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Presidential Documents

Title 3—

The President

Proclamation 9951 of October 17, 2019

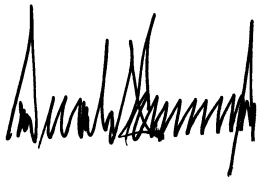
Death of Elijah E. Cummings

By the President of the United States of America

A Proclamation

As a mark of respect for the memory and longstanding public service of Representative Elijah E. Cummings, of Maryland, 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 through October 18, 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 seventeenth day of October, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.



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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3, 6, 34, 46, 160, 161, 163, and 167

[Docket ID OCC–2019–0004]

RIN 1557–AE50

Other Real Estate Owned and Technical Amendments

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Final rule.

SUMMARY: The OCC is issuing a final rule to clarify and streamline its regulation on other real estate owned (OREO) for national banks and update the regulatory framework for OREO activities at Federal savings associations. The OCC is also removing outdated capital rules for national banks and Federal savings associations, which include provisions related to OREO, and making conforming edits to other rules that reference those capital rules.

DATES: The final rule is effective December 1, 2019.

FOR FURTHER INFORMATION CONTACT:

For revisions to part 34, subpart E (OREO): Charlotte Bahin, Senior Advisor for Thrift Supervision, (202) 649–6281; Beth Nalyvayko, Bank Examiner, Commercial Credit Risk, (202) 649–6670; or J. William Binkley, Attorney, Chief Counsel's Office, (202) 649–5490.

For all revisions: Kevin Korzeniewski, Counsel, Chief Counsel's Office, (202) 649–5490; or for persons who are deaf or hearing impaired, TTY, (202) 649–5597.

SUPPLEMENTARY INFORMATION:

I. Background

On April 24, 2019, the OCC published a proposed rule (proposal) [1] to clarify and streamline the regulation for national bank other real estate owned (OREO) activities and to apply that framework to the OREO activities of Federal savings associations. The OCC's last significant revision to the national bank OREO rules occurred over twenty years ago,[2] and the OCC has gained additional supervisory experience related to OREO since that time.

In addition, the OCC now supervises Federal savings associations pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[3] Federal savings associations, unlike national banks, are not subject to statutory provisions governing OREO. While capital regulations and handbooks issued by the Office of Thrift Supervision (OTS) generally established requirements and supervisory expectations, respectively, for OREO activities, the OCC rescinded many of those documents, creating ambiguity with respect to OREO standards for Federal savings associations. As discussed below, the OCC is adopting a framework for Federal savings associations that generally is consistent with the OTS framework described above. This framework is still followed by many savings associations and offers flexibility consistent with provisions in the Home Owners' Loan Act (HOLA).[4]

The OCC also is removing Appendices A and B to 12 CFR part 3 (risk-based capital guidelines for national banks) and 12 CFR part 167 (capital requirements for Federal savings associations) and making conforming technical edits to other CFR parts that reference those provisions. When the OCC revised Part 3, it superseded Appendices A and B to part 3 and part 167. However, because there was a transition period for part 3, the OCC retained those appendices at that time.[5] Part 167 includes provisions relating to treatment of OREO held by Federal savings associations that are no longer in effect. The OCC is removing part 167 and related references to avoid any confusion with the OREO treatment in this final rule. Since Appendices A and B to part 3 include the corresponding capital provisions for national banks and are similarly outdated, the OCC is rescinding those appendices in this final rule as well.

II. Description of Final Rule and Comments

The OCC received two comments on the proposal. Both comments requested clarification or adjustments to the provisions on appraisals of OREO. For the reasons discussed below, the OCC does not believe changes are necessary to the rule text in response to the comments, and therefore is adopting the final rule substantially as proposed. The OCC is making minor adjustments to the proposed technical amendments related to the capital rules.

A. Definitions (§ 34.81)

This section contains definitions used in the OREO regulation. This final rule continues to use the existing definitions for *other real estate owned (OREO); market value;* and *recorded investment amount* in the revised regulation. The term *OREO* continues to mean DPC real estate and former banking premises. The term *market value* continues to mean the value of the property, as determined under the appraisal rule in 12 CFR part 34, subpart C. *Recorded investment amount* continues to mean the recorded loan balance (for loans) or the net book value (for former banking premises).

In addition, the final rule continues to use the current definition of *DPC real estate,* but with minor revisions related to lease accounting described below. The definition of *DPC real estate* continues to mean real estate acquired through any means in satisfaction of a debt previously contracted. The definition of the term includes capitalized and operating leases, which are the two types of leases recognized under current accounting standards from the lessee's perspective. However, revised accounting standards requiring operating leases to be capitalized are scheduled to be implemented in the near future.[6] Therefore, the OCC is revising the terminology in the current definition of DPC real estate to refer to leased real estate, rather than to refer specifically to capitalized and operating leases. The definition continues to cover all leases, but the revision will ensure the regulation is not outdated in this

[1] *See* 84 FR 17094 (April 24, 2019).

[2] *See* 61 FR 11294 (March 20, 1996).

[3] *See* 12 U.S.C. 5412.

[4] 12 U.S.C. 1461 *et seq.*

[5] *See* 78 FR 62018 (October 11, 2013).

[6] *See* FASB ASU 2016–02, ''Leases (Topic 842)'' (February 2016).

respect after implementation of the new accounting standards.

In addition, the final rule revises the definition of *former banking premises* to include a reference to 12 CFR 7.1000(a)(1), which provides that national banks and Federal savings associations are permitted to invest in real estate for use in their banking activities. The revised definition defines former banking premises as real estate permitted under section 7.1000(a)(1) that is no longer used or contemplated to be used for the purposes permitted under that section.[7] The revision should improve regulatory consistency by clarifying that both rules cover the same types of real estate for banking activities and eliminate confusion about whether the rules refer to different types of properties.

B. Holding Period (§ 34.82)

This section specifies how long a national bank or a Federal saving association may hold OREO, provides the starting date for that holding period, and addresses additional related provisions affecting the holding period.

The holding period for national banks under the final rule remains unchanged and consists of an initial five-year holding period, with up to an additional five years if approved by the OCC.

The final rule establishes an initial holding period for Federal savings associations of five years after commencement of the holding period to ensure the safe and sound management of OREO holdings. If the Federal savings association has not disposed of the OREO within the initial five-year holding period, the savings association may request OCC approval to continue to hold the real property as OREO for up to five additional years. These provisions are consistent with the rules that apply to national banks. The OCC's supervisory experience is that both types of institutions generally have or obtain similar types of OREO. As with national banks, in deciding whether to grant the approval to hold OREO beyond the initial five-year holding period, the OCC would expect to consider, among other factors, the Federal savings association's current and prior efforts to dispose of the property and safety and soundness concerns related to an immediate disposition of the property. During the initial five-year holding period and any subsequent approved period, the Federal savings association would need to make reasonable efforts to dispose of the OREO. This provision is consistent with prior OTS expectations. This framework also is consistent with the requirement previously applicable to Federal savings associations under 12 CFR part 167, which required savings associations to deduct from regulatory capital the value of OREO held for more than five years, or a longer period with OCC approval, as an equity investment. This provision created incentives for Federal savings associations to dispose of OREO within five years, or a longer period approved by the OCC, as the regulatory capital treatment for failure to dispose of the property generally would be more onerous than disposing of the property. The OCC believes that an initial five-year holding period is a sufficient amount of time to dispose of most OREO and the option to extend the holding period for an additional five years should be sufficient to address atypical properties or unusual real estate market conditions.

The final rule also adopts for Federal savings associations the existing national bank provision describing the date the holding period for OREO begins. Generally, the holding period for DPC real estate would begin on the date the property is transferred to the national bank or Federal savings association (for example, after a judicial foreclosure or deed-in-lieu of foreclosure), which may be different than the date the institution must recognize the property as OREO for accounting and financial reporting purposes. The title transfer law of the state or other jurisdiction where the property is located governs when the property is considered transferred to the national bank or Federal savings association. The holding period for former bank premises begins when the national bank or Federal savings association ceases using a property as bank premises (whether outright or after relocating) or abandons a plan to use property held for future bank premises.

The OCC is modifying the holding period for OREO obtained by a Federal savings association prior to the effective date of this final rule. For this OREO, the holding period would begin on the rule's effective date (December 1, 2019) to provide for a full initial five-year holding period. The OCC still would consider the entire time the OREO has been held by the Federal savings association in evaluating any request for an additional holding period beyond that initial five years. The OCC believes this accommodation provides Federal savings associations with a reasonable timeframe to dispose of OREO held prior to the effective date of the final rule, rather than calculating the holding period back to the initial transfer date.

The OCC also is clarifying that when a national bank or Federal savings association obtains OREO from a merged or acquired institution, the relevant holding period commences on the effective date of the merger or acquisition and would not include any time the OREO had been held by the acquired institution prior to the merger or acquisition. Similarly, when an institution converts to a national bank or Federal savings association, the relevant holding period begins on the date of conversion. However, if the institution was already a national bank or Federal savings association immediately prior to the conversion, the holding period would not reset on the conversion date.[8] The OCC believes this is appropriate because different OREO standards might apply to an institution before it becomes a national bank or Federal savings association, unless the institution is already covered by the OCC's OREO rule. The revision also extends to Federal savings associations the national bank regulatory provision which provides that the holding period for DPC real estate that is subject to a redemption period imposed under state law begins after the expiration of the redemption period.

The revised section also addresses an interpretive issue that arises when a national bank or Federal savings association enters into a transaction to dispose of OREO, but the real estate is conveyed back to the institution for a reason other than a subsequent purchase by the institution (for example, if there is a failure to complete the disposition or the disposition is validly rescinded or unwound). In those cases, the holding period would be tolled during the period of time the OREO property was not under the bank's or savings association's control. For example, if a third party purchases OREO from a national bank or Federal savings association but later legally rescinds the sale, the bank or savings association cannot start a new five-year holding period for the property. Instead, any previous holding period (including approved extensions) is tolled between the time the bank or savings association sold and reacquired the real property. Similarly, in certain U.S. government mortgage loan programs a national bank or Federal savings association may be required to transfer a foreclosed

[7] While the proposed rule referenced 12 CFR 7.1000(a)(2), which provides a non-exclusive list of permissible real estate investments, the OCC believes a reference to the general authority in 7.1000(a)(1) is more appropriate for the final rule.

[8] For example, if a Federal savings association that had OREO with a holding period that began in January 2020, converted to a national bank in June 2023, the OCC would still consider the holding period for the OREO to have begun in January 2020, not June 2023.

property to a U.S. government entity, and that entity may later validly reject receipt of the property and return title to the bank or savings association. In that case, the national bank or Federal savings association could not start a new five-year holding period for the property but could toll any previous holding period (including approved extensions) during the time the government entity had possession of the property. However, if the national bank or Federal savings association re-acquires property that was previously OREO and had been disposed of consistent with this part, then the five-year holding period would reset on that property. For example, if a national bank or Federal savings association originates a mortgage loan in connection with the sale of an OREO property that met the requirements for a valid disposition under part 34, but later forecloses on that property due to missed mortgage payments, then the bank or savings association will obtain a new five-year holding period.

C. Disposition of OREO (§ 34.83)

This section specifies methods for national banks and Federal savings associations to dispose of OREO. Generally, the final rule retains the existing disposal methods for national banks and allows Federal savings associations to dispose of OREO using those same methods. These methods include: (i) Selling the property outright or over a period of time; (ii) using DPC real estate as bank premises or affiliate premises; or (iii) entering into subleases of OREO leases. Writing OREO (whether owned or leased) down to zero for accounting purposes is not a valid disposition under the existing rules and would not be a valid disposition under the final rule.

To provide for additional flexibility to dispose of OREO, the OCC also is adding a new paragraph (a)(5) that recognizes that OREO may be disposed of in other ways approved by the OCC consistent with safe and sound banking practices. For example, the OCC previously has approved national banks and Federal savings associations to dispose of OREO in certain circumstances by donating or escheating OREO or by negotiating early terminations of OREO leases.

The final rule recognizes that, unlike a national bank, a Federal savings association also may transfer OREO to a service corporation.[9] Under HOLA and 12 CFR 5.59, a Federal savings association may invest in a service corporation, which may engage in the same activities as its parent Federal savings association under the same terms and conditions. A service corporation also may engage in additional activities not permitted at a Federal savings association, including certain real estate related services such as holding property as an investment in real estate.[10] In addition, 12 CFR 5.59(i) permits a Federal savings association to make a contribution to a service corporation in the exercise of the association's salvage powers.[11] Consistent with HOLA and 12 CFR 5.59, the final rule allows a Federal savings association, through a service corporation, to hold OREO property as an investment for longer than 10 years. However, under current statutory and regulatory capital requirements, a Federal savings association must deconsolidate, and deduct any investments in, a subsidiary engaged in activities not permissible for a national bank, including holding property as an investment in real estate.[12]

Finally, this section of the final rule retains the requirement that a national bank must make a diligent and ongoing effort to dispose of OREO and maintain documentation of those efforts. The final rule also applies these provisions to Federal savings associations. Compliance with the requirement to document the national bank's or Federal savings association's diligence when attempting to dispose of OREO is an important consideration if the national bank or Federal savings association requests an extension to hold OREO beyond the initial five-year holding period. The requirement that a Federal savings association make diligent efforts to dispose of OREO and maintain relevant documentation is consistent with both prior OTS expectations that savings associations develop salvage plans that included provisions for disposition of OREO and the existing requirement that Federal savings associations maintain documentation of appraisals of OREO.[13]

D. Appraisal Requirements (§ 34.85)

This section specifies the appraisal requirements applicable to OREO. The final rule carries over the existing requirements for appraisals of OREO for national banks and applies those same requirements to Federal savings associations. Generally, this section requires an appraisal consistent with 12 CFR part 34, subpart C when property is obtained as OREO, followed by periodic monitoring thereafter. In addition, this section would continue to include existing exceptions from the appraisal requirements. For example, an appraisal is not required if there is still a valid appraisal that was created in a transaction involving the property, as described in § 34.85(b). Because the requirements for appraisals of OREO held by Federal savings associations are set out in the final rule, the OCC also is repealing 12 CFR 160.172, which includes comparable appraisal standards for OREO held by Federal savings associations.

As noted above, the OCC received two comments raising three issues related to the appraisal provisions applicable to OREO. One comment requested that the OCC permit appraisals of OREO to use liquidation value or disposition value instead of market value as required by the current rule, as the commenter stated that these alternate values are commonly used with OREO. The OCC notes that liquidation value or disposition value generally assume a seller who is compelled or strongly motivated to sell a property as compared to a market value appraisal that assumes a willing seller in the ordinary course of business. As the OREO rule permits an initial holding period of five years, that timeframe aligns better with the assumptions of a seller under a market value appraisal rather than a liquidation value or disposition value appraisal for purposes of this rule. While a bank or savings association may request alternate values in addition to market value, only a market value appraisal is required for OREO in the final rule.

Another commenter requested clarification regarding the amount a bank should use in determining whether to request an appraisal of a property in foreclosure. Under the final rule, an appraisal is required by default when the property is obtained as OREO,

[9] This provision would not apply to a Federal savings association that elects to be treated as a covered savings association. A covered savings association is not permitted to establish any new service corporations and generally must divest any interests in existing service corporations. *See* 12 CFR 101.5.

[10] *See* 12 U.S.C. 1464(c)(4)(B) and 12 CFR 5.59.

[11] 12 CFR 5.59(i) provides that ''a Federal savings association may exercise its salvage power to make a contribution or a loan . . . to a service corporation (''salvage investment'') that exceeds the maximum amount otherwise permitted under law or regulation.'' The Federal savings association must demonstrate that: (i) The salvage investment protects the association's interest in the service corporation; (ii) the salvage investment is consistent with safety and soundness; and (iii) the association considered alternatives to the salvage investment but determined the alternatives would not satisfy (i) and (ii).

[12] 12 U.S.C. 1464(t)(5) and 12 CFR 3.22(a)(8). Holding property as an investment in real estate is not authorized for a national bank under 12 U.S.C. 29.

[13] 12 CFR 160.172.

unless the ''recorded investment amount'' of the OREO is less than the applicable threshold in 12 CFR 34.43(a). For foreclosed real estate, referred to as DPC property in the final rule, recorded investment amount means the recorded loan balance (*i.e.,* contractual loan balance less payments and charge-offs) at the time the property is obtained as OREO. If the recorded investment amount is less than the applicable threshold, 12 CFR 34.43(b) generally requires an evaluation, instead of an appraisal, for OREO.

The same commenter also requested clarification on applying the requirement to obtain an appraisal or evaluation after a foreclosed property is transferred to OREO but when the bank may not have full access to the property (for example, if the bank obtains title to the property but the prior owners continue to occupy the property as squatters) and whether an alternate valuation is appropriate in those circumstances. The OCC believes that it is important for a bank or savings association to obtain the best appraisal or evaluation possible at the time a property is transferred to OREO. In situations where it may be unreasonable or unsafe to conduct a full appraisal or evaluation of the interior or other portions of the property, the appraisal or evaluation may include ''extraordinary assumptions'' about the condition of the interior of the property or other areas that could not reasonably and safely be accessed at the time the property is transferred to OREO. Once the bank or savings association completes the process of obtaining access to or possession of the property and the property has been inspected by the lender or an authorized third-party, the appraisal or evaluation should promptly be updated if the actual condition of the property materially differs from the extraordinary assumptions.

E. OREO Expenditures and Notification (§ 34.86)

This section contains provisions related to permissible expenditures on OREO. The final rule codifies various interpretations regarding other permissible expenses related to OREO for national banks and Federal savings associations in new paragraphs (a) and (b). Paragraph (a) allows national banks and Federal savings associations to pay any normal operating expenses relating to the OREO property, such as taxes, insurance, utilities, and maintenance, and homeowners' or condominium association fees, to the extent those fees are reasonable and consistent with safe and sound banking practices. This addition is consistent with a provision in existing paragraph (b)(1), prior interpretations issued by the OCC for national banks, and prior OTS expectations concerning payment of taxes, insurance, and similar expenses on OREO by Federal savings associations.[14]

Paragraph (b) allows national banks and Federal savings associations to pay expenses for the operation of a business associated with the OREO property, if (i) payment of the expenses is reasonably calculated to reduce the shortfall between the current value of the property and the national bank or Federal savings association's investment in the property; and (ii) the expenses are consistent with safe and sound banking practices. For example, if a national bank or Federal savings association obtains an OREO property that includes a functioning hotel and resort, the national bank or Federal savings association may be able to minimize its loss on the defaulted loan by continuing to pay business expenses to operate the hotel and resort, such as staff wages, inventory, management fees, and licensing fees, while the OREO is being prepared for sale. The OCC has previously addressed these types of expenses for national banks consistent with safe and sound banking practices, and this provision extends the permission to Federal savings associations.[15]

Under the current rule, a national bank is permitted to make advances to complete an OREO development or improvement project (referred to as ''additional expenditures''). Paragraph (c) continues the existing requirements for additional expenditures on OREO for a national bank and applies the same requirements to a Federal savings association. A national bank or Federal savings association could make additional expenditures only if (i) the expenditures are reasonably calculated to reduce the shortfall between the current value of the property and the bank's investment in the property; (ii) the expenditures are not made for purposes of speculation in real estate; and (iii) the expenditures are consistent with safe and sound banking practices. These requirements are consistent with prior OTS expectations, which addressed a Federal savings association's reasonable capital expenditures to reduce the loss on OREO obtained by the savings association.[16]

In addition, paragraph (d) updates the requirements for prior notification for significant additional expenditures on OREO for national banks and extends the provision to Federal savings associations. Currently, under 12 CFR 34.86(b), a national bank must notify the OCC at least 30 days before making additional expenditures if the amount of the expenditures and recorded investment in the OREO exceeds ten percent of the national bank's capital and surplus, which generally is based on regulatory capital calculated under 12 CFR part 3. Federal savings associations were subject to supervisory review of any expenditures on OREO in excess of their lending limits, which are calculated based on a formula that incorporates a percentage of capital and surplus.[17] While based on different calculations, the supervisory review for Federal savings associations had a similar purpose as the required OCC notification for national banks, namely, to ensure that institutions did not expend an excessive amount of funds to complete or renovate OREO. The OCC is updating and streamlining the notification provision by requiring prior notification only when the proposed additional expenditures and recorded investment in an individual OREO property exceed 10 percent of the institution's total equity capital based on the institution's most recent Consolidated Reports of Condition and Income (Call Report). The OCC believes that using a measure based on total equity capital for this purpose, rather than a measure tied to 12 CFR part 3 regulatory capital or lending limits, allows for a less burdensome and more transparent calculation, while not impairing the OCC's supervisory review of institutions that propose making significant additional expenditures on OREO.

A comparison of capital and surplus and total equity capital for national banks supports this approach.[18] Based on information from the June 30, 2018

[14] For more information, *see* Comptroller's Handbook on ''Other Real Estate Owned'' (August 2018). For Federal savings associations, this provision was included in the OTS Examination Handbook, Section 251, ''Real Estate Owned and Repossessed Assets'' (December 2010), which has since been rescinded by the OCC.

[15] *See* Comptroller's Handbook on ''Other Real Estate Owned'' (August 2018).

[16] For Federal savings associations, this provision was included in the OTS Examination Handbook, Section 251, ''Real Estate Owned and Repossessed Assets'' (December 2010), which has since been rescinded by the OCC.

[17] This provision was reflected in the OTS lending limits at 12 CFR 560.93 and included in the OTS Examination Handbook, Section 211, ''Loans to One Borrower'' (December 2007). The OCC has superseded the rule and rescinded the handbook section.

[18] The OCC did not review these measures for Federal savings associations because Federal savings associations were not subject to either the existing limit or notification provision for improvements to OREO.

Call Report, the measures of regulatory capital and total equity capital are numerically comparable, and identical in some cases, for many national banks that hold OREO. Under the final rule, national banks with significant loan loss reserves or excessive losses recorded in accumulated other comprehensive income will generally have a lower limit for notification compared with the ''capital and surplus'' measure. The OCC believes that this result is appropriate, as those losses may indicate national banks with a higher risk profile for which notification of significant OREO expenditures is most relevant. National banks holding assets that are deducted under the regulatory capital rule, such as mortgage servicing assets or investments in other financial institutions, would generally have a higher limit for notification under the revised measure.

F. Additional Provisions

The OCC is rescinding existing 12 CFR 34.87, which requires national banks to account for OREO consistent with the instructions for the Call Report, because it is now redundant to statutory requirements. Historically, there have been differences between regulatory accounting principles and generally accepted accounting principles (GAAP). However, currently, national banks and Federal savings associations must follow GAAP when accounting for transactions involving OREO.[19] Therefore, codifying this requirement in the OREO rule is unnecessary. Guidance on the application of GAAP for OREO transactions can be found in the instructions for the Call Report and the OCC's Bank Accounting Advisory Series.[20] However, the OCC notes that, although the accounting standard generally establishes a bright line for when a bank or savings association must report a property as OREO for financial reporting purposes (*i.e.,* when a judge completes a judicial foreclosure), section 34.82(b) does not establish a bright line for when property is originally transferred to a bank or savings association. As a result, the date on which reporting requirements begin for OREO under the accounting standard may be different than the date that the holding period commences under 34.82(b), as described above in Section III.B. The OCC also notes that writing off a property or lease classified as OREO for accounting purposes does not eliminate the need to comply with the requirements of this subpart, including the requirement for appraisals and disposition of the property or lease under one of the allowed methods.

IV. Technical Amendments

As described above, the OCC also is removing Appendices A and B to 12 CFR part 3 (risk-based capital guidelines for national banks) and 12 CFR part 167 (capital requirements for Federal savings associations) and making conforming technical edits to other parts, as part 167 is outdated and includes OREO provisions that conflict with the provisions described in this final rule. The final rule also makes conforming technical changes to portions of the OCC's rules that refer to Appendices A and B to 12 CFR part 3 or to 12 CFR part 167. Specifically, the OCC is making conforming edits to 12 CFR 3.1, 6.1, 6.2, Appendix A to Subpart D of part 34, 46.6, 160.100, Appendix A to 160.101, 161.55, 163.74, and 163.80. This final rule does not impact the legal status of any reference to the superseded capital rules in outstanding compliance and enforcement orders, agreements, and memoranda of understanding entered into by the OCC and a national bank or Federal savings association, as those references became references to 12 CFR part 3 when the revised capital rule became effective.

V. Regulatory Analyses

A. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995,[21] the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number. The OCC has submitted the information collection requirements imposed by this final rule to OMB for review. However, the final rule will not result in a change in burden. While the respondent count will increase with the addition of Federal savings associations, the OCC estimates fewer notices from national banks due to a decrease in charters since the last review, resulting in no change in burden.

Section 34.86(d) updates the requirements for prior notification for significant additional expenditures on OREO for national banks and extends the provision to Federal savings associations. Currently, a national bank must notify the OCC at least 30 days before making additional expenditures if the amount of the expenditures and recorded investment in the OREO exceeds ten percent of its capital and surplus, based on regulatory capital calculated under 12 CFR part 3. Federal savings associations are subject to supervisory review of any expenditures on OREO in excess of their lending limits, which are calculated based on a formula that incorporates a percentage of capital and surplus.

The final rule updates and streamlines the notification provision by requiring prior notification only when the proposed additional expenditures and recorded investment in an individual OREO property exceeds 10 percent of the institution's total equity capital based on its most recent Call Report. National banks with significant loan loss reserves or excessive losses recorded in accumulated other comprehensive income will generally have a reduced limit for notification. National banks holding assets that are deducted under the regulatory capital rule, will generally have an increase limit for notification under the final rule. The OCC expects a similar result for Federal savings associations that previously used a notification framework based on lending limits.

Title: Real Estate Lending and Appraisals.

OMB Control No.: 1557–0190.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 6.

Estimated Burden per Respondent: 5 hours.

Estimated Total Annual Burden: 30 hours.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the collections 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 collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act[22] requires an agency, in connection with

[19] *See* 12 U.S.C. 1831n(a)(2).

[20] Bank Accounting Advisory Series (August 2019), *available at: https://www.occ.gov/publications-and-resources/publications/banker-education/files/pub-bank-accounting-advisory-series.pdf.*

[21] 44 U.S.C. 3501 *et seq.*

[22] 5 U.S.C. 601 *et seq.*

a final rule, to prepare a Final Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the SBA for purposes of the RFA to include commercial banks and savings institutions with total assets of $600 million or less and trust companies with total revenue of $41.5 million or less) or to certify that the final rule would not have a significant economic impact on a substantial number of small entities. As of December 31, 2018, the OCC supervised 782 small entities. The final rule would apply to all entities supervised by the OCC and, therefore, would affect a substantial number of small entities. The economic impact on each small Federal savings association is estimated to be approximately $1,824, which is not significant based on 5% of total annual salaries or 2.5% of other noninterest income. The economic impact on each small national bank is estimated to be *de minimis.* Therefore, the OCC certifies the final rule would not have a significant economic impact on a substantial number of small entities.

C. OCC Unfunded Mandates Reform Act of 1995

The OCC analyzed the final rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the final rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation). The OCC estimates that the total cost of the final rule is $568,000. Therefore, the OCC has determined that this final rule would not result in expenditures by State, local, and Tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a written statement to accompany this final rule.

D. Riegle Community Development and Regulatory Improvement Act of 1994

This rulemaking would not impose additional reporting, disclosure, or other requirements on an insured depository institution. Therefore, section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 does not apply to this rulemaking.

E. Congressional Review Act Determination

Pursuant to the Congressional Review Act, the Office of Management and Budget's Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined at 5 U.S.C. 804(2).

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 6

National banks.

12 CFR Part 34

Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 46

Banks, Banking, Capital, Disclosures, National banks, Reporting and recordkeeping requirements, Risk, Stress test.

12 CFR Part 160

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 161

Administrative practice and procedure, Savings associations.

12 CFR Part 163

Accounting, Administrative practice and procedure, Advertising, Conflicts of interest, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Surety bonds.

12 CFR Part 167

Capital, Reporting and recordkeeping requirements, Risk, Savings associations.

Authority and Issuance

For the reasons set out in the preamble, the OCC is revising 12 CFR chapter I as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

§ 3.1 [Amended]

■ 2. Section 3.1 is amended by removing and reserving paragraph (f)(1)(ii).

Appendix A to Part 3 [Removed]

■ 3. Remove Appendix A to part 3.

Appendix B to Part 3 [Removed]

■ 4. Remove Appendix B to part 3.

PART 6—PROMPT CORRECTIVE ACTION

■ 5. The authority citation for part 6 continues to read as follows:

Authority: 12 U.S.C. 93a, 1831o, 5412(b)(2)(B).

§ 6.1 [Amended]

■ 6. Section 6.1 is amended by removing and reserving paragraph (f)(1).

§ 6.2 [Amended]

■ 7. Section 6.2 is amended by removing footnotes 30, 31, 32, 33, 34, and 35.

PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 8. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j–3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* and 5412(b)(2)(B) and 15 U.S.C. 1639h.

Subpart D—Real Estate Lending Standards

■ 9. Footnote 2 of Appendix A to Subpart D of part 34 is revised to read as follows:

Appendix A to Subpart D of Part 34—Interagency Guidelines for Real Estate Lending

* * * * *

[2] For the state member banks, the term ''total capital'' means ''total risk-based capital'' as defined in Appendix A to 12 CFR part 208. For insured state non-member banks, ''total capital'' refers to that term described in table I of Appendix A to 12 CFR part 325. For national banks and Federal savings associations, the term ''total capital'' is defined at 12 CFR 3.2.

Subpart E—Other Real Estate Owned

■ 10. Section 34.81 is amended by:
■ a. Removing the paragraph designations and arranging the definitions in alphabetical order;
■ b. Removing the definition of ''capital and surplus''; and
■ c. Revising the definitions of ''debts previously contracted (DPC) real estate'' and ''former banking premises''.

The revisions read as set forth below.

§ 34.81 Definitions.

* * * * *

Debts previously contracted (DPC) real estate means real estate (including leases) acquired by a national bank or Federal savings association through any means in full or partial satisfaction of a debt previously contracted.

Former banking premises means real estate permissible under § 7.1000(a)(1) of this chapter that is no longer used or contemplated to be used for the purposes permitted under that section.

* * * * *

■ 11. Section 34.82 is amended by revising paragraphs (a) and (b) and adding paragraphs (d) and (e) to read as follows:

§ 34.82 Holding period.

(a) *Holding period for OREO*—(1) *National bank.* A national bank shall dispose of OREO at the earliest time that prudent judgment dictates, but not later than the end of the holding period (or an extension thereof) permitted by 12 U.S.C. 29.

(2) *Federal savings association.* A Federal savings association may hold OREO for not more than five years after commencement of the holding period. On the request of a Federal savings association, the OCC may extend the holding period for not more than an additional five years.

(b) *Commencement of holding period.* The holding period begins on the date that:

(1) Ownership of the property is originally transferred to a national bank or Federal savings association, including as a result of a merger with or acquisition of another organization holding OREO;

(2) A national bank or Federal savings association completes relocation from former banking premises to new banking premises or ceases to use the former banking premises without relocating;

(3) A national bank or Federal savings association decides not to use real estate acquired for future banking expansion;

(4) An institution converts to a national bank or Federal savings association, unless the institution was a national bank or Federal savings association immediately prior to the conversion; or

(5) Is December 1, 2019, for OREO obtained by a Federal savings association prior to that date.

* * * * *

(d) *Effect of failed disposition.* If a national bank or Federal savings association disposes of OREO, but the real estate subsequently is conveyed back to the institution within five years as a result of a valid rescission or invalidation of the original disposition, then the holding period will be tolled for the period during which the real estate was not in possession of the national bank or Federal savings association.

(e) *Re-acquisition of former OREO.* If a national bank or Federal savings association reacquires a property that had been OREO and was disposed of consistent with § 34.83, the holding period will reset.

■ 12. Section 34.83 is amended:

■ a. By revising the section heading and paragraphs (a) introductory text, (a)(3) introductory text, (a)(3)(i)(B), and (a)(3)(ii);

■ b. In paragraph (a)(4) by removing the period at the end and adding ''; or'' in its place;

■ c. Adding paragraph (a)(5);

■ d. Redesignating paragraph (b) as paragraph (c);

■ e. Adding new paragraph (b); and

■ f. In newly redesignated paragraph (c), by adding ''or Federal savings association'' after ''national bank''.

The revisions and addition read as follows:

§ 34.83 Disposition of OREO.

(a) *Disposition.* A national bank or Federal savings association may dispose of OREO in the following ways:

* * * * *

(3) With respect to a lease:

(i) By obtaining an assignment or a coterminous sublease. If a national bank or Federal savings association enters into a sublease that is not coterminous, the period during which the master lease must be divested will be suspended for the duration of the sublease, and will begin running again upon termination of the sublease. A national bank or Federal savings association holding a lease as OREO may enter into an extension of the lease that would exceed the holding period referred to in § 34.82 if the extension meets the following criteria:

* * * * *

(B) The national bank or Federal savings association, prior to entering into the extension, has a firm commitment from a prospective subtenant to sublease the property; and

* * * * *

(ii) Should the OCC determine that a national bank or Federal savings association has entered into a lease, extension of a lease, or a sublease for the purpose of real estate speculation, the OCC will take appropriate measures to address the violation, which may include requiring the bank or savings association to take immediate steps to divest the lease or sublease; and

* * * * *

(5) By any other method approved by the OCC.

(b) *Additional method for Federal savings associations.* A Federal savings association also may transfer OREO to a service corporation. A service corporation may hold real property transferred to it:

(1) As OREO, subject to the requirements otherwise applicable to the Federal savings association under this Subpart E; or

(2) As an investment in real estate under § 5.59.

* * * * *

§ 34.85 [Amended]

■ 13. Section 34.85 is amended:

■ a. After ''national bank'', wherever it appears, by adding ''or Federal savings association''; and

■ b. In paragraphs (a)(2) and (b), by adding ''or savings association'' after ''the bank''.

■ 14. Section 34.86 is revised to read as follows:

§ 34.86 OREO expenditures and notification.

(a) *Operating expenditures.* A national bank or Federal savings association may pay operating expenses on OREO, including taxes, insurance, utilities, and maintenance, that are reasonable and consistent with safe and sound banking practices.

(b) *Business expenditures.* A national bank or Federal savings association may pay expenses for OREO that includes the operation of a business, provided the expenses are:

(1) Reasonably calculated to reduce any shortfall between the property's market value and the recorded investment amount; and

(2) Consistent with safe and sound banking practices.

(c) *Additional expenditures.* For OREO that is a development or improvement project, a national bank or Federal savings association may make advances to complete the project if the advances are:

(1) Reasonably calculated to reduce any shortfall between the property's market value and the recorded investment amount;

(2) Not made for the purpose of speculation in real estate; and

(3) Consistent with safe and sound banking practices.

(d) *Notification procedures for additional expenditures.* (1) A national bank or Federal savings association shall notify the appropriate supervisory office at least 30 days before implementing a development or improvement plan for OREO when the sum of the plan's estimated cost and the

bank's or savings association's current recorded investment amount (including any unpaid prior liens on the property) exceeds 10 percent of the bank's or savings association's total equity capital on its most recent report of condition. A national bank or Federal savings association need notify the OCC under this paragraph (d)(1) only once.

(2) The required notification must demonstrate that the additional expenditure is consistent with the conditions and limitations in paragraph (c) of this section.

(3) Unless informed otherwise, the national bank or Federal savings association may implement the proposed plan on the thirty-first day (or sooner, if notified by the OCC) following receipt by the OCC of the notification, subject to any conditions imposed by the OCC.

§ 34.87 [Removed]

■ 15. Remove § 34.87.

PART 46—ANNUAL STRESS TEST

■ 16. The authority citation for part 46 continues to read as follows:

Authority: 12 U.S.C. 93a; 1463(a)(2); 5365(i)(2); and 5412(b)(2)(B).

§ 46.6 [Amended]

■ 17. Section 46.6 is amended in paragraph (a)(2), in the first sentence, by removing ''or part 167, as applicable,'' after ''12 CFR part 3''.

PART 160—LENDING AND INVESTMENT

■ 18. The authority for part 160 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106.

§ 160.100 [Amended]

■ 19. Section 160.100 is amended by removing ''or 167.1, as applicable,''.

■ 20. Section 160.101 is amended by revising footnote 2 in appendix A to § 160.101 to read as follows:

§ 160.101 Real estate lending standards.

* * * * *

[2] For the state member banks, the term ''total capital'' means ''total risk-based capital'' as defined in Appendix A to 12 CFR part 208. For insured state non-member banks, ''total capital'' refers to that term described in table I of Appendix A to 12 CFR part 325. For national banks and Federal savings associations, the term ''total capital'' is defined at 12 CFR 3.2.

§ 160.172 [Removed]

■ 21. Remove § 160.172.

PART 161—DEFINITIONS FOR REGULATIONS AFFECTING ALL SAVINGS ASSOCIATIONS

■ 22. The authority for part 161 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 5412(b)(2)(B).

§ 161.55 [Amended]

■ 23. Section 161.55 is amended in paragraph (c) by removing ''or part 167, as applicable'' after ''12 CFR part 3''.

PART 163—SAVINGS ASSOCIATIONS—OPERATIONS

■ 24. The authority for part 163 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1817, 1820, 1828, 1831o, 3806, 5101 *et seq.,* 5412(b)(2)(B); 31 U.S.C. 5318; 42 U.S.C. 4106.

§ 163.74 [Amended]

■ 25. Section 163.74 is amended in paragraphs (i)(2)(iv) and (v) by removing ''or part 167, as applicable,'' after ''12 CFR part 3''.

§ 163.80 [Amended]

■ 26. Section 163.80 is amended in paragraph (e)(1) introductory text by removing ''or part 167, as applicable''.

PART 167—[REMOVED]

■ 27. Under the authority of 12 U.S.C. 1464, part 167 is removed.

Dated: October 11, 2019.

Morris R. Morgan,

First Deputy Comptroller, Comptroller of the Currency.

[FR Doc. 2019–22823 Filed 10–21–19; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0580; Product Identifier 2019–NM–019–AD; Amendment 39–19765; AD 2019–20–12]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–243, –243F, –341, –342, and –343 airplanes. This AD was prompted by a determination that cracks can develop on the ripple damper weld of the hydraulic pressure tube assembly and reports of failure of the ripple damper of the hydraulic pressure tube assembly. This AD requires replacement of the affected hydraulic pressure tube assembly or modification of both engines, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 26, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 26, 2019.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0580.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0580; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0031, dated February 13, 2019 (''EASA AD 2019–0031'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–243, –243F, –341, –342, and –343 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–243, –243F, –341, –342, and –343 airplanes. The NPRM published in the **Federal Register** on July 31, 2019 (84 FR 37162). The NPRM was prompted by a determination that cracks can develop on the ripple damper weld of the hydraulic pressure tube assembly and reports of failure of the ripple damper of the hydraulic pressure tube assembly. The NPRM proposed to require replacement of the affected hydraulic pressure tube assembly or modification of both engines.

The FAA is issuing this AD to address cracking of the ripple damper weld of the hydraulic pressure tube assembly, which could lead to hydraulic fluid leakage and consequent loss of the green hydraulic system. This condition, if combined with other system failures, could result in reduced control of the airplane. See the MCAI for additional background information.

Comments

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

Conclusion

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

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

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0031 describes procedures for replacement of the affected hydraulic pressure tube assembly with a serviceable hydraulic pressure tube assembly or modification of both engines. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 53 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$20,000	$20,340	$1,078,020

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–20–12 Airbus SAS: Amendment 39–19765; Docket No. FAA–2019–0580; Product Identifier 2019–NM–019–AD.

(a) Effective Date

This AD is effective November 26, 2019.

(b) Affected ADs

This AD affects AD 2017–07–03, Amendment 39–18841 (82 FR 15985, March 31, 2017; corrected April 13, 2017 (82 FR 17749)) (''AD 2017–07–03'').

(c) Applicability

This AD applies to all Airbus SAS Model A330–243, –243F, –341, –342, and –343 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by a determination that cracks can develop on the ripple damper weld of the hydraulic pressure tube assembly and reports of failure of the ripple damper of the hydraulic pressure tube assembly. The FAA is issuing this AD to address cracking of the ripple damper weld of the hydraulic pressure tube assembly, which could lead to hydraulic fluid leakage and consequent loss of the green hydraulic system. This condition, if combined with other system failures, could result in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0031, dated February 13, 2019 (''EASA AD 2019–0031'').

(h) Exceptions to EASA AD 2019–0031

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0031 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0031 does not apply to this AD.

(i) Terminating Action for AD 2017–07–03

Accomplishing the actions required by this AD terminates all requirements of AD 2017–07–03 for that airplane only.

(j) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0031 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0031 that contains RC procedures and tests: Except as required by paragraph (k)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0031, dated February 13, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0031, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0580.

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

Issued in Des Moines, Washington, on October 11, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–22956 Filed 10–21–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0492; Product Identifier 2019–NM–045–AD; Amendment 39–19766; AD 2019–20–13]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A330–200, A330–200 Freighter, and A330–300 series airplanes. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 26, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 26, 2019.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0492.

Examining the AD Docket

You may examine the AD docket on the internet at *http://*

www.regulations.gov by searching for and locating Docket No. FAA–2019–0492; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3229.

SUPPLEMENTARY INFORMATION:

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0047, dated March 11, 2019 (''EASA AD 2019–0047'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A330–200, A330–200 Freighter, and A330–300 series airplanes. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0492.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A330–200, A330–200 Freighter, and A330–300 series airplanes. The NPRM published in the **Federal Register** on July 3, 2019 (84 FR 31769). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address the failure of system components, which could reduce the controllability of the airplane. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comment received on the NPRM and the FAA's response to each comment.

Supportive Comment

American Airlines (AAL) stated its support for the NPRM.

Request To Remove Certain Service Information

AAL requested that the FAA revise paragraphs (g), and (i)(2) and (3) of the proposed AD to remove Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Variation 7.1, dated November 5, 2018. The proposed AD would have included Variation 7.1 as part of the required service information, Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 07, dated October 15, 2018. Variation 7.1, however, applies only to Airbus SAS Model A330–941 airplanes, which are not included in the applicability of the proposed AD.

The FAA agrees with the commenter for the reason provided above. Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Variation 7.1, dated November 5, 2018, has been removed from this AD.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule with the change described previously and minor editorial changes. The FAA has determined that these minor changes:

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

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

Airbus has issued A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 07, dated October 15, 2018. This service information describes airworthiness limitations for system equipment maintenance requirements. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 107 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–20–13 Airbus SAS: Amendment 39–19766; Docket No. FAA–2019–0492; Product Identifier 2019–NM–045–AD.

(a) Effective Date

This AD is effective November 26, 2019.

(b) Affected ADs

This AD affects the following ADs.

(1) AD 2019–01–05, Amendment 39–19544 (84 FR 4310, February 15, 2019) (''AD 2019–01–05'').

(2) AD 2017–25–13, Amendment 39–19127 (82 FR 59960, December 18, 2017) (''AD 2017–25–13'').

(3) AD 2014–16–22, Amendment 39–17946 (79 FR 49442, August 21, 2014) (''AD 2014–16–22'').

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (3) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before October 15, 2018.

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–223F and –243F airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by the need for new or more restrictive airworthiness limitations that refer to preventive maintenance tasks including replacement of life-limited parts. Failure to accomplish the tasks could result in an unsafe condition such as reduced airplane controllability due to the failure of system components.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 07, dated October 15, 2018. The component life limits and the initial compliance time for doing the tasks are at the times specified in Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 07, dated October 15, 2018, or within 90 days after the effective date of this AD, whichever occurs later.

(h) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(i) Terminating Actions

(1) Accomplishing the actions required by this AD terminates all requirements of AD 2019–01–05.

(2) Accomplishing the action required by task number 274400–00004–1–E of Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 07, dated October 15, 2018, within the compliance time specified for that task in Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 07, dated October 15, 2018, terminates all requirements of AD 2017–25–13 for Airbus SAS Model A330–200, –200 Freighter, and –300 series airplanes only.

(3) Accomplishing the action required by task number 213100–00001–1–E of Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 07, dated October 15, 2018, within the compliance time specified for that task in Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 07, dated October 15, 2018, terminates all requirements of AD 2014–16–22 for Airbus SAS Model A330–200, –200 Freighter, and –300 series airplanes only.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Union Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2019–0047, dated March 11, 2019, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0492.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3229.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this

paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

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

(i) Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 07, dated October 15, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued in Des Moines, Washington, on October 11, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–22957 Filed 10–21–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0850]

RIN 1625–AA00

Safety Zone; Delaware River and Schuylkill River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 200-yard radius of the derrick boat ELIZABETH for the duration of object removal operations within the Delaware and Schuylkill Rivers. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by submerged object removal operations. Entry of vessels or persons into the zone is prohibited unless authorized by the Captain of the Port Delaware Bay, or certain criteria are met.

DATES: This rule is effective without actual notice from October 22, 2019 through November 10, 2019. For the purpose of enforcement, actual notice will be used from October 17, 2019 through October 22, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0850 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Edmund Ofalt, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division; telephone (215) 271–4814, email *Edmund.J.Ofalt@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. There is insufficient time to allow for a reasonable comment period prior to the start date for submerged object removal operations. The rule must be in force by October 17, 2019, to serve its purpose of ensuring the safety of working crews and the general public from hazards associated with submerged object removal operations, to include possible diving operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is necessary to mitigate the potential safety hazards associated with submerged object removal operations on the Delaware River and Schuylkill River.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that there are potential hazards associated with the submerged object removal operations. This rule is needed to ensure the safety of personnel, vessels, and the marine environment within a 200-yard radius of submerged object removal operations.

IV. Discussion of the Rule

This rule establishes a safety zone from October 17, 2019, through November 10, 2019. The safety zone includes all navigable waters within 200 yards of the derrick boat ELIZABETH while conducting submerged object removal operations on the Delaware River from Philadelphia, PA, to Trenton, NJ, and on the Schuylkill River in Philadelphia, PA. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative unless certain criteria are met.

A vessel may transit the safety zone without obtaining permission from the COTP if the derrick boat ELIZABETH is contacted, via VHF–FM channel 13 or 16, at least one hour prior to arrival to arrange safe passage. A vessel transiting the safety zone must do so in a manner that maintains the greatest safe distance possible from the derrick boat ELIZABETH. Any vessel that transits in or near the safety zone must do so at the minimum safe speed required to maintain steering and reduce wake.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and traffic management of the safety zone. The safety zone, lasting approximately three weeks, will be enforced in an area and in a manner that does not conflict with transiting commercial and recreational traffic. The safety zone only encompasses a small portion of the navigable waterway. The safety zone only covers navigable waters within 200 yards of the derrick boat ELIZABETH while conducting submerged object removal operations on the Delaware River from Philadelphia, PA, to Trenton, NJ, and on the Schuylkill River in Philadelphia, PA. Vessels wishing to transit the safety zone will generally be permitted, without delay, if notification is given at least one hour prior to arrival at the derrick boat ELIZABETH and safe passage is arranged.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone. It is categorically excluded from further review under paragraph L[60a] in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0782 to read as follows:

§ 165.T05–0782 Safety Zone, Delaware River and Schuylkill River, Philadelphia, PA.

(a) *Location.* The following area is a safety zone: All navigable waters within 200 yards of the derrick barge ELIZABETH while the vessel is conducting object removal operations within the Delaware and Schuylkill Rivers.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Delaware Bay (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) In accordance with the general safety zones regulations in subpart C of this part and except for as described in paragraph (c)(3) of this section, vessels may not enter, remain in, or transit the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter or remain in the zone contact the COTP or the COTP's representative via VHF–FM Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) A vessel may transit the safety zone described in paragraph (a) of this section without permission from the COTP if all of the following criteria are met:

(i) The transiting vessel contacts the derrick boat ELIZABETH at least 1 hour prior to arrival to arrange safe passage.

(ii) The transiting vessel maintains the minimum safe speed to reduce wake and maintain steerage.

(iii) The transiting vessel maintains the maximum safe distance from the derrick boat ELIZABETH.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* Enforcement of the safety zone will begin at 5:00 a.m. on October 17, 2019, and will continue through 10:00 p.m. on November 10, 2019.

Dated: October 16, 2019.

Scott E. Anderson,

Captain, U.S. Coast Guard, Captain of the Port, Delaware Bay.

[FR Doc. 2019–22963 Filed 10–21–19; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 20

International Competitive Services Product and Price Changes

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), to reflect the prices, product features, and classification changes to Competitive Services and other minor changes, as established by the Governors of the Postal Service.

DATES: Effective January 26, 2020.

FOR FURTHER INFORMATION CONTACT: Michelle Lassiter at 202–268–2914.

SUPPLEMENTARY INFORMATION: New prices will be posted under Docket Number CP2020–5 on the Postal Regulatory Commission's website at *http://www.prc.gov.*

Over the course of time, country names have changed due to a variety of political or cultural reasons. By notice filed on October 9, 2019, in PRC Docket No. MC2020–7, and in collaboration with International Postal Affairs and requests made through the Universal Postal Union, the Postal Service is updating country names throughout mailing standards, changing Republic of Macedonia to Republic of North Macedonia.

This final rule describes the international price and classification changes and the corresponding mailing standards changes for the following Competitive Services:

- Priority Mail Express International®.
- Priority Mail International®.
- First-Class Package International Service® (FCPIS®).
- International Priority Airmail® (IPA®).
- International Surface Air Lift® (ISAL®).
- Direct Sacks of Printed Matter to One Addressee (Airmail M-bag® services).
- The following international extra services and fees:
  - International Insurance.
  - International Certificate of Mailing.
  - International Return Receipt.
  - International Postal Money Orders.
  - International Money Order Inquiry Fee.
  - International Money Transfer Service.
  - Customs Clearance and Delivery Fee.

New prices will be located on the Postal Explorer® website at *https://pe.usps.com.*

Priority Mail Express International

Priority Mail Express International service provides fast service to approximately 180 countries in 3–5 business days for many major markets, although the actual number of days may vary based upon origin, destination and customs delays. Priority Mail Express International with Money-Back Guarantee service is available for certain destinations. The price increase for Priority Mail Express International service averages 2.0 percent. The Commercial Base® price for customers who prepare and pay for Priority Mail Express International shipments via permit imprint, online at USPS.com®, or as registered end-users using an authorized PC Postage vendor (with the exception of Click-N-Ship® service) averages 6.0 percent below the retail price. Customers who prepare Priority Mail Express International shipments via Click-N-Ship service pay retail prices. Commercial Plus® prices are set to match the Commercial Base prices.

The Postal Service will also continue to include Priority Mail Express International service in customized Global Expedited Package Services (GEPS) contracts offered to customers who meet certain revenue thresholds and are willing to commit a larger amount of revenue to the USPS® for Priority Mail Express International service and Priority Mail International service.

Priority Mail Express International flat rate pricing continues to be available for Flat Rate Envelopes.

Priority Mail International

Priority Mail International (PMI) is an economical way to send merchandise and documents to approximately 180 countries in 6–10 business days for many major markets, although the actual number of days may vary based upon origin, destination and customs delays. The price increase for Priority Mail International service averages 6.0 percent. The Commercial Base price for customers who prepare and pay for PMI items via permit imprint, online at USPS.com, or as registered end-users using an authorized PC Postage vendor (with the exception of Click-N-Ship) will be 5 percent below the retail price. Customers who prepare PMI shipments via Click-N-Ship pay retail prices. Commercial Plus prices are set to match Commercial Base prices. The Postal Service will continue to include Priority Mail International service in customized GEPS contracts offered to customers who meet certain revenue thresholds and are willing to commit to a larger amount of revenue to the USPS for Priority Mail Express International and Priority Mail International.

Priority Mail International flat rate pricing continues to be available for Flat Rate Envelopes, Small Flat Rate Boxes, and Medium and Large Flat Rate Boxes.

First-Class Package International Service

First-Class Package International Service (FCPIS) is an economical international service for small packages not exceeding 4 pounds in weight and $400 in value. The price increase for FCPIS averages 9.9 percent. The Commercial Base price for customers who prepare and pay for FCPIS items via permit imprint or by USPS-approved online payment methods will be 5 percent below the retail price.

Customers who prepare FCPIS shipments via Click-N-Ship service pay retail prices. Commercial Plus prices are set to match the Commercial Base prices.

Electronic USPS Delivery Confirmation International service—abbreviated E-USPS DELCON INTL—is available for First-Class Package International Service items to select destination countries at no charge.

International Priority Airmail (IPA) and International Surface Air Lift (ISAL)

International Priority Airmail (IPA) service, including IPA M-bags, is an economical commercial service designed for volume mailings of all First-Class Mail International postcards, letters, and large envelopes (flats), and for volume mailings of First-Class Package International Service packages (small packets) weighing up to a maximum of 4.4 pounds. IPA shipments are typically flown to foreign destinations (exceptions apply to Canada and Mexico) and are then entered into that country's air or surface priority mail system for delivery. The price increase for IPA and IPA M-Bags is 5.9 percent. International Surface Airlift (ISAL) is similar to IPA except that once flown to the foreign destination, ISAL is entered into that country's air or surface nonpriority mail system for delivery. The price increase for ISAL, as well as ISAL M-Bags, is 5.9 percent.

Direct Sacks of Printed Matter to One Addressee (Airmail M-bags)

An airmail M-bag is a direct sack of printed matter sent to a single foreign addressee at a single address. Prices are based on the weight of the sack. The price increase for Airmail M-bag service averages 6.0 percent.

International Extra Services and Fees

Depending on country destination and mail type, customers may add a variety of extra services to their outbound shipments and pay a variety of fees. The Postal Service proposes to increase fees for certain competitive international extra services including:

International Insurance

Global Express Guaranteed, each additional $100 or fraction over $100

- *Fee:* $1.25.

$100.01–$200.00	$1.25
$200.01–$300.00	2.50
$300.01–$400.00	3.75
$400.01–$500.00	5.00
For document reconstruction insurance or non-document insurance coverage above $500.00, add 1.25 per $100.00 or fraction thereof, up to a maximum of $2,499 per shipment.	
Up to $2,499.00	30.00

Priority Mail Express International and Priority Mail International, each additional $100 or fraction over $100

$300.01–$400.00	$8.40
$400.01-$500.00	10.05
$500.01–$600.00	11.70
$600.01–$700.00	13.35
$700.01–$800.00	15.00
$800.01–$900.00	16.65
$16.65 plus $1.65 per $100 or fraction thereof over $900 in declared value.	

CERTIFICATE OF MAILING

	Fee
Individual pieces	
Individual article (PS Form 3817)	$1.50
Duplicate copy of PS Form 3817 or PS Form 3665 (per page)	1.50
Firm mailing sheet (PS Form 3665), per piece (minimum 3); First-Class Mail International only	0.51
Bulk quantities	
For first 1,000 pieces (or fraction thereof)	$8.75
Each additional 1,000 pieces (or fraction thereof)	1.09
Duplicate copy of PS Form 3606	1.50

Return Receipt

Fee: $4.15.

International Postal Money Orders

Fee: $10.25.

International Money Order Inquiry

Fee: $7.60

International Money Transfer Service

Fee:

$0.01–$750.00	14.55
$750.01–$1500.00	20.75
Refunds	31.95
Change of Recipient	16.95

Customs Clearance and Delivery

Fee: per piece $6.50.

The Postal Service hereby adopts the following changes to *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, 39 CFR part 20 is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), as follows:

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

[Throughout the IMM, change all references to ''Macedonia, Republic of'' to ''North Macedonia, Republic of'' or use the short name ''North Macedonia'' and place in correct alphabetical order in lists.]

* * * * *

We will publish an appropriate amendment to 39 CFR part 20 to reflect these changes.

Brittany M. Johnson,

Attorney, Federal Compliance.

[FR Doc. 2019–22822 Filed 10–21–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 265

Procedures for Disclosure of Records Under the Freedom of Information Act

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: In August 2019, the Postal Service proposed to amend its Freedom of Information Act (''FOIA'') regulations regarding fee waivers. These changes would improve clarity and more closely align the regulations with both the relevant guidance from the Department of Justice's Office of Information Policy and the relevant statute. The Postal Service did not receive any comments.

DATES: This rule is effective as of November 21, 2019.

FOR FURTHER INFORMATION CONTACT: Joshua J. Hofer, Attorney, Federal Compliance, *joshua.hofer@usps.gov,* 202–268–6704.

SUPPLEMENTARY INFORMATION: In August 2019, the Postal Service proposed to amend 39 CFR part 265 (84 FR 44565). The purpose of the changes is to improve clarity and to more closely align the regulations with both the relevant guidance from the Department of Justice's Office of Information Policy and the relevant statute, 5 U.S.C. 552(a)(4)(A)(iii). The portion of the regulations being amended concerns fee waivers. Generally speaking, fees for a FOIA request will be waived ''if disclosure of the 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.'' 5 U.S.C. 552(a)(4)(A)(iii). The guidance from the Department of Justice elucidates a six-factor test from this rule—two of which of which relate to the commercial interest of the requester. The amendment to 39 CFR 265.9(j)(3)(i) clarifies that the first commercial interest factor is to determine whether a commercial interest exists. The amendment to 39 CFR 265.9(j)(3)(ii) incorporates the balancing test from the statute as the second part of the commercial interest factor, along with adding a presumption concerning news media requesters. No comments were received in response to the proposed changes.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees.

For the reasons stated in the preamble, the Postal Service amends 39 CFR chapter I as follows:

PART 265—[AMENDED]

■ 1. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601; Pub. L. 114–185.

■ 2. Amend § 265.9 by revising paragraphs (j)(3)(i) and (ii) to read as follows:

§ 265.9 Fees.

* * * * *

(j) * * *

(3) * * *

(i) Whether there is a commercial interest, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure. If so, then the requester will be given an opportunity to provide explanatory information regarding this consideration.

(ii) Whether any identified commercial interest of the requester in disclosure outweighs the public interest, as defined in paragraph (j)(1)(i) of this section, in disclosure. If so, then the disclosure is primarily in the commercial interest of the requester. The component ordinarily shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by the requested disclosure. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

* * * * *

Joshua Hofer,

Attorney, Federal Compliance.

[FR Doc. 2019–22971 Filed 10–21–19; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0044; EPA–R05–OAR–2015–0699; FRL–10001–26–Region 5]

Approval of Air Quality Implementation Plans; Ohio and West Virginia; Attainment Plans for the Steubenville, Ohio-West Virginia 2010 Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), two State Implementation Plan (SIP) revision submittals, submitted by Ohio and West Virginia, respectively. The Ohio and West Virginia submittals include each State's attainment demonstration for the Steubenville Ohio-West Virginia sulfur dioxide (SO_2) nonattainment area (hereinafter ''Steubenville Area'' or ''Area''). Each SIP contains an attainment demonstration, enforceable emission limits, control measures and other elements required under the CAA to address the nonattainment area requirements for the Steubenville Area. EPA concludes that the Ohio and West Virginia attainment plan submittals demonstrate that the provisions in the respective SIPs provide for attainment of the 2010 primary SO_2 national ambient air quality standard (NAAQS) in the entire Steubenville Area and meet the requirements of the CAA. EPA is also approving into the West Virginia SIP new emissions limits, operational restrictions, and associated compliance requirements for Mountain State Carbon, and approving into the Ohio SIP the limits on emissions from Mingo Junction Energy Center, JSW Steel, and the Cardinal Power Plant.

DATES: This final rule is effective on November 21, 2019.

ADDRESSES: EPA has established dockets for this action under Docket ID Nos. EPA–R03–OAR–2019–0044 and EPA–R05–OAR–2015–0699. 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 through *www.regulations.gov,* or please contact the applicable Region III or Region V person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers at EPA Region III, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, (215) 814–2308, *powers.marilyn@epa.gov.* John Summerhays at EPA Region V, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency,

Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this preamble.

Table of Contents

I. Summary of EPA's Notice of Proposed Rulemaking
II. Comments and EPA's Responses
III. EPA's Final Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Summary of EPA's Notice of Proposed Rulemaking

Following the promulgation in 2010 of a 1-hour primary SO_2 NAAQS, EPA designated a two-State Steubenville, Ohio-West Virginia area (among other areas) as nonattainment for this NAAQS. Ohio and West Virginia submitted SIP revision requests to address the attainment planning requirements that then applied for this area. Ohio's requested SIP revision was submitted to EPA through the Ohio Environmental Protection Agency (OEPA) on April 1, 2015 with supplemental submissions on October 13, 2015, March 25, 2019, and June 25, 2019. West Virginia's requested SIP revision was submitted to EPA through the West Virginia Department of Environmental Protection (WVDEP) on April 25, 2016, with a supplemental submission from WVDEP on November 27, 2017 and a clarification letter on May 1, 2019.

On June 24, 2019, at 84 FR 29456, EPA published a notice of proposed rulemaking (NPRM) on Ohio's and West Virginia's plans for assuring that the Steubenville Area attains the 2010 SO_2 NAAQS. Because the Area includes portions in both Ohio and West Virginia, each State was required to submit plans that in combination provided for attainment throughout the two-State area. EPA published a combined NPRM on the two States' submittals addressing whether these submittals satisfied applicable requirements throughout the Area. Ohio's submittal included proposed rules with a proposed emission limit for the Cardinal Power Plant. EPA's NPRM proposed to approve the two States' submittals contingent upon Ohio adopting and submitting these rules in final form.

The NPRM provided extensive discussion of EPA's rationale for proposing to approve the two States' submittals as meeting these requirements. The NPRM described the requirements that nonattainment plans are designed to meet. Notably, Ohio's plan included a 30-day average SO_2 emission limit for the Cardinal Power Plant (Cardinal), and the West Virginia plan included 24-hour average SO_2 emission limits for the Mountain State Carbon facility. The NPRM included an extensive discussion of EPA's guidance on the use of such longer term average emission limits, including a full discussion of EPA's rationale for concluding that properly set longer term average SO_2 emission limits (in particular, longer term emission limits that are comparably stringent to the 1-hour limits that would otherwise be established) can be effective in providing for attainment. The NPRM then described EPA's review of the modeling that the States submitted to demonstrate that the limits they adopted would provide for attainment of the 2010 SO_2 NAAQS and described EPA's review of whether the submittals met other applicable requirements such as the requirements for an emissions inventory and for reasonably available control measures.

On this basis, EPA proposed to conclude that, in combination with the other limits in Ohio's and West Virginia's plans, these longer term average SO_2 emission limits assure attainment in the Steubenville Area. More generally, EPA proposed to approve Ohio's and West Virginia's SIP submittals as addressing the nonattainment planning requirements, provided Ohio adopted and submitted in final form its proposed rules limiting emissions from the Cardinal power plant.

II. Comments and EPA's Responses

EPA received two comment letters on the NPRM, from owners of two of the facilities affected by these plans. JSW Steel provided brief comments supporting EPA's proposed action. Mountain State Carbon also expressed support for EPA's proposed action but identified various alleged factual errors in the NPRM that it sought to correct for the record. The following paragraph describes Mountain State Carbon's requested corrections and EPA's responses.

Mountain State Carbon identified several emission rates listed in the NPRM as inconsistent with the emissions reflected in Ohio's and West Virginia's plans. These claims are summarized in Table 1. For convenience, EPA's response is also listed in the table. In each case, EPA agrees with Mountain State Carbon's requested correction.

TABLE 1—EMISSION RATES IDENTIFIED AS BEING IN ERROR

[Abbreviations shown below]

Source	Unit(s)	NPRM value	Recommended value	Does EPA agree with MSC?
MJEC	4 units	20.34 lb/hr each	0.5 lb/hr each (total of 2 lb/hr)	Yes.
MSC	Battery #8 pushing, outage operation.	15.72 lb/hr	9.8 lb/hr	Yes.
MSC	Battery #1 combustion	241.5lb#/hr	76.8 lb/hr	Yes.
MSC	At issue *	Limit (1.32 g/s or 10.48 lb/hr) applies to power boilers.	Emission limit (correct value) applies to Battery 1/2/3 pushing baghouse.	Yes.

* The commenter states that the NPRM (the footnote to Table 4) assigns a limit incorrectly, that the limit of 1.32 g/s (10.32 lb/hr) applies not to the power boilers but instead to the Battery 1/2/3 pushing baghouse. EPA agrees.

Abbreviations: MJEC—Mingo Junction Energy Center; MSC—Mountain State Carbon; NPRM Value—Value cited in NPRM; Recommended Value—Value that MSC cites as the correct value; lb/hr—pounds per hour; g/s—grams per second.

EPA is correcting the record accordingly. Mountain State Carbon states that it does not believe that its comments are material to the proposed approval of the SIP, and that it supports EPA's action. Moreover, Mountain State Carbon explains that the corrected values are provided in West Virginia's submission. EPA agrees, and concludes that making these corrections, which more accurately characterizes the emission rates in Ohio's and West Virginia's modeled attainment plans, and which in the aggregate reflect lower allowable emission rates than EPA had

presented in the NPRM, does not necessitate reconsidering the validity of the attainment demonstration.

III. EPA's Final Action

EPA is approving two SIP revision submittals, one submitted by the State of Ohio on April 1, 2015, which Ohio supplemented on October 13, 2015, March 25, 2019, and June 25, 2019, and the other submitted by the State of West Virginia on April 25, 2016, which West Virginia supplemented on November 27, 2017, with a clarification letter submitted on May 1, 2019. The proposed approval was contingent on Ohio adopting and submitting in final form the limit for Cardinal that it submitted in proposed form on March 25, 2019. Ohio has adopted the limit it had proposed, effective July 5, 2019, and submitted this limit to EPA on June 25, 2019.[1]

Ohio's and West Virginia's submittals represent their plans for attaining the 2010 SO_2 NAAQS and how they are meeting other nonattainment area planning requirements. EPA is approving the attainment demonstrations, emissions limitations and control measures, the base year emissions inventory, nonattainment new source review program, reasonable further progress, and reasonably available control technology/reasonably available control measures, and contingency measures submitted by Ohio and West Virginia for the Steubenville Area. In the West Virginia SIP, EPA is approving the consent order between West Virginia and Mountain State Carbon identified as CO–SIP–C–2017–9, effective September 29, 2017, containing emission limits and other measures for Mountain State Carbon, including operational restrictions and sulfur content limits during the periods in which the desulfurization unit for Mountain State Carbon is shut down for maintenance purposes, and their associated compliance requirements. In the Ohio SIP, EPA is approving OAC Rule 3745–18–03, the pertinent sections of 3745–18–04,[2] and 3745–18–47.

[1] In conjunction with the newly adopted limit for Cardinal and resubmitted limits for other Ohio sources, in Ohio Administrative Code (OAC) 3745–18–47, Ohio also adopted and submitted associated compliance deadlines and compliance determination procedures, in OAC 3745–18–03 and 3745–18–04, respectively.

[2] EPA has historically not taken action on several paragraphs of OAC 3745–18–04. Ohio requested that EPA approve ''the revisions to . . . 3745–18–04 . . ., with the exception of [several listed portions of OAC 3745–18–04 that mostly have not previously been approved].'' Although Ohio's rulemaking for this submittal only revised paragraph (D)(11) of this rule, for administrative convenience EPA is reapproving all of OAC 3745–18–04 except for the listed paragraphs.

IV. Incorporation by Reference

In this rule, 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 Ohio and West Virginia Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and at the EPA Region III and Region V Offices (please contact the applicable 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]

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 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 December 23, 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

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

shall not postpone the effectiveness of such rule or action.

This action to approve the Steubenville Area attainment plans for Ohio and West Virginia 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, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: September 23, 2019

Cosmo Servidio,

Regional Administrator, Region III.

Dated: October 7, 2019

Cathy Stepp,

Regional Administrator, Region V.

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 52.1870 is amended:

■ a. In the table in paragraph (c), under ''Chapter 3745–18 Sulfur Dioxide Regulations,'' by revising the entries for ''3745–18–03'', ''3745–18–04'' (with a State effective date of 2/16/2017), and ''3745–18–47''; and

■ b. In the table in paragraph (e), under the heading ''Summary of Criteria Pollutant Attainment Plans,'' by adding a second entry for ''SO_2 (2010)'' after the entry for ''SO_2 (2010)'' (with a State date of 2/16/2017).

The revisions and additions read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED OHIO REGULATIONS

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
*	*	*	*	*
Chapter 3745–18 Sulfur Dioxide Regulations				
*	*	*	*	*
3745–18–03	Compliance Time Schedules.	7/5/2019	10/22/2019, [insert **Federal Register** citation].	
*	*	*	*	*
3745–18–04	Measurement Methods and Procedures.	7/5/2019	10/22/2019, [insert **Federal Register** citation].	Except (D)(2), (D)(3), (D)(5), (D)(6), (D)(9)(c), (E)(2), (E)(3), and (E)(4).
*	*	*	*	*
3745–18–47	Jefferson County Emission Limits.	7/5/2019	10/22/2019, [insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

(e) * * *

EPA-APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
*	*	*	*	*
Summary of Criteria Pollutant Attainment Plans				
*	*	*	*	*
SO_2 (2010)	Steubenville	6/25/19	10/22/2019, [insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

■ 3. Section 52.2520 is amended:

■ a. In the table in paragraph (d) by adding an entry at the end of the table for ''Mountain State Carbon''; and

■ b. In the table in paragraph (e) by adding an entry at the end of the table for ''2010 Sulfur Dioxide Attainment Plan''.

The additions read as follows:

§ 52.2520 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED SOURCE SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
*	*	*	*	*
Mountain State Carbon.	Consent Order CO–SIP–C–2017–9.	9/29/17	10/22/2019, [insert **Federal Register** citation].	

(e) * * *

Name of non-regulatory SIP revision	Applicable geographical area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
2010 Sulfur Dioxide Attainment Plan.	Steubenville Area (Brooke County).	4/25/16	10/22/2019, [insert **Federal Register** citation].	52.2525(c).

■ 4. Section 52.2525 is amended by adding paragraph (c) to read as follows:

§ 52.2525 Control strategy: Sulfur dioxide.

* * * * *

(c) EPA approves the attainment plan for Brooke County, West Virginia, submitted by the Department of Environmental Protection on April 25, 2016, supplemented on November 27, 2017, and with a clarification letter submitted on May 1, 2019.

[FR Doc. 2019–22909 Filed 10–21–19; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 84, No. 204

Tuesday, October 22, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0678; Airspace Docket No. 18–AWP–27]

RIN 2120–AA66

Proposed Amendment of Class D and E Airspace; Concord, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace and establish Class E airspace extending upward from 700 feet above the surface of the earth at Buchanan Field, Concord, CA. This action also proposes to remove the Concord VOR/DME and the city listed before the airport name in the legal description header information. This action would ensure the safety and management of instrument flight rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before December 6, 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 Docket No. FAA–2019–0678; Airspace Docket No. 18–AWP–27, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

FAA Order 7400.11D, 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 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0678; Airspace Docket No. 18–AWP–27''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *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 the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class D airspace at Buchanan Field extending upward from the surface to and including 2,500 feet MSL within a 2.6-mile radius of the airport from the 205° bearing from the airport clockwise to the

314° bearing, thence extending to a 4.1-mile radius of Buchanan Field from the 314° bearing clockwise to the 205° bearing from the airport to contain instrument approach procedures as aircraft descend through 1,000 feet AGL. 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.

Additionally, this action proposes to establish Class E5 airspace extending upward from 700 feet above the surface within a 4.1-mile radius of Buchanan Field and within 2.5 miles each side of the 009° bearing from the airport extending from the 4.1-mile radius to 11 miles north of Buchanan Field and within 2.5 miles each side of the 023° bearing from the airport extending from the 4.1-mile radius to 11 miles northeast of the airport to contain instrument approach procedures as aircraft descend through 1,500 feet AGL.

Further, this action proposes to remove the Concord VOR/DME and the associated extensions to simplify how the airspace is described.

Lastly, this action proposes a minor editorial amendment to remove the city listed before the airport name in the legal description header information to comply with airspace policy guidance.

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

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AWP CA D Concord, CA [Amended]

Buchanan Field, CA

(Lat. 37°59′23″ N, long. 122°03′25″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 2.6-mile radius of the airport from the 205° bearing from the airport clockwise to the 314° bearing, thence extending to a 4.1-mile radius of Buchanan Field from the 314° bearing clockwise to the 205° 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 Chart Supplement.

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

* * * * *

AWP CA E5 Concord, CA [New]

Buchanan Field, CA

(Lat. 37°59′23″ N, long. 122°03′25″ W)

That airspace extending upward from 700 feet above the surface within a 4.1-mile radius of Buchanan Field and within 2.5 miles each side of the 009° bearing from the airport extending from the 4.1-mile radius to 11 miles north of Buchanan Field and within 2.5 miles each side of the 023° bearing from the airport extending from the 4.1-mile radius to 11 miles northeast of the airport.

Issued in Seattle, Washington, on October 10, 2019.

Byron Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2019–22814 Filed 10–21–19; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 312

RIN 3084–AB20

The Federal Trade Commission's Implementation of the Children's Online Privacy Protection Rule

AGENCY: Federal Trade Commission.

ACTION: Extension of deadline for submission of public comments.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is extending the deadline for filing comments on its implementation of the Children's Online Privacy Protection Act (''COPPA''), through the Children's Online Privacy Protection Rule (''COPPA Rule'' or ''the Rule'').

DATES: Comments must be received on or before December 9, 2019.

ADDRESSES: Interested parties may file a comment online or on paper by following the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''COPPA Rule Review, 16 CFR Part 312, Project No. P195404,'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Peder Magee (202–326–3358) or James Trilling (202–326–3497), Division of Privacy and Identity Protection, Federal

Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Comment Period Extension

On July 25, 2019, the Commission published in the **Federal Register** a Request for Public Comment on the Federal Trade Commission's Implementation of the COPPA Rule (84 FR 35842), with an October 23, 2019 deadline for filing comments (''the Notice''). The Commission published the Notice to facilitate the Commission's review of the COPPA Rule to ensure that it has kept up with marketplace, technology, and business model changes that have occurred since the Commission ended its last review of the COPPA Rule in 2013. Interested parties have subsequently requested an extension of the public comment period to give them additional time to respond to the Notice's requests for comment and to address actions that have occurred since the Commission published the Notice, including the Commission's announcement of a new COPPA enforcement action on September 4, 2019 and the completion of the Commission's public workshop on ''The Future of the COPPA Rule'' on October 7, 2019.

The Commission agrees that allowing additional time for filing comments on its implementation of the COPPA Rule would help facilitate the creation of a more complete record. The Commission has therefore decided to extend the comment period for 45 days, to December 9, 2019. A 45-day extension provides commenters adequate time to address the issues raised in the Notice and relevant actions that have occurred since the Commission published the Notice.

II. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 9, 2019. Write ''COPPA Rule Review, 16 CFR Part 312, Project No. P195404,'' on the comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online. To make sure that the Commission considers your online comment, you must file it at *https://www.regulations.gov* by following the instructions on the web-based form.

If you file your comment on paper, write ''COPPA Rule Review, 16 CFR Part 312, Project No. P195404,'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website, *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive personal information, such as your or anyone else's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential . . . ,'' as provided in Section 6(f) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2), including, in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comments to be withheld from the public record. Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov*—as legally required by FTC Rule 4.9(c)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants the request.

Visit the Commission website at *https://www.ftc.gov* to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 9, 2019. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2019–22940 Filed 10–21–19; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AE77

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is seeking comment on proposed amendments to the margin requirements for uncleared swaps for swap dealers (''SD'') and major swap participants (''MSP'') for which there is no prudential regulator. The proposed amendments would add the European Stability Mechanism (''ESM'') to the list of entities that are expressly excluded from the definition of financial end user and correct an erroneous cross-reference in the Commission's regulations.

DATES: Comments must be received on or before December 23, 2019.

ADDRESSES: You may submit comments, identified by RIN 3038–AE77, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures

Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.

• *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (''FOIA''), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Joshua B. Sterling, Director, 202–418–6056, *jsterling@cftc.gov*; Thomas J. Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov*; Warren Gorlick, Associate Director, 202–418–5195, *wgorlick@cftc.gov*; Carmen Moncada-Terry, Special Counsel, 202–418–5795, *cmoncada-terry@cftc.gov*; or Rafael Martinez, Senior Financial Risk Analyst, 202–418–5462, *rmartinez@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

In January 2016, the Commission adopted §§ 23.150 through 23.161 (collectively, ''CFTC Margin Rule'') to implement section 4s(e) of the Commodity Exchange Act (''CEA''),[2] which requires SDs and MSPs for which there is not a prudential regulator (''CSEs'') to meet minimum initial and variation margin requirements adopted by the Commission by rule or regulation.[3]

Consistent with the administration of swap regulation, the Commission's Division of Swap Dealer and Intermediary Oversight (''DSIO''), on an ongoing basis, reviews rules subject to its oversight, no-action letters and other grants of relief. In conducting that exercise, DSIO identified a no-action letter, further discussed below, whose codification would provide greater certainty to the marketplace concerning the scope and application of the CFTC Margin Rule and allow for its effective implementation. DSIO also identified a typographical error in Commission § 23.157 that without correction would cause confusion in the application of the CFTC Margin Rule.

A. No-Action Letter

In July 2017, the ESM submitted a letter to the Commission requesting that SDs be relieved from the CFTC Margin Rule when entering into swap transactions with the ESM. The ESM represented that it was similar to the multilateral development banks that are listed in Commission § 23.151 (including the International Bank for Reconstruction and Development, the Asian Development Bank, and the European Investment Bank), which are excluded from the definition of financial end user and whose swaps are exempt from the CFTC Margin Rule. DSIO granted no-action relief, stating that it would not recommend enforcement action if an SD subject to the CFTC Margin Rule did not comply with that rule solely in respect of uncleared swaps between the SD and the ESM.[4]

II. Proposed Regulations

A. Amendment of Commission § 23.151—Definition of Financial End User

The CFTC Margin Rule applies to swap transactions between CSEs and counterparties that are SDs, MSPs or financial end users. Commission § 23.151 defines the term ''financial end user''[5] and expressly carves out from the definition sovereign entities, multilateral development banks, the Bank for International Settlements, entities exempt from the definition of financial entity pursuant to section 2(h)(7)(C)(iii) of the Act and implementing regulations, affiliates that qualify for the exemption from clearing pursuant to section 2(h)(7)(D) of the Act, and eligible treasury affiliates that the Commission exempts from the requirements of Commission §§ 23.150 through 23.161 by rule.[6] The Commission proposes to revise the definition of financial end user to further exclude the ESM.

The proposed amendment would codify CFTC Letter No. 17–34, which provides relief from the CFTC Margin Rule with respect to uncleared swaps between SDs and the ESM. In granting relief, DSIO stated that the ESM, like multilateral development banks excluded from the financial end user definition, had a lower risk profile, posing less counterparty risk to an SD and less systemic risk to the financial system. While not explicitly finding that the ESM was a multilateral development bank, DSIO recognized that its function and credit profile justified the relief.[7]

The Commission proposes to amend the definition of financial end user in Commission § 23.151 by adding the ESM to the list of entities that are expressly excluded from the definition. As described in CFTC Letter No. 17–34, the ESM is an intergovernmental financial institution that provides financial assistance for national or regional development to Euro area member states that are in or are threatened by severe financial distress,

[1] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR chapter I.

[2] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016) (''Final Margin Rule''); Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016).

[3] *See* 7 U.S.C. 6s(e)(1)(B). SDs and MSPs for which there is a ''Prudential Regulator'' must meet the margin requirements for uncleared swaps established by the applicable ''Prudential Regulator.'' 7 U.S.C. 6s(e)(1)(A). *See also* 7 U.S.C. 1a(39) (defining the term ''Prudential Regulator'' to include the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency, and specifying the entities for which these agencies act as Prudential Regulators). The Prudential Regulators published final margin requirements in November 2015. *See* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015).

[4] *See* CFTC Letter No. 17–34, Commission §§ 23.150 through 23.159, and 23.161; No-Action Position with Respect to Uncleared Swaps with the European Stability Mechanism (July 24, 2017) (''CFTC Letter No. 17–34''), *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/17-34.pdf.*

[5] *See* 17 CFR 23.151.

[6] *See id.*

[7] The Commission notes that the Basel Committee on Banking Supervision ascribes to the ESM a 0% risk weight. The ESM has been included in the list of entities receiving a 0% risk weight in the document entitled ''Basel II: International Convergence of Capital Measurement and Capital Standards: A Revised Framework—Comprehensive Version, June 2006.'' *See* BIS, Risk Weight for the European Stability Mechanism (ESM) and European Financial Stability Facility (EFSF), *https://www.bis.org/publ/bcbs_nl17.htm.*

similar to entities listed as multilateral development banks in Commission § 23.151, which are excluded from the definition of financial end user. To accomplish its policy goals, the ESM utilizes several financial assistance instruments, including loans in various forms which can be used for multiple purposes and are offered only subject to bespoke specified conditions, including economic reforms. The ESM regularly enters the international capital markets to fund these loans. It enters into uncleared swaps with SDs to hedge the interest rate and currency risks it faces as a result of entering into and funding these loans and to hedge risks associated with its invested contributed capital.

The Commission notes that, contemporaneously with the issuance of this proposal, DSIO staff is issuing a revised no-action letter to phase out the relief provided under CFTC Letter No. 17–34, which would instead be provided under Commission § 23.151. To allow adequate time for submission and review of comments, and finalization of the proposed amendment to § 23.151, the revised no-action letter will provide relief until the earlier of: (i) April 14, 2020 at 11:59 p.m. (Eastern Time); or (ii) the effective date of final Commission action on this rule proposal.

Based on the foregoing, the Commission proposes to exclude the ESM from the definition of a financial end user, which provides clarity and certainty to CSEs that uncleared swaps entered into with the ESM are not subject to the CFTC Margin Rule. The Commission believes that this approach is appropriate as activities conducted by the ESM, like activities conducted by multilateral development banks that are excluded from the financial end user definition, generally have a different purpose in the financial system. These types of entities are established by governments and their financial activities are designed to further governmental purposes. As such, the ESM, like multilateral development banks, has a lower risk profile and poses less counterparty risk to an SD and less systemic risk to the financial system.

The Commission also believes that this proposed rule will encourage international comity and continued cooperation between the Commission and EU authorities. In this regard, the Commission notes that the European Stability Mechanism is exempt from the European Market Infrastructure Regulation or EMIR's margin rules for OTC derivatives contracts not cleared by a central counterparty.[8] The proposed rule acknowledges the unique interests of the EU authorities in the ESM by excluding the ESM from the CFTC's margin requirements for uncleared swaps. The principles of international comity counsel mutual respect for the important interests of foreign sovereigns.[9]

Accordingly, paragraph (2)(iii) of the definition of financial end user in Commission § 23.151 would be amended by replacing ''The Bank for International Settlements'' with ''The Bank for International Settlements and the European Stability Mechanism.''

Request for comment: The Commission requests comment regarding the proposed amendment to Commission § 23.151. The Commission specifically requests comment on the following question:

- Are there any other risk factors or issues pertaining to the ESM's business model that the Commission should consider in finalizing this rulemaking?

B. Amendment of Commission § 23.157—Correction of Cross-Reference

Commission § 23.157 requires initial margin collected from or posted by a CSE to be held by one or more independent custodians. The CSE must enter into a custodial agreement with each custodian that holds the initial margin collateral. In particular, paragraph (c)(1) of Commission § 23.157 provides that the custodial agreement must prohibit the custodian from rehypothecating, repledging, reusing, or otherwise transferring the collateral except that cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase an asset described in Commission § 23.156(a)(1)(iv) through (xii).

Commission staff has determined that the cross-reference to ''§ 23.156(a)(1)(iv) through (xii)'' in paragraph (c)(1) is erroneous. First, the existing cross-reference incorrectly refers to non-existing paragraphs. Second, the existing cross-reference excludes treasury securities and U.S. Government agency securities, which are included in the list of eligible collateral set forth in Commission § 23.156(a)(1), and which the Commission intended to include as eligible assets into which cash collateral can be converted.[10] The correct cross-reference should be § 23.156(a)(1)(ii) through (x). The Commission is proposing an amendment to Commission § 23.157(c)(1) to remove the erroneous cross-reference to ''§ 23.156(a)(1)(iv) through (xii)'' and replace it with the corrected cross-reference ''§ 23.156(a)(1)(ii) through (x).''

Request for comment: The Commission requests comment regarding the proposed amendment to Commission § 23.157.

III. Administrative Compliance

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires Federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[11] Whenever an agency publishes a general notice of proposed rulemaking for any rule, pursuant to the notice-and-comment provisions of the Administrative Procedure Act,[12] a regulatory flexibility analysis or certification typically is required.[13] The Commission previously has established certain definitions of ''small entities'' to be used in evaluating the impact of its regulations on small entities in accordance with the RFA.[14] The proposed amendments only affect certain SDs and MSPs and their counterparties, which must be eligible contract participants (''ECPs'').[15] The Commission has previously established

[8] *See* Regulation (EU) No 648/2012 of the European Parliament and the Council of the European Union of July 4, 2012.

[9] *See* Restatement (Third) of Foreign Relations Law of the United States sec. 403 (Am. Law Inst. 2018) (the Restatement). The Restatement provides that even where a country has a basis for jurisdiction, it should not prescribe law with respect to a person or activity in another country when the exercise of such jurisdiction is unreasonable. *See* Restatement section 403(1). Notably, the Restatement recognizes that, in the exercise of international comity, reciprocity is an appropriate consideration in determining whether to exercise jurisdiction extraterritorially.

[10] In the Final Margin Rule, the Commission explained that its intent was to exclude ''immediately available cash funds,'' which is one form of eligible collateral in Commission § 23.156(a)(1), because allowing such eligible collateral to be held in the form of a deposit liability of the custodian bank would be incompatible with Commission § 23.157(c)'s prohibition against rehypothecation of collateral. *See* Final Margin Rule, 81 FR at 671. However, the Commission expressly stated that the custodian could use the cash funds to purchase other forms of eligible collateral. *See id.*

[11] 5 U.S.C. 601 *et seq.*

[12] 5 U.S.C. 553. The Administrative Procedure Act is found at 5 U.S.C. 500 *et seq.*

[13] *See* 5 U.S.C. 601(2), 603, 604, and 605.

[14] *See* Registration of Swap Dealers and Major Swap Participants, 77 FR 2613 (Jan. 19, 2012); 47 FR 18618 (Apr. 30, 1982).

[15] Pursuant to section 2(e) of the CEA, 7 U.S.C. 2(e), each counterparty to an uncleared swap must be an ECP, as defined in section 1a(18) of the CEA, 7 U.S.C. 1a(18).

that SDs, MSPs and ECPs are not small entities for purposes of the RFA.[16]

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed alternatives will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[17] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number. The proposed rules contain no requirements subject to the PRA.

C. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) considerations.

In addition, the Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving U.S. firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of the proposed rules on all activities subject to the proposal, whether by virtue of the activity's physical location in the United States or by virtue of the activities' connection with or effect on U.S. commerce under CEA section 2(i).[18]

1. Baseline and Rule Summary

The baseline for the Commission's consideration of the costs and benefits of this proposed rulemaking is the CFTC Margin Rule. The Commission recognizes that to the extent market participants have relied on CFTC Letter No. 17–34, the actual costs and benefits of the proposed amendment to Commission § 23.151, as realized in the market, may not be as significant. The proposed amendment would revise the definition of financial end user in Commission § 23.151 to exclude the ESM from the definition. The amendment would codify CFTC Letter No. 17–34 and confirm that swaps with the ESM as a counterparty are not subject to the CFTC Margin Rule. As a result, CSEs facing the ESM as counterparties would not be required to exchange margin with the ESM, resulting in the collection of lesser amounts of margin to mitigate the risk of uncleared swaps. Nevertheless, the Commission believes that the proposed amendment is reasonable because the ESM's activity in the swaps market, as of the date of this proposal, is so limited that any potential unmargined exposure is unlikely to result in substantial systemic risk.[19] In addition, the Commission notes that the ESM is an intergovernmental financial institution established by the EU, and its stated purpose of supporting member states in financial distress serves to manage and reduce risk to the EU financial system.

The Commission is also proposing to amend Commission § 23.157(c)(1) to remove the erroneous cross-reference to ''§ 23.156(a)(1)(iv) through (xii)'' and to replace it with the corrected cross-reference ''§ 23.156(a)(1)(ii) through (x).'' The Commission believes that custodial banks will benefit from being able to convert cash posted as initial margin into treasury and U.S. Government agency securities as was originally intended by the Commission.

2. Section 15(a) Considerations

a. Protection of Market Participants and Public

The proposed amendment to Commission § 23.151 would formalize CFTC Letter No. 17–34 and would confirm that swaps with the ESM as a counterparty are not subject to the CFTC Margin Rule. As discussed above, given the limited activity of the ESM in the swaps markets, the Commission believes that the unmargined exposure resulting from swaps between CSEs and the ESM is unlikely to result in significant risk to the financial system. Inasmuch as margin is posted to protect counterparties against credit risk, the creditworthiness of the ESM is critical to this analysis. The ESM has maintained high capital levels and has ultimate backing from the European Union.[20] Consequently, at this time, the Commission is comfortable that the ESM does not pose substantial counterparty credit risk. Thus, the Commission preliminarily believes that there would be no material impact on market participants and the general public relative to the status quo baseline.

b. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission preliminarily believes that the efficiency, competitiveness, and financial integrity of markets would not be significantly impacted by removing the requirement to post and collect margin in swap transactions with the ESM. One of the main functions of the ESM is to provide emergency assistance to members states of the European Union.[21] Given the nature of its operations, the ESM would be motivated to choose sensible, creditworthy counterparties thereby containing the credit risk exposure that the ESM may incur in swaps transactions.

[16] *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 77 FR 30596, 30701 (May 23, 2012).

[17] 44 U.S.C. 3501 *et seq.*

[18] *See* 7 U.S.C. 2(i).

[19] Recent review of data from the swap data repositories indicates that the ESM engages in limited swap trading activity.

[20] CFTC Letter No. 17–34 states that ''[w]ith respect to its credit risk, as part of its emergency procedure, the ESM's member states have irrevocably agreed to contribute a total of approximately €624 billion in additional capital should the ESM face financial distress. Further, the ESM is subject to limits on its lending and borrowing, and the ESM's property, funding, and assets in its member states are immune from search, requisition, confiscation, expropriation, or any other form of seizure, taking, or foreclosure. In addition, to the extent necessary to carry out its activities, all property, funding, and assets of the ESM are free from restrictions, regulations, controls, and moratoria of any nature. The combined application of these rules and limits is effective in keeping the ESM's total liabilities well below its available capital.''

[21] *See* CFTC Letter No. 17–34.

c. Price Discovery

The proposed amendment to Commission § 23.151, which codifies CFTC Letter No. 17–34, would relieve the ESM and its counterparties from the CFTC Margin Rule, as the ESM would no longer be classified as a financial end user. The codification of the no-action relief as a rule would formalize a no-action position held by DSIO, promoting transparency concerning the applicability of the CFTC Margin Rule. Because there would not be a legal requirement that margin be posted in swap transactions with the ESM, such transactions would likely be for prices that deviate from similar swap transactions with financial end users but be in line with swaps with non-financial entities. As a result, swaps entered into with the ESM could increase, which could enhance, or at least not harm, the price discovery process.

d. Sound Risk Management

The ESM is an intergovernmental financial institution established by the EU and its financial activities are designed to advance EU objectives. The ESM's purpose is to manage the potential for systemic risk by providing support to member states that are in distress. The exposures posed by the ESM are therefore relatively unique. Relief from the CFTC Margin Rule may result in CSEs being more inclined to enter into swaps with the ESM, benefiting from the overall diversification of their swap portfolios, which is consistent with sound risk management.

e. Other Public Interest Considerations

As discussed above, the Commission believes that the proposed amendment to Commission § 23.151 is also warranted based on the interests of comity and the Commission's continuing cross-border coordination with EU authorities, such as the 2016 EC–CFTC Agreement, which has fostered cooperation and mutual respect between the CFTC and EU authorities.

3. Request for Comment

The Commission invites comment on its preliminary consideration of the costs and benefits associated with the proposed changes to Commission §§ 23.151 and 23.157, especially with respect to the five factors the Commission is required to consider under CEA section 15(a). In addressing these areas and any other aspect of the Commission's preliminary cost-benefit considerations, the Commission encourages commenters to submit any data or other information they may have quantifying and/or qualifying the costs and benefits of the proposal. The Commission also specifically requests comment on the following questions:

- Has the Commission accurately identified the benefits of this proposal? Are there other benefits to the Commission, market participants, and/or the public that may result from the adoption of this proposal that the Commission should consider? Please provide specific examples and explanations of any such benefits.
- Has the Commission accurately identified the costs of this proposal? Are there additional costs to the Commission, market participants, and/or the public that may result from the adoption of this proposal that the Commission should consider? Please provide specific examples and explanations of any such costs.
- Does this proposal impact the section 15(a) factors in any way that is not described above? Please provide specific examples and explanations of any such impact.
- Whether, and the extent to which, any specific foreign requirement(s) may affect the costs and benefits of the proposal. If so, please identify the relevant foreign requirement(s) and any monetary or other quantitative estimates of the potential magnitude of those costs and benefits.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA, in issuing any order or adopting any Commission rule or regulation. The Commission does not anticipate that the proposed changes discussed herein will result in anti-competitive behavior. The Commission requests comment regarding whether the proposed changes could be deemed anti-competitive.

List of Subjects in 17 CFR Part 23

Capital and margin requirements, Major swap participants, Swap dealers, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 23 as set forth below:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Pub. L. 111–203, 124 Stat. 1641 (2010).

■ 2. In § 23.151, revise paragraph (2)(iii) of the definition of ''Financial end user'' to read as follows:

§ 23.151 Definitions applicable to margin requirements.

* * * * *

Financial end user * * *

(2) * * *

(iii) The Bank for International Settlements and the European Stability Mechanism;

* * * * *

■ 3. In § 23.157, revise paragraph (c)(1) to read as follows:

§ 23.157 Custodial arrangements.

* * * * *

(c) * * *

(1) Prohibits the custodian from rehypothecating, repledging, reusing, or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repurchase agreement or other means) the collateral held by the custodian except that cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase an asset described in § 23.156(a)(1)(ii) through (x), such asset is held in compliance with this section, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin; and

* * * * *

Issued in Washington, DC, on October 16, 2019, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Commission Voting Summary and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Behnam, Stump, and Berkovitz voted in the affirmative. Commissioner Quintenz voted in the negative.

Appendix 2—Dissenting Statement of Commissioner Brian D. Quintenz to the Proposed Exclusion for the European Stability Mechanism From the Commission's Margin Requirements for Uncleared Swaps

In March 2018, I articulated my approach to our current regulatory relationship with our European counterparts in light of their refusal to stand by or re-affirm their 2016 commitments in the CFTC's and European Commission's common approach to the regulation of cross-border central counterparties (CCPs) (CFTC–EC CCP Agreement).[1] Specifically, the absence of the agreement's re-affirmation directly implied the agreement's abrogation by the European Market Infrastructure Regulation 2.2 (EMIR 2.2).[2] I therefore vowed that I would either object to or vote against any relief provided to or requested by European Union authorities until the agreement's clarity was restored. While the possibility still exists for a successful outcome to EMIR 2.2 that fully respects the CFTC's ultimate authority over U.S. CCPs, still no assurance has been given to remove that doubt.

I therefore dissent from today's proposed rule to exempt the European Stability Mechanism from the Commission's margin requirements for uncleared swaps.

The ESM plays an important role within Europe—an intergovernmental organization of the EU's Eurozone member states that provides financial assistance to those countries. The rule the CFTC is proposing to issue today would codify CFTC staff no-action relief permitting the ESM, unlike other financial entities, to enter into uncleared swaps with Commission-registered swap dealers without complying with the CFTC's margin regulations.[3] In proposing this rule, the CFTC has directed precious staff resources to provide legal certainty to an EU agency so that it may access CFTC-supervised swap dealers with significantly greater flexibility than numerous U.S. firms. Yet, we are taking this step while, and as I stated at last month's Global Markets Advisory Committee meeting, the proposed implementation of EMIR 2.2 has actually increased the likelihood of the CCP Agreement's nullification.[4] It is entirely unclear if any of the five U.S. CCPs currently authorized to access the EU[5] will ultimately be treated as domestic EU firms and forced to follow EU rules.

Subjecting a U.S. CCP to the same level of EU regulation as an EU CCP would unilaterally render null and void an agreement originally based on regulatory deference and mutual respect between two authorities. Even subjecting them to a re-application process under new or different criteria could nullify the 2016 agreement. And yet that re-application process is precisely the current expectation.

The CFTC–EC CCP Agreement promoted cross-border markets and regulatory efficiency because the CFTC and the European Commission agreed on where and how to defer to each other's regulatory regimes. A rule like the one proposed today, or the relief provided by CFTC staff to Eurex Clearing last December (to which I similarly objected)[6] provides special accommodations to an EU institution by relying on the CFTC's trust in our EU counterparts. Such trust continues to be misplaced until the EU can provide assurance that the CFTC–EC CCP Agreement will be upheld.

Appendix 3—Supporting Statement of Commissioner Dan M. Berkovitz on the Proposed Rule Excluding the European Stability Mechanism From Definition of Financial End User

I support the proposed regulation that would add the European Stability Mechanism (''ESM'') to the list of governmental entities excluded from the definition of financial end user in the Commission's margin regulations. The Commission has recognized for many years that entities established by governments like the ESM should be exempted from some of our regulatory requirements for financial entities. These entities serve a governmental purpose that is not to speculate or profit from derivatives and therefor are less likely to engage in activities that would bring risk to the United States. The ESM, an intergovernmental entity designed to assist EU member states in financial distress, would likely reduce systemic risk in the European Union. If the 2008 financial crisis is any guide, reducing financial distress in one region of the world is likely to benefit the rest of the world, including the United States.

In addition, comity is an important consideration when regulating entities established by a foreign government for a governmental purpose. The proposal will facilitate international comity and should encourage further cooperation. Showing reciprocal, mutual respect for the important interests of other sovereigns is an important step to harmonizing regulation and facilitating global markets where appropriate.

[FR Doc. 2019–22955 Filed 10–21–19; 8:45 am]

BILLING CODE 6351–01–P

[1] Keynote Address of Commissioner Brian Quintenz before FIA Annual Meeting, Boca Raton, Florida (March 14, 2018), *https://www.cftc.gov/PressRoom/SpeechesTestimony/opaquintenz9*; *and* Joint Statement from CFTC Chairman Timothy Massad and European Commissioner Jonathan Hill, CFTC and the European Commission: Common approach for transatlantic CCPs (Feb. 10, 2016), *https://www.cftc.gov/PressRoom/PressReleases/pr7342-16*.

[2] The proposed implementation of EMIR 2.2 by ESMA is available at, *https://www.esma.europa.eu/press-news/esma-news/esma-consults-tiering-comparable-compliance-and-fees-under-emir-22*.

[3] CFTC Letter 17–34 (July 24, 2017), *https://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm*.

[4] Opening Statement of Commissioner Brian Quintenz before the CFTC Global Markets Advisory Committee Meeting (Sept. 24, 2019), *https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement092419*. *See also* a similar Opening Statement by Commissioner Quintenz before the June 12, 2019 meeting of the CFTC's Market Risk Advisory Committee, *https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement061219*.

[5] CME, ICE Clear Credit, ICE Clear US, Minneapolis Grain Exchange, and Nodal Clear.

[6] Statement of Commissioner Brian Quintenz on Staff No-Action Relief for Eurex Clearing AG (December 20, 2018), *https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement122018*.

DEPARTMENT OF JUSTICE

28 CFR Part 28

[Docket Number OAG–164; AG Order No. 4537–2019]

RIN 1105–AB56

DNA-Sample Collection From Immigration Detainees

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice is proposing to amend regulations that require DNA-sample collection from individuals who are arrested, facing charges, or convicted, and from non-United States persons who are detained under the authority of the United States. The amendment would strike a provision authorizing the Secretary of Homeland Security to exempt from the sample-collection requirement certain aliens from whom collection of DNA samples is not feasible because of operational exigencies or resource limitations. This will restore the Attorney General's plenary legal authority to authorize and direct all relevant Federal agencies, including the Department of Homeland Security, to collect DNA samples from individuals who are arrested, facing charges, or convicted, and from non-United States persons who are detained under the authority of the United States.

DATES: Written and electronic comments must be sent or submitted on or before November 12, 2019. Comments received by mail will be considered timely if they are postmarked on or before the last day of the comment period. The electronic Federal Docket Management System will accept electronic comments until Midnight Eastern Time at the end of that day.

ADDRESSES: Comments may be mailed to Regulations Docket Clerk, Office of Legal Policy, Department of Justice, 950 Pennsylvania Avenue NW, Room 4234, Washington, DC 20530. To ensure proper handling, please reference Docket No. OAG–164 on your correspondence. You may submit comments electronically or view an electronic version of this proposed rule at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: David J. Karp, Senior Counsel, Office of

Legal Policy, United States Department of Justice, Washington, DC, 202–514–3273.

SUPPLEMENTARY INFORMATION: *Posting of Public Comments.* Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you still want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Background and Purpose

This proposed rule removes 28 CFR 28.12(b)(4), a provision that authorizes the Secretary of Homeland Security to exempt certain detained aliens from DNA-sample collection.

The DNA Fingerprint Act of 2005, title X of Public Law 109–162, authorizes the Attorney General to collect DNA samples from individuals who are arrested, facing charges, or convicted, and from non-United States persons who are detained under the authority of the United States. *See* 34 U.S.C. 40702(a)(1)(A). The statute further authorizes the Attorney General to delegate the function of collecting DNA samples to other agencies, and to direct their discharge of this function, thereby empowering the Attorney General to establish and administer a government-wide sample-collection program for persons in the covered classes. *See id.* In 2008, the Attorney General issued an implementing rule for 34 U.S.C. 40702(a)(1)(A) that amended 28 CFR 28.12. *See* 73 FR 74932 (Dec. 10, 2008).

The rule generally requires DNA-sample collection from individuals in these categories if they are fingerprinted. Consequently, Federal agencies now collect DNA samples from persons they take into custody as a regular identification measure in booking, on a par with fingerprinting and photographing. The rule requires DNA-sample collection both for persons arrested on Federal criminal charges and for non-United States persons in detention for immigration violations because DNA identification serves similar purposes and is of similar value in both contexts. *See* 28 CFR 28.12(b) (''Any agency of the United States that arrests or detains individuals . . . shall collect DNA samples from individuals who are arrested, facing charges, or convicted, and from non-United States persons who are detained under the authority of the United States.''); 73 FR at 74933–34, 74938–39. The rule defines ''non-United States persons'' for this purpose to mean persons who are not U.S. citizens and who are not lawfully admitted for permanent residence as defined in the relevant regulation (8 CFR 1.1(p), which has since been redesignated 8 CFR 1.2). 28 CFR 28.12(b).

The rule allows exceptions to the sample-collection requirement with the approval of the Attorney General. 28 CFR 28.12(b) (third sentence); 73 FR at 74934. As currently formulated, the rule also recognizes specific exceptions with respect to four categories of aliens, as provided in paragraphs (1)–(4) of 28 CFR 28.12(b).

The first exception, appearing in § 28.12(b)(1), is for aliens lawfully in, or being processed for lawful admission to, the United States. This reflects that the rule's objectives in relation to non-U.S. persons generally concern those implicated in illegal activity (including immigration violations) and not lawful visitors from other countries. *See* 73 FR at 74941.

The second exception, appearing in § 28.12(b)(2), is for aliens held at a port of entry during consideration of admissibility and not subject to further detention or proceedings. The second exception overlaps with the first and its rationale is similar. Lawful entrants from other countries may be regarded as detained when, for example, they are briefly held up at airports during routine processing or taken aside for secondary inspection. As with the first exception, when such entrants are not subject to further detention or proceedings, categorically requiring DNA-sample collection is not necessary to realize the rule's objectives.

The third exception, appearing in § 28.12(b)(3), is for aliens held in connection with maritime interdiction, because collecting DNA samples in maritime interdiction situations may be unnecessary and practically difficult or impossible.

This proposed rule does not affect these three exceptions because the considerations supporting them have not changed since the issuance of the original rule in 2008.

The fourth exception, appearing in § 28.12(b)(4), is for other aliens, with respect to whom the Secretary of Homeland Security, in consultation with the Attorney General, determines that the collection of DNA samples is not feasible because of operational exigencies or resource limitations. This aspect of the current regulation is at odds with the treatment of all other Federal agencies, which may adopt exceptions to DNA-sample collection based on operational exigencies or resource limitations only with the Attorney General's approval. *See* 28 CFR 28.12(b). Nevertheless, the rule granted the Secretary of Homeland Security authority to make exceptions for certain aliens, recognizing that it might not be feasible to implement the general policy of DNA-sample collection immediately in relation to the whole class of immigration detainees, including the hundreds of thousands of illegal entrants who are taken into custody near the southwest border of the United States each year.

Then-Secretary of Homeland Security Janet A. Napolitano advised in a March 22, 2010, letter to then-Attorney General Eric H. Holder, Jr., that categorical DNA collection from aliens in this class was not feasible, on the grounds described in § 28.12(b)(4). However, subsequent developments have resulted in fundamental changes in the cost and ease of DNA-sample collection. DNA-sample collection from persons taken into or held in custody is no longer a novelty. Rather, pursuant to the mandate of § 28.12(b), it is now carried out as a routine booking measure, parallel to fingerprinting, by Federal agencies on a government-wide basis.

The established DNA-collection procedures applied to persons arrested or held on criminal charges can likewise be applied to persons apprehended for immigration violations.

Accordingly, this proposed rule removes the exemption authority of the Secretary of Homeland Security appearing in paragraph (b)(4) of § 28.12. The removal of that exemption authority will not preclude limitations and exceptions to the regulation's requirement to collect DNA samples, because of operational exigencies, resource limitations, or other grounds. But all such limitations and exceptions, beyond those appearing expressly in the regulation's remaining provisions, will require the approval of the Attorney General.

The Attorney General—exercising his plenary authority under the DNA Fingerprint Act of 2005 to authorize and direct DNA-sample collection by Federal agencies, and to permit limitations and exceptions thereto—will review DHS's capacity to implement DNA-sample collection from non-U.S. person detainees as required by the regulation. The Department of Justice will work with DHS to develop and implement a plan for DHS to phase in that collection over a reasonable timeframe.

The situation parallels that presented by the initial implementation of DNA-sample collection by other Federal agencies pursuant to 28 CFR 28.12. The regulatory requirements were not understood or applied to impose impossible obligations on the agencies to immediately collect DNA samples from all persons in their custody covered by the rule. Rather, the Department of Justice worked with the various agencies to implement the regulation's requirements in their operations without unnecessary delay, but in a manner consistent with the need to adjust policies and procedures, train personnel, establish necessary relationships with the Federal Bureau of Investigation Laboratory regarding DNA-sample collection and analysis, and take other measures required for implementation.

Many considerations support the decision to repeal the § 28.12(b)(4) exception. As an initial observation, the original rulemaking recognized that distinguishing the treatment of criminal arrestees and immigration detainees with respect to DNA identification is largely artificial, in that most immigration detainees are held on the basis of conduct that is itself criminal. Aliens who are apprehended following illegal entry have likely committed crimes under the immigration laws, such as 8 U.S.C. 1325(a) and 1326, for which they can be prosecuted. ''Hence, whether an alien in such circumstances is regarded as an arrestee or a (non-arrested) detainee may be a matter of characterization, and the aptness of one description or the other may shift over time, depending on the disposition or decision of prosecutors concerning the handling of the case.'' 73 FR at 74939. The practical difference between criminal arrestees and immigration detainees, for purposes of DNA-sample collection, has been further eroded through policies favoring increased prosecution for immigration violations.

The underlying legal and policy considerations support consistent DNA identification of individuals in the two classes. At the broadest level, ''[t]he advent of DNA technology is one of the most significant scientific advancements of our era,'' having an ''unparalleled ability both to exonerate the wrongly convicted and to identify the guilty.'' *Maryland* v. *King,* 569 U.S. 435, 442 (2013) (quotation marks omitted). DNA analysis ''provides a powerful tool for human identification,'' which ''help[s] to bring the guilty to justice and protect the innocent, who might otherwise be wrongly suspected or accused.'' 73 FR at 74933. ''[T]hrough DNA matching,'' it enables ''a vast class of crimes [to] be solved.'' 73 FR at 74934. The need for consistent application of DNA identification measures may be particularly compelling ''in relation to aliens who are illegally present in the United States and detained pending removal,'' because ''prompt DNA-sample collection could be essential to the detection and solution of crimes they may have committed or may commit in the United States . . . before the individual's removal from the United States places him or her beyond the ready reach of the United States justice system.'' 73 FR at 74934.

Regardless of whether individuals are deemed criminal arrestees or immigration detainees, the use of collected DNA samples is the same and has similar value. The DNA profiles the government derives from arrestee or detainee samples amount to sanitized ''genetic fingerprints''—they can be used to identify an individual uniquely, but they do not disclose the individual's traits, disorders, or dispositions. The profiles are searched against the Combined DNA Index System (CODIS), which includes DNA profiles derived from biological residues left at crime scenes—for example, the DNA of a rapist secured in a sexual assault examination kit, or the DNA of a murderer found on an item he left or touched in committing the crime. A match to CODIS identifies the arrestee or detainee as the source of the crime-scene DNA and likely perpetrator of the offense. Equally for criminal arrestees and immigration detainees, the operation of the DNA identification system thereby furthers the interests of justice and public safety without compromising the interest in genetic privacy. *See King,* 569 U.S. at 442–46, 461–65; 73 FR at 74933, 74937–38.

For criminal arrestees and immigration detainees, the specific governmental interests supporting the use of the DNA technology are implicated in similar, if not identical, ways. One such interest is simply that of identification—''the need for law enforcement officers in a safe and accurate way to process and identify the persons . . . they must take into custody,'' *King,* 569 U.S. at 449, which includes connecting the person ''with his or her public persona, as reflected in records of his or her actions,'' *id.* at 451. DNA is a ''metric of identification'' used to connect the individual to his ''CODIS profile in outstanding cases,'' which is functionally no different from the corresponding use of fingerprints, except for ''the unparalleled accuracy DNA provides.'' *King,* 569 U.S. at 451–52; *see* 73 FR at 74933–34, 74936–37.

A second governmental interest is the responsibility ''law enforcement officers bear . . . for ensuring that the custody of an arrestee does not create inordinate risks for facility staff, for the existing detainee population, and for a new detainee.'' *King,* 569 U.S. at 452 (quotation marks and citation omitted); *see* 73 FR at 74934 (noting use of DNA information in ensuring proper security measures for detainees). For example, a match between the DNA profile of a person in custody and DNA left by the apparent perpetrator at the site of a murder is important information that officers and agencies responsible for the person's custody should have, a consideration that applies equally whether the detention is premised on a criminal law violation or an immigration law violation.

Third, DNA identification informs the decision concerning continued detention or release, in the interest of ensuring that the individual will appear for future proceedings. In the criminal context this includes ensuring that an arrestee will appear for trial if released, and in the immigration context it includes ensuring that a detainee will appear for future proceedings relating to his immigration status if released. If DNA matching has shown or will show a connection between the person in custody and a crime for which he may be held to account if he has further

contact with the justice system, the person's incentive to flee must be considered in deciding whether to continue the detention pending further proceedings. *See King,* 569 U.S. at 452–53 (''A person who . . . knows he has yet to answer for some past crime may be more inclined to flee.'').

Fourth, DNA identification informs the decision concerning continued detention or release, and necessary conditions if release is granted, in the interest of public safety. *See King,* 569 U.S. at 453 (''an arrestee's past conduct is essential to an assessment of the danger he poses to the public, and this will inform a . . . determination whether the individual should be released''); 73 FR at 74934 (DNA information ''helps authorities to assess whether an individual may be released safely to the public . . . and to establish appropriate conditions for his release''). The results of DNA identification have the same significance for this purpose whether the person has been detained for criminal or immigration law reasons.

Fifth, DNA identification furthers the fundamental objectives of the criminal justice system, clearing innocent persons who might otherwise be wrongly suspected or accused by identifying the actual perpetrator, and helping to bring the guilty to justice. *See King,* 569 U.S. at 455–56; 73 FR at 74933–34. Here, too, it makes no difference whether the basis of the detention is suspected criminality or an immigration violation.

In this connection, consider the case of Raphael Resendez-Ramirez, the ''Railway Killer,'' who was executed in Texas in 2006. Resendez is believed to have committed numerous murders in the United States, including at least seven in the 1997–99 period, as well as additional murders in Mexico. Resendez was repeatedly taken into custody and repatriated to Mexico, including eight times between January 5, 1998 and June 1, 1999, and on earlier occasions going back to the 1970s. *See* U.S. Department of Justice, Office of the Inspector General, Special Report on the Raphael Resendez-Ramirez Case (March 20, 2000), *https://oig.justice.gov/special/0003.*

Suppose it had been possible on any occasion when Resendez was apprehended to take a DNA sample from him and match it to DNA evidence derived from any of his murders. The officers responsible for his custody would have been put on notice of his dangerousness upon receipt of the information, and he would have been held in custody for criminal proceedings rather than being released, thereby saving the lives of the victims he claimed thereafter.

This proposed rule's removal of the authorized exception to DNA collection for certain detained aliens appearing in 28 CFR 28.12(b)(4) will help to ensure that future avoidable tragedies of this nature will in fact be avoided, and that DNA technology will be consistently utilized to further public safety and the interests of justice in relation to immigration detainees, as has long been the case in relation to criminal arrestees, defendants, and convicts in the Federal jurisdiction.

In addition to removing § 28.12(b)(4), the proposed rule updates a citation in § 28.12(b), replacing ''8 CFR 1.1(p)'' with ''8 CFR 1.2.''

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation would not have a significant economic impact on a substantial number of small entities because it concerns Federal agencies' collection of DNA samples from certain aliens.

Executive Orders 12866, 13563, and 13771—Regulatory Planning and Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation, and Executive Order 13563, ''Improving Regulation and Regulatory Review.'' The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f).

This rule strikes paragraph (b)(4) of 28 CFR 28.12, which authorizes the Secretary of Homeland Security to exempt certain aliens from DNA-sample collection based on operational exigencies or resource limitations. Following the proposed change, the decision regarding limitations and exceptions to DNA-sample collection from persons in the affected class will be fully vested in the Attorney General.

This proposed rulemaking is not subject to the requirements of Executive Order 13771 because any future costs of DNA-sample collection following this change in decision-making authority will be the same as the costs of DNA-sample collection pursuant to the existing regulation, subject to whatever limitations or exceptions the decision-maker chooses to allow. In other words, while future implementation decisions under 28 CFR 28.12 to collect DNA more broadly may entail costs, these costs could equally be realized under the current text of the regulation and do not result from this proposed rulemaking's change in the regulation. Fully vesting the authority regarding limitations and exceptions to the regulation's DNA-sample collection requirement in the Attorney General does not determine whether or to what extent limitations or exceptions will be adopted, and does not dictate any time frame for implementation of DNA-sample collection with respect to aliens in the affected class. The Attorney General will work with DHS, as he has done with other Federal agencies that have heretofore implemented DNA collection from persons in their custody, to ensure that any expansion of DNA-sample collection from such aliens will be effected in an orderly manner consistent with DHS's capacities.

For example, if DNA-sample collection were implemented in full with respect to aliens in the category implicated by 28 CFR 28.12(b)(4), pursuant either to the Secretary of Homeland Security's direction under the current text of the regulation, or the Attorney General's direction following the amendment of the regulation by this rulemaking, there would be the same implementation costs. The Department of Justice assumes in analyzing these costs that any such expansion of DNA-sample collection would be phased in over the first three years and that DHS would utilize the Electronic Data Capture Project (EDCP). EDCP is a project designed to improve efficiencies by reducing the number of duplicate DNA samples collected by Federal agencies and by eliminating the manual collection of biographical data and inked fingerprints at the time of booking, by utilizing the information already electronically collected at the time of booking. This capability is estimated to reduce the time of DNA collection from approximately 15 minutes to less than 5 minutes. To obtain the EDCP technology, integrate it into their booking software, and create a training program for their staff, DHS would incur a total one-time cost of $500,000.

Approximately 743,000 people fell into the category implicated by 28 CFR 28.12(b)(4) over the past 12 months, which is equivalent to approximately 755,000 samples, once repeated samples (due to rejection of initial samples) are considered. DHS submitted nearly 7,000 samples in FY2018. Therefore, assuming the population subject to DNA collection under the rule remains at this level, DHS would be expected to submit an additional 748,000 samples annually.

Utilizing EDCP, DHS would require approximately 20,778 additional work hours in the first year, 41,556 hours in the second year, and 62,333 hours in the third year to collect the additional samples. Using average compensation for U.S. Customs & Border Protection employees stationed along the southern border, the total cost to DHS with the EDCP software would be about $5.1 million in the first three years. If future implementation decisions or changes in the volume of apprehensions ultimately resulted in annual submission of a number of additional DNA samples less than or greater than 748,000, required work hours and resulting costs would be reduced or increased correspondingly.

The FBI would also need to provide additional DNA-sample collection kits, at a per-kit cost of $5.38, in sufficient numbers to collect samples at the volumes described above. For example, assuming a three-year phase-in period with an additional third of the eligible population added in each successive year, the additional sample-collection kit costs to the FBI would be $1,341,413 to collect 249,333 samples in the first year, $2,682,827 to collect 498,667 samples in the second year, and $4,024,240 to collect 748,000 samples in the third year. The FBI will provide to DHS, without charge, the same services that it provides to other Federal agencies that collect DNA samples, including assistance with regard to training, DNA-sample collection kits, postage to return the collected samples, analysis of samples, inclusion in CODIS, and handling resulting matches.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 28 CFR Part 28

Crime, Information, Law enforcement, Prisoners, Prisons, Probation and parole, Records.

Accordingly, for the reasons stated in the preamble, part 28 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 28—DNA IDENTIFICATION SYSTEM

■ 1. The authority citation for part 28 is revised to read as follows:

Authority: 28 U.S.C. 509, 510; 34 U.S.C. 12592, 40702, 40703; 10 U.S.C. 1565; 18 U.S.C. 3600A; Public Law 106–546, 114 Stat. 2726; Public Law 107–56, 115 Stat. 272; Public Law 108–405, 118 Stat. 2260; Public Law 109–162, 119 Stat. 2960; Public Law 109–248, 120 Stat. 587; Public Law 115–50, 131 Stat. 1001.

§ 28.12 [Amended]

■ 2. Amend § 28.12:

■ a. In the introductory text of paragraph (b) by removing ''1.1(p)'' and adding in its place ''1.2'';

■ b. At the end of paragraph (b)(2) by removing the semicolon and adding in its place ''; or'';

■ c. At the end of paragraph (b)(3) by removing ''; or'' and adding in its place a period; and

■ d. By removing paragraph (b)(4).

Dated: October 15, 2019.

William P. Barr,

Attorney General.

[FR Doc. 2019–22877 Filed 10–21–19; 8:45 am]

BILLING CODE 4410–19–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO–P–2019–0011]

RIN 0651–AD34

Rules of Practice To Allocate the Burden of Persuasion on Motions To Amend in Trial Proceedings Before the Patent Trial and Appeal Board

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (''USPTO'' or ''Office'') proposes changes to the rules of practice in *inter partes* review (''IPR''), post-grant review (''PGR''), and the transitional program for covered business method patents (''CBM'') (collectively ''post-grant trial'') proceedings before the Patent Trial and Appeal Board (''PTAB'' or ''Board'') to allocate the burdens of persuasion in relation to motions to amend and the patentability of substitute claims proposed therein.

DATES: *Comment Deadline Date:* The Office solicits comments from the public on this proposed rulemaking. Written comments must be received on or before December 23, 2019 to ensure consideration.

ADDRESSES: Comments should be sent by electronic mail message over the internet addressed to: *MTABurden2019@uspto.gov.* Comments may also be sent by electronic mail message over the internet via the Federal eRulemaking Portal at *http://www.regulations.gov.* See the Federal eRulemaking Portal website for additional instructions on providing comments via the Federal eRulemaking Portal. All comments submitted directly to the USPTO or provided on the Federal eRulemaking Portal should include the docket number (PTO–P–2019–0011).

Comments may also be submitted by postal mail addressed to: Mail Stop Patent Board, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Lead Administrative Patent Judge Christopher L. Crumbley or Lead Administrative Patent Judge Susan L. C. Mitchell, PTAB Notice of Proposed Rulemaking 2019.''

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message to more easily

share all comments with the public. The Office prefers the comments to be submitted in plain text, but also accepts comments submitted in searchable ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that accommodates digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Patent Trial and Appeal Board, located in Madison East, Ninth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's internet website, *https://go.usa.gov/xXXFW,* and on the Federal eRulemaking Portal. Because comments will be made available for public inspection, information that the submitter does not desire to be made public, such as address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Christopher L. Crumbley, Lead Administrative Patent Judge, or Susan L. C. Mitchell, Lead Administrative Patent Judge, by telephone at (571) 272–9797.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose: The proposed rules would amend the rules of practice for IPR, PGR, and CBM proceedings that implement provisions of the Leahy-Smith America Invents Act, Public Law 112–29, 125 Stat. 284 (2011) (''AIA'') providing for trials before the Office. Pursuant to the AIA, during the course of an IPR, PGR, or CBM, a patent owner may file a motion to amend the patent by cancelling any challenged patent claim or by proposing a reasonable number of substitute claims for each challenged claim. 35 U.S.C. 316(d)(1), 326(d)(1).

Previously, relying on a general rule that a movant bore the burden of proof with respect to motions before the Board (37 CFR 42.20(c)), the Office placed the burden of showing the patentability of proposed substitute claims on the patent owner moving to amend a patent in a trial proceeding. On October 4, 2017, the United States Court of Appeals for the Federal Circuit issued an *en banc* decision in *Aqua Prods., Inc.* v. *Matal,* 872 F.3d 1290 (Fed. Cir. 2017) (en banc) (''*Aqua Products*''), in which a majority of the judges concluded that the Office had not adopted a rule allocating the burden of persuasion with respect to the patentability of proposed substitute claims. In light of *Aqua Products,* as well as public comment provided in response to a Request for Comments (*See* 83 FR 54319), the Office proposes to issue specific rules applicable to motions to amend. The proposed rules assign the burden of persuasion in relation to the patentability of proposed substitute claims to the petitioner, but permit the Board to exercise its discretion to reach a determination regarding patentability of proposed substitute claims even when a petitioner does not carry its burden of persuasion, when supported by the record and when in the interests of justice. The proposed rules also assign the burden of persuasion in relation to certain statutory and regulatory requirements for a motion to amend (*i.e.,* 35 U.S.C. 316(d) or 326(d); 37 CFR 42.121(a)(2), (a)(3), (b)(1), (b)(2), or 42.221(a)(2), (a)(3), (b)(1), (b)(2)) to the patent owner, but permit the Board to exercise its discretion to determine that the motion to amend complies with the statutory and regulatory requirements of those sections even when the patent owner does not carry its burden of persuasion, when supported by the record and when in the interests of justice. The Office anticipates that the Board will exercise such discretion only in rare circumstances, as discussed herein. The proposed rules are consistent with *Aqua Products* and also with current Board practice as described in the precedential Board decision *Lectrosonics, Inc.* v. *Zaxcom, Inc.,* Cases IPR2018–01129, 01130 (P.T.A.B. Feb. 25, 2019) (Paper 15), and as such do not reflect a change from current practice.

The proposed rules would thus clarify the rules of practice for amending claims in an IPR, PGR, or CBM to specify that the petitioner bears the burden of showing that the proposed substitute claims are unpatentable by a preponderance of the evidence, and would address instances where a petitioner does not oppose an amendment or does not meet its burden of persuasion in this regard, for example, where the petitioner ceases to participate in the proceeding or declines to oppose the patent owner's motion to amend. The proposed rules also would specify that the patent owner bears the burden of showing, by a preponderance of the evidence, that a motion to amend complies with certain statutory and regulatory requirements, and would address instances where a patent owner does not meet its burden of persuasion in this regard. In instances where a party does not meet its burden, the Board may, in the interests of justice, justify a determination regarding the patentability of amended claims based on the record as a whole.

Costs and Benefits: This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

Background

On September 16, 2011, the AIA was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)), and within one year, the Office implemented rules to govern Office practice for AIA trials, including IPR, PGR, CBM, and derivation proceedings pursuant to 35 U.S.C. 135, 316 and 326 and AIA sec. 18(d)(2). *See* Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions, 77 FR 48612 (Aug. 14, 2012); Changes to Implement *Inter Partes* Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, 77 FR 48680 (Aug. 14, 2012); Transitional Program for Covered Business Method Patents—Definitions of Covered Business Method Patent and Technological Invention, 77 FR 48734 (Aug. 14, 2012). Additionally, the Office published a Patent Trial Practice Guide to advise the public on the general framework of the regulations, including the structure and times for taking action in each of the new proceedings. *See* Office Patent Trial Practice Guide, 77 FR 48756 (Aug. 14, 2012); *see also* Office Patent Trial Practice Guide, August 2018 Update, 83 FR 39989 (Aug. 13, 2018); Office Patent Trial Practice Guide, July 2019 Update, 84 FR 33925 (July 16, 2018).

In prescribing these regulations, the Office considered ''the effect of any such regulation on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings instituted'' as required by statute. 35 U.S.C. 316(b), 326(b). The Office also considered the public comments carefully and responded to the comments in these final rules. Among the final rules, the Office promulgated § 42.20(c), which states that a ''moving party has the burden of proof to establish that it is entitled to the requested relief.'' 37 CFR 42.20(c).

Previously, the Board interpreted the burden of proof requirement of § 42.20(c) to apply to motions to amend filed pursuant to 35 U.S.C. 316 and 326, including the requirement to show that the proposed substitute claims were patentable over the prior art of record. *MasterImage 3D, Inc.* v. *RealD Inc.,* Case IPR2015–00040 (P.T.A.B. July 15, 2015) (Paper 42) (''*MasterImage*''). Under *MasterImage,* which was subsequently made precedential, the patent owner in a proceeding, as the moving party in a

motion to amend, bore the burden of showing that the proposed substitute claims were patentable. *Id.*

On October 4, 2017, the United States Court of Appeals for the Federal Circuit issued its *en banc* decision in *Aqua Products,* addressing the burden of persuasion regarding the patentability of substitute claims presented in a motion to amend. The lead opinion of the decision explains that, in the absence of rulemaking, the USPTO may not place the burden of persuasion on the patent owner to show that proposed substitute claims are patentable.

> The only legal conclusions that support and define the judgment of the court are: (1) The PTO has not adopted a rule placing the burden of persuasion with respect to the patentability of amended claims on the patent owner that is entitled to deference; and (2) in the absence of anything that might be entitled deference, the PTO may not place that burden on the patentee.

Id. at 1327 (O'Malley, J.).

A separate opinion joined-in-part by a majority of the *en banc* court observed that ''it is well settled that regardless of which party bears the ultimate burden of *persuasion,* the movant bears a burden of *production*'' and that ''the Patent Office has adopted regulations that address what a patent owner must submit in moving to amend the patent.'' *Id.* at 1340–41 (Reyna, J., concurring in part) (citing 37 CFR 42.20(a), 42.22(a), 42.121(a)(2)(i)). The opinion explains that these regulations require a patent owner to ''assist[ ] the Board to perform its statutory obligation to 'issue a final written decision with respect to the patentability of . . . any new claim added under section 316(d).''' *Id.* at 1341 (omission in original) (quoting 35 U.S.C. 318(a)).

In view of the Federal Circuit's decision in *Aqua Products,* on November 21, 2017, the Office issued formal guidance through a memorandum from the Chief Administrative Patent Judge, explaining that, in light of the *Aqua Products* decision, the Board will no longer place the burden of persuasion on a patent owner with respect to patentability of any proposed substitute claims presented in a motion to amend. *See Guidance on Motions to Amend in view of* Aqua Products, *https://go.usa.gov/xQGAA* (''Guidance Memo''). The Guidance Memo also notes that a motion to amend must continue to satisfy the requirements of 37 CFR 42.121 or 42.221 (*e.g.,* provide a reasonable number of substitute claims and written description support in relation to each substitute claim), as applicable, that all parties continue to have a duty of candor under 37 CFR 42.11, and that the page limits, type, and timing of briefs remain unchanged. *Id.*

On December 22, 2017, the Federal Circuit issued a related decision in *Bosch Auto. Serv. Solutions, LLC* v. *Matal,* 878 F.3d 1027 (Fed. Cir. 2017) (''*Bosch*''). In that decision, because the petitioner had settled with the patent owner who had proposed substitute claims, the Federal Circuit remanded the case to the Board to evaluate the patentability of the proposed substitute claims. *Id.* (''[W]here the challenger ceases to participate in the IPR and the Board proceeds to final judgment, *it is the Board* that must justify any finding of unpatentability by reference to the evidence of record in the IPR.'') (alteration in original) (quoting *Aqua Products,* 872 F.2d at 1311 (O'Malley, J.)).

In view of the decisions by the Federal Circuit regarding motion to amend practice and procedure in AIA trials, the Board de-designated as precedential *MasterImage,* as well as de-designating as informative a prior decision of the Board in *Idle Free Sys., Inc.* v. *Bergstrom, Inc.,* Case IPR2012–00027 (P.T.A.B. June 11, 2013) (Paper 26), decisions in which the Board panels stated that ''[t]he burden is not on the petitioner to show unpatentability, but on the patent owner to show patentable distinction over the prior art of record and also prior art known to the patent owner.'' *Id.* at 7; *see also MasterImage* at 2 (quoting *Idle Free*). Concurrently, the Board designated an order issued in *Western Digital Corp.* v. *SPEX Techs., Inc.,* Cases IPR2018–00082, 00084 (P.T.A.B. Apr. 25, 2018) (Paper 13) (''*Western Digital*'') as informative to provide an example of how panels can handle several aspects of the motion to amend practice under the *Aqua Products* and *Bosch* precedent. With respect to the burden of persuasion, the *Western Digital* order explained that under the current state of the law ''the burden of persuasion will ordinarily lie with the petitioner to show that any proposed substitute claims are unpatentable'' and that the ''Board itself may justify any finding of unpatentability by reference to evidence of record in the proceeding.'' *Id.* at 4.

On March 7, 2018, the Board designated as precedential an order in *Lectrosonics, Inc.* v. *Zaxcom, Inc.,* Cases IPR2018–01129, 01130 (P.T.A.B. Feb. 25, 2019) (Paper 15) (''*Lectrosonics*''), and de-designated *Western Digital.* This order provides guidance regarding statutory and regulatory requirements for a motion to amend in light of Federal Circuit case law. For example, the order notes that, prior to considering the patentability of any substitute claims, the Board first must determine whether the patent owner has met the statutory and regulatory requirements set forth in 35 U.S.C. 316(d) and 37 CFR 42.121, such as, that the motion proposes a reasonable number of substitute claims and that the amendments do not broaden the scope of the claims. *Id.* at 4–5. The order also sets out that ''the burden of persuasion ordinarily will lie with the petitioner to show that any proposed substitute claims are unpatentable by a preponderance of the evidence.'' As discussed in more detail below, the proposed rules herein allocate the burden of persuasion regarding the patentability of proposed substitute claims in a motion to amend as set forth in *Lectrosonics* and *Western Digital.*

On October 29, 2018, the Office published a ''Request for Comments on Motion To Amend Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board'' in the **Federal Register** (''Request for Comments''), seeking public comment on various aspects of the Board's amendment practice. 83 FR 54319. Among the questions on which the Board sought public input were the following, directed to the allocation of the burden of persuasion:

15. Should the Office engage in rulemaking to allocate the burden of persuasion regarding the patentability of proposed substitute claims in a motion to amend as set forth in the *Western Digital* order? What are the advantages or disadvantages of doing so?

16. If the Office continues to allocate the burden as set forth in the *Western Digital* order, under what circumstances should the Board itself be able to justify findings of unpatentability? Only if the petitioner withdraws from the proceeding? Or are there situations where the Board itself should be able to justify findings of unpatentability when the petitioner remains in the proceeding? What are the advantages or disadvantages?

Id. at 54325.[1]

In response to the October 2018 Request for Comments, the Office received 49 comments as of December 21, 2018 (the closing date for comments), from intellectual property

[1] The October 2018 Request for Comments was published before *Western Digital* was superseded by *Lectrosonics,* and thus refers only to the *Western Digital* order. Both orders are identical in their discussion of the burden of persuasion. Therefore, Questions 15 and 16 of the Request for Comments, and the public comments provided thereto, are equally pertinent to the current Board precedent of *Lectrosonics.*

organizations, trade organizations, other organizations, and individuals. *See https://go.usa.gov/xyeFy* (collected responses to Request for Comments).[2] [3] Approximately 25 of the commenters provided specific responses to Questions 15 and 16 of the Request for Comments. In response to Question 15, the majority of commenters were in favor of the Office engaging in rulemaking to allocate the burden of persuasion as set forth in *Western Digital* (as discussed in more detail below). Only three commenters believed rulemaking was unnecessary (either because the Board could simply continue to apply its own precedent, or because the statute already allocates the burden of persuasion). A minority of commenters stated that the Office should engage in rulemaking, but that the burden of persuasion should be placed on the patent owner.

Additionally, in response to Question 15, some commenters suggested that even if the Office promulgates rules to place the burden of persuasion on the petitioner on the issue of patentability of the proposed substitute claims, the patent owner continues to bear the burden to show that the motion to amend complies with the statutory requirements of 35 U.S.C. 316(d) or 326(d) (for example, that the amendment may not enlarge the scope of the claims), as well as the regulatory requirements of 37 CFR 42.121 or 42.221 (for example, that the motion set forth the support for the amendment in the original disclosure of the patent).

In response to Question 16, the majority of responsive comments stated that the Board should be able to justify findings of unpatentability in any circumstance, for example, even when the petitioner remains in the proceeding. Two commenters responded that the Board should never be able to assume the burden of persuasion on unpatentability itself, and three commenters believed that the Board should be permitted to justify findings of unpatentability of proposed substitute claims itself only in certain circumstances, for example, when a petitioner ceases to participate in a proceeding.

The Office appreciates the public input provided in response to the Request for Comments and has reviewed the individual responses thoroughly. In light of the generally positive support for rulemaking to allocate the burden of persuasion as set forth in the *Western Digital* order (and subsequently made precedential in *Lectrosonics*), and in the interest of providing greater clarity, certainty, and predictability to parties participating in trial proceedings before the Board, the Office now issues proposed rules allocating the burden of persuasion. The rules would specify that the burden of persuasion as to patentability of substitute claims proposed in a motion to amend is on the petitioner. In addition, the rules would specify that the burden of persuasion is on the patent owner to show that the motion complies with the requirements of 35 U.S.C. 316(d) or 326(d) (requiring that a motion to amend propose a reasonable number of substitute claims, and that substitute claims do not enlarge scope of the original claims of the patent or introduce new matter), as well as 37 CFR 42.121(a)(2), (a)(3), (b)(1), and (b)(2), or 42.221(a)(2), (a)(3), (b)(1), and (b)(2) (indicating, for example, that a motion to amend must set forth written description support and support for the benefit of a filing date in relation to each substitute claim, and respond to grounds of unpatentability involved in the trial).

Irrespective of the burdens of persuasion discussed above, however, the rules also would specify that the Board may, in the interests of justice, exercise its discretion to grant or deny a motion to amend for any reason supported by the evidence of record. Thus, in instances where a party has not met its burden in relation to a motion to amend or any substitute claims proposed therein, the Board may, in the interests of justice, reach a determination regarding patentability, based on the entirety of the evidence made of record in the proceeding. The Office anticipates that the Board will exercise this discretion only in rare circumstances. Any evidence relied on to support a determination regarding patentability will be made of record in the proceeding by the parties or the Board.

For instance, the Board may, in the interests of justice, exercise its discretion to determine that a motion to amend complies with the statutory and regulatory requirements of 35 U.S.C. 316(d) or 326(d) and 37 CFR 42.121(a)(2), (a)(3), (b)(1), and (b)(2), or 42.221(a)(2), (a)(3), (b)(1), and (b)(2), even if a patent owner does not expressly address or establish every requirement in its briefing. The Office expects that the Board will do so only in circumstances where there is easily identified and persuasive evidence that the motion complies with the statutory and regulatory requirements, and only where the petitioner has been afforded the opportunity to respond to that evidence. The Board will rely on evidence of record when making such a determination.

Furthermore, as supported by the majority of the comments received in response to Question 16, under the proposed rules, the Board may exercise its discretion to reach a determination regarding patentability in instances where a petitioner does not oppose the amendment or does not meet its burden of persuasion in relation to any proposed substitute claim. The proposed rules limit such instances to those in which the interests of justice warrant the Board reaching a determination regarding patentability. Such instances may include, for example, situations where the petitioner has ceased to participate in the proceeding altogether (for example, as a result of settlement) or where the petitioner remains in the proceeding but does not oppose the motion to amend.

The interests of justice also may, for example, support the Board exercising its discretion to deny a motion to amend when the petitioner opposes the motion to amend and has failed to meet the burden of persuasion, but where there is easily identified and persuasive evidence of unpatentability in the record. In such situations, the proposed rules would grant the Board discretion regarding whether to make any determination of unpatentability that is supported by the evidence of record, even if the ground of unpatentability has not been advanced by the petitioner. The Office expects that the Board will do so only in rare circumstances, and only where the patent owner has been afforded the opportunity to respond to that evidence and related grounds of unpatentability. Ordinarily, in cases where the petitioner has participated fully and opposed the motion to amend, the Office expects that the petitioner will bear the burden of persuasion and there will be no need for the Board to independently justify a determination of unpatentability.

[2] The October 2018 Request for Comments also sought comments on a proposed amendment procedure in post-grant trial proceedings that included the Board providing preliminary non-binding guidance on the merits of a motion to amend, and an opportunity for a patent owner to revise its motion to amend thereafter. The Office recently addressed that portion of the Request for Comments separately in a ''Notice Regarding a New Pilot Program Concerning Motion To Amend Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board.'' 84 FR 9497 (Mar. 15, 2019).

[3] In response to the October 2018 Request for Comments, the Office also received comments and questions relating to reissue or reexamination as an alternative vehicle for claim amendments. The Office recently addressed those comments and questions separately in a ''Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding (April 2019).'' 84 FR 16654 (Apr. 22, 2019).

Discussion of Specific Rules

The USPTO proposes to amend 37 CFR part 42 as follows:

Section 42.121: § 42.121 is proposed to be amended by adding a new subsection (d) to state that a patent owner bears the burden of persuasion to show that a motion to amend complies with certain statutory and regulatory requirements, but that the petitioner bears the burden of persuasion to show that any proposed substitute claims are unpatentable. The new subsection (d) also states that in cases where a party does not meet its burden, the Board may, in the interests of justice, exercise its discretion to grant or deny a motion to amend for any reason supported by the evidence of record.

Section 42.221: § 42.221 is proposed to be amended by adding a new subsection (d) to state that a patent owner bears the burden of persuasion to show that a motion to amend complies with certain statutory and regulatory requirements, but that the petitioner bears the burden of persuasion to show that any proposed substitute claims are unpatentable. The new subsection (d) also states that in cases where a party does not meet its burden, the Board may, in the interests of justice, exercise its discretion to grant or deny a motion to amend for any reason supported by the evidence of record.

Rulemaking Considerations

A. Regulatory Flexibility Act: For the reasons set forth herein, the Senior Counsel for Regulatory and Legislative Affairs, Office of General Law, United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes set forth in this notice of proposed rulemaking would not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

The changes set forth in this notice of proposed rulemaking are to set forth expressly the respective burdens of persuasion on the parties regarding a motion to amend in an AIA proceeding. These changes are consistent with relevant precedential decisions of the Board and Federal Circuit, and as such do not reflect a change from current practice. The changes do not create additional procedures or requirements or impose any additional compliance measures on any party, nor do these changes cause any party to incur additional cost. Therefore, any requirements resulting from these proposed changes are of minimal or no additional burden to those practicing before the Board.

For the foregoing reasons, the proposed changes in this notice of proposed rulemaking would not have a significant economic impact on a substantial number of small entities.

B. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

C. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rules; (2) tailored the rules to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

D. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs): This proposed rule is not expected to be an Executive Order 13771 (Jan. 30, 2017) regulatory action because this proposed rule is not significant under Executive Order 12866.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

G. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

H. *Executive Order 13045 (Protection of Children):* This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

I. *Executive Order 12630 (Taking of Private Property):* This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

J. *Congressional Review Act:* Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice of proposed rulemaking are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not a ''major rule'' as defined in 5 U.S.C. 804(2).

K. *Unfunded Mandates Reform Act of 1995:* The changes set forth in this notice of proposed rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

L. *National Environmental Policy Act:* This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

M. *National Technology Transfer and Advancement Act:* The requirements of

section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

N. *Paperwork Reduction Act:* The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rulemaking does not involve an information collection requirement that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). This rulemaking does not add any additional information requirements or fees for parties before the Board.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 42

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, the Office proposes to amend part 42 of title 37 as follows:

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 1. The authority citation for 37 CFR part 42 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, and 321–326; Pub. L. 112–29, 125 Stat. 284; and Pub. L. 112–274, 126 Stat. 2456.

■ 2. Amend § 42.121 by adding paragraph (d) to read as follows:

§ 42.121 Amendment of the patent.

* * * * *

(d) *Burden of Persuasion.* On a motion to amend:

(1) A patent owner bears the burden of persuasion to show, by a preponderance of the evidence, that the motion to amend complies with the requirements of paragraphs (1) and (3) of 35 U.S.C. 316(d), as well as paragraphs (a)(2), (3), (b)(1), and (2) of this section;

(2) A petitioner bears the burden of persuasion to show, by a preponderance of the evidence, that any proposed substitute claims are unpatentable; and

(3) Irrespective of paragraphs (d)(1) and (2) of this section, the Board may, in the interests of justice, exercise its discretion to grant or deny a motion to amend for any reason supported by the evidence of record.

■ 3. Amend § 42.221 by adding paragraph (d) to read as follows:

§ 42.221 Amendment of the patent.

* * * * *

(d) *Burden of Persuasion.* On a motion to amend:

(1) A patent owner bears the burden of persuasion to show, by a preponderance of the evidence, that the motion to amend complies with the requirements of paragraphs (1) and (3) of 35 U.S.C. 326(d), as well as paragraphs (a)(2), (3), (b)(1), and (2) of this section;

(2) A petitioner bears the burden of persuasion to show, by a preponderance of the evidence, that any proposed substitute claims are unpatentable; and

(3) Irrespective of paragraphs (d)(1) and (2) of this section, the Board may, in the interests of justice, exercise its discretion to grant or deny a motion to amend for any reason supported by the evidence of record.

Dated: October 10, 2019.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2019–22768 Filed 10–21–19; 8:45 am]

BILLING CODE 3510–16–P

POSTAL SERVICE

39 CFR Part 20

International Mailing Services: Proposed Product and Price Changes—CPI

AGENCY: Postal Service™.

ACTION: Proposed rule; request for comments.

SUMMARY: The Postal Service proposes to revise *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), to reflect changes coincident with recently announced mailing services price adjustment.

DATES: We must receive your comments on or before November 21, 2019.

ADDRESSES: Mail or deliver comments to the manager, Product Classification, U.S. Postal Service®, 475 L'Enfant Plaza SW, RM 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington, DC by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday by calling 1–202–268–2906 in advance. Email comments, containing the name and address of the commenter, to: *ProductClassification@usps.gov,* with a subject line of ''January 2020 International Mailing Services Price Change—CPI.'' Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Michelle Lassiter at 202–268–2914.

SUPPLEMENTARY INFORMATION:

International Price and Service Adjustments

On October 9, 2019, the Postal Service filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC), effective on January 26, 2020. The Postal Service proposes to revise Notice 123, *Price List,* available on Postal Explorer® at *https://pe.usps.com,* to reflect these new price changes. The new prices are or will be available under Docket Number R2020–1 on the Postal Regulatory Commission's website at *www.prc.gov.*

Over the course of time, country names have changed due to a variety of political or cultural reasons. By notice filed on October 9, 2019, in PRC Docket No. MC2020–7, and in collaboration with International Postal Affairs and requests made through the Universal Postal Union, the Postal Service proposed to update country names throughout mailing standards, changing Republic of Macedonia to Republic of North Macedonia and using the short name North Macedonia. This proposed rule seeks public comment on proposed updates to the IMM that are designed to implement this name change.

This proposed rule also describes the price and classification changes and the corresponding mailing standards changes for the following market dominant international services:

- First-Class Mail International® service
- International extra services and fees.

First-Class Mail International

The Postal Service plans to increase prices for single-piece First-Class Mail International (FCMI) letters, postcards, and flats by approximately 4.6 percent. The price for a single-piece 1-ounce letter will increase to $1.20. The First-Class Mail International letter nonmachinable surcharge remains $0.21.

International Extra Services and Fees

The Postal Service plans to increase fees for certain market dominant international extra services including:

- Certificate of Mailing.
- Return Receipt.
- Customs Clearance and Delivery Fee.
- International Business Reply™ Mail Service.

CERTIFICATE OF MAILING

	Fee
Individual pieces:	
Individual article (PS Form 3817)	$1.50
Duplicate copy of PS Form 3817 or PS Form 3665 (per page)	1.50
Firm mailing sheet (PS Form 3665), per piece (minimum 3); First-Class Mail International only	0.43
Bulk quantities:	
For first 1,000 pieces (or fraction thereof)	8.75
Each additional 1,000 pieces (or fraction thereof)	1.09
Duplicate copy of PS Form 3606	1.50

Return Receipt

Fee: $4.15.

Customs Clearance and Delivery

Fee: per piece $6.50.

International Business Reply Service

Fee: Cards $1.50; Envelopes up to 2 ounces $2.00.

Following the completion of Docket No. R2020–1, the Postal Service will adjust the prices for products and services covered by the International Mail Manual. These prices will be available on Postal Explorer at *https://pe.usps.com.*

Accordingly, although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed changes to *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), which is incorporated by reference in the *Code of Federal Regulations* in accordance with 39 CFR 20.1, and to associated changes to Notice 123, *Price List.*

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, 39 CFR part 20 is proposed to be amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), as follows:

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

[Throughout the IMM, change all references to ''Macedonia, Republic of'' to ''North Macedonia, Republic of'' or use the short name ''North Macedonia'' and place in correct alphabetical order in lists]

* * * * *

New prices will be listed in the updated Notice 123, *Price List*

Brittany M. Johnson,

Attorney, Federal Compliance.

[FR Doc. 2019–22819 Filed 10–21–19; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0171; FRL–10000–73–Region 4]

Air Plan Approval; Tennessee: Knox County Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve several Tennessee State Implementation Plan (SIP) revisions submitted by the Tennessee Department of Environment and Conservation (TDEC), on behalf of Knox County's Air Quality Management Division by a letter dated May 24, 2018. The submissions revise four sections of Knox County's Air Quality Management Regulations covering definitions, opening burning, permits and emissions reporting requirements. These actions are being proposed pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before November 21, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0171 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 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, 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: Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8726. Mr. Wong can also be reached via electronic mail at *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In letter dated May 24, 2018, TDEC submitted SIP revision to EPA for approval into the Knox County portion

of the Tennessee SIP.[1] Specifically, the May 24, 2018, SIP revision includes changes to the following Knox County SIP-approved regulations: Section 13.0—''Definitions,'' Section 16.0—''Open Burning,'' Section 25.11—''Limiting a Source's Potential to Emit of VOC by Recordkeeping,'' and Section 26—''Monitoring, Recording, and Reporting.'' These revisions are intended, in part, to conform Knox County's regulations with the State of Tennessee's SIP-approved regulations. EPA is proposing to approve the aforementioned changes to the SIP. Additional detail on the analysis of the SIP submittal and our reasoning for proposing to approve the revisions are presented below.

II. Analysis of Tennessee's Submittal

A. Section 13—''Definitions''

The SIP revision includes the following changes to Section 13—*Definitions:*[2]

- ''Air Containment Source''—Under the revised definition, ''Air Contaminant Source'' means ''any and all sources of emissions of air contaminants, whether privately or publicly owned or operated.'' The definition was revised by removing the phrases ''into the outdoor atmosphere'' and ''including stationary and mobile sources'' from this sentence. The submission also revises the list of sources that are included in the definition by changing the term ''residences'' to ''multiple family residences;'' adding ''piles'' and ''all stack and other chimney outlets;'' and removing ''salvage operations.''[3] Additionally, the revision exempts from this definition certain motor vehicles manufactured prior to enactment of national vehicle emissions standards. These older vehicles were never subject to any state or local regulation concerning emission controls and the change will not affect the way mobile source emissions for the on-road source category are accounted for in air quality modeling. Overall, the revisions conform the Knox County definition to the definition in Tennessee's SIP-approved rules and will not change the regulatory status of any sources under the rules.
- ''Air Curtain Destructor''—The term ''Air Curtain Destructor'' is revised to ''Air Curtain Destructor or Air Curtain Incinerator.'' The definition is revised to conform to the definition for such devices in the County's SIP-approved regulations for ''Open Burning'' at Section 16.2. Among other changes, the revision provides that portable or stationary combustion devices are specifically covered.
- ''Continuous Monitoring''—The SIP revision adds the term ''ambient'' to the definition to clarify the meaning of ''concentration'' as used. Thus, under the revised definition, ''Continuous Monitoring'' means ''the sampling and analysis of air contaminants in a continuous or timed sequence, using techniques which will adequately reflect actual emissions levels or ambient concentrations on a continuous basis.''
- ''Emissions''—The SIP revision changes the defined term to ''Emission,'' removes ''air contaminant into the outdoor atmosphere'' and replaces it with ''material to the ambient air'' to clarify the definition. Thus, under the revised definition, '''Emission' shall mean the release of material to the ambient air.''
- ''Equivalent Method''—The revision adds more details and stipulations to the definition to require that the equivalent method must have a ''quantitatively known'' relationship to a reference method ''under specific conditions.'' Under the revised definition, ''equivalent method'' can also include any method so designated by the County's regulations, but the Knox County portion of the Tennessee SIP under Section ''27.2 Source Sampling and Analysis'' provides that ''[a]ny equivalent or alternative methods must first be approved by the EPA Administrator.'' Therefore, under the SIP, equivalent methods may only be used upon approval by EPA.
- ''Hazardous Air Containment''—The revision corrects a typographical error.
- ''Incinerator''—The definition describes the types of devices, equipment, or contrivances that are considered incinerators and is modified to remove ''combustion device'' and a modifier that limited incinerators to such devices ''specifically designed for destruction by burning of solid, semi-solid, liquid, or gaseous combustible [waste].'' As revised, incinerator means ''any equipment, device, or contrivance used for disposal of waste or refuse by burning, including air curtain destructors and air curtain incinerators.'' The definition is revised to conform to Tennessee's SIP-approved definition.
- ''Malfunction''—The revision corrects a typographical error.
- ''Modification''—The revision expands the burden of proof required of an owner or operator to establish that a change is excepted from the definition of modification and thereby does not require a construction permit to include paragraphs E and F. Paragraph E refers to operational flexibility, and minor permit modifications for major sources subject to title V permitting. Paragraph F refers to certain changes that do not result in emissions exceeding allowable levels or in the emission of any new air contaminant, and are not subject to Part C or D NSR. Previously, the burden of proof requirement for the owner or operator only extended to routine maintenance, repair, and replacement changes, and certain other changes such as increased production rate or hours of operation, the use of alternative fuels. The revision also makes typographical corrections to the definition.
- ''Opacity''—The SIP revision includes several changes to the definition, including removing reference to the Ringelmann number[4] and removing an exclusion from obscuration of vision from uncombined water droplets. The changes align with the federal definition found in 40 CFR 60, ''Standards of Performance for New Stationary Sources'' (40 CFR 60.2).
- ''Open Burning''—The definition is revising the term to ''mean the burning of any matter under such conditions that products of combustion are emitted directly into the atmosphere without passing through any stack.'' Previously, the term meant ''the unconfined burning of combustible material where no equipment has been provided or used for the control of air for combustion.''
- ''Particulate Matter''—The definition is modified to remove language stating that the material is considered particulate matter only ''at standard conditions.'' Under this changed definition, emissions would be considered particulate matter without consideration of specific ambient temperature and pressure conditions, which is consistent with EPA's definition of particulate matter at 40 CFR 60.2.
- ''PM_{10} Emissions''—The definition is revised by stating that these emissions are ''as measured by an applicable reference method, or equivalent or alternative method, specified by the

[1] EPA notes that the Agency received the SIP revision on May 29, 2018.

[2] See the May 24, 2018 SIP revisions for full regulatory text. The SIP revisions are located in the docket for these proposed actions.

[3] The definition provides that the list of source categories specifically identified as included under this definition does not limit the generality of the term ''Air Contaminant Source,'' as defined in the first sentence.

[4] The Ringelmann number is an early method used to observe smoke evaluation from point source stacks. This was a previously accepted approach to determine opacity levels which is now replaced by EPA Methods 9 and 22.

regulations, or a test method specified in these regulations.'' The changes also correct a typographical error. The changes are consistent with EPA's federal regulations pertaining to ''PM_{10} emissions'' at 40 CFR 50.6 and 60.2.

• ''Process Emissions''—The SIP revision excludes *wigwam burners* from the definition, changes the term ''outdoor atmosphere'' to ''ambient air,'' and makes typographical changes. The County has historically considered wigwam burners as a type of ''open burning'' and, thus, have never classified the burners as ''process emissions.'' Excluding wigwam burners from the definition of ''Process Emissions'' does not exempt the burners from the Knox County opacity requirements and any visible emissions from these burners would remain subject to the 20 percent opacity limit specified in Section ''17.0 Regulation of Visible Emissions.''

• ''Process Weight''—The term applies to the weight of materials added to a process that may cause emissions. The SIP revision changes the description of the type of emissions from ''air contaminants'' to ''particulate matter.'' This revision does not impact the regulation of process emissions because the term ''Process Weight'' as used in the applicable emissions standards in Section 19—*Regulation of Process Emissions* is specific to particulate matter.

• ''Suspended Particulates''—The definition is revised to change language describing the suspended particles as particulate matter which ''will'' remain suspended in air for an appreciable amount of time rather than those that ''may tend to'' remain suspended in air. The defined term, ''Suspended Particulates'' is a subset of the term Total Suspended Particulates (TSP). Knox County defines TSP as particulate matter as measured by the method described in Appendix B, 40 CFR 50. Historically, EPA regulated TSP through a National Ambient Air Quality Standard but replaced TSP as an indicator for particulate matter with PM_{10} in 1987. *See* 52 FR 24634 (July1, 1987). As indicated in the definition of TSP, the revision to the term ''Suspended Particulates'' will not change the methodology used to measure such emissions and therefore will not change the suspended particulate measured by the Division.

Additionally, the SIP revision includes the addition of the following definitions to the Knox County portion of the SIP: ''Alternative Method,'' [5] ''Continuous Emission Monitor,'' ''Isokinetic Sampling,'' ''Nonattainment Area,'' ''Particulate Matter Emissions,'' ''Part Per Billion (ppb),'' ''Parts Per Million (ppm),'' ''Political Subdivision,'' ''Portland Cement Plant,'' ''Proportional Sampling,'' ''Standard,'' ''Volatile Organic Compounds (VOC),'' and ''Wigwam Burner.'' [6]

The revisions and additions to the definitions in Section 13 align with the SIP-approved Tennessee rules, and where applicable, federal definitions. The changes also provide clarity to terms referenced in Knox County Air Quality Management Regulations and permits.

EPA has reviewed the aforementioned changes to Knox County's Section 13—*Definitions* and proposes to approve the changes into the SIP. These changes are not expected to interfere with any applicable requirement of the SIP concerning attainment and reasonable further progress, or any other applicable requirement under the CAA.

B. Section 16—''Open Burning''

The SIP revision includes a change to the definition of open burning in Section 16.2 to align with the revised definition of that term in Section 13 as discussed above. The change revises the definition to mean ''burning of any matter under such conditions that products of combustion are emitted directly into the open atmosphere without passing directly through a stack.'' All applicable requirements for open burning remain unchanged and are found in Section 16—*Open Burning*. Therefore, EPA proposes to approve the change into the SIP.

C. Section 25.11—''Limiting a Source's Potential to Emit of VOC by Recordkeeping''

The revision at Section 25.11–B.1.d amends the frequency for submitting emission logs to Knox County for volatile organic compound (VOC) and individual hazardous air pollutants from a monthly to a semi-annual requirement for sources limiting potential VOC emissions in accordance with Section 25.11. Sources are still required to maintain records in accordance with Section 25.11, including a 12-month rolling emissions log, and are also required to provide notification to Knox County within one week of any emissions exceedance. This revision aligns with the approach for title V major sources, including reports of excess emissions. In 1999, EPA issued a rulemaking that reduced the required reporting frequency under the General Provisions for 40 CFR parts 60, 61, and 63 from quarterly to semiannually. *See* ''Recordkeeping and Reporting Burden Reduction,'' 64 FR 7458 (February 12, 1999). EPA noted in its action that semiannual reporting ''provides sufficiently timely information to both ensure compliance and enable adequate enforcement of applicable requirements.'' *Id.* Also, changing the frequency of reporting does not change the underlying applicable requirements or emissions limitations. Therefore, EPA proposes to approve the change in frequency of applicable reporting requirements into the SIP because EPA believes the reporting frequency is sufficient to ensure compliance and adequate enforcement.

D. Section 26—''Monitoring, Recording, and Reporting''

Knox County is adding a new regulation at Section 26.7—*Emission Inventory Requirements*. The rule requires stationary sources meeting the emission thresholds established in the Air Emissions Reporting Requirements (AERR) at 40 CFR 51, subpart A, to submit emissions inventory reports to the Division by June of each year. The AERR, set forth at 40 CFR part 51, subpart A, requires states to report to EPA an emission inventory of criteria air pollutants and precursors for all point sources, mobile sources, and nonpoint sources within the state. The requirements for reporting of point source emissions are outlined in Appendix A to 40 CFR part 51, subpart A, which sets an annual or triennial reporting period based on thresholds of potential to emit.

This AERR reporting requirements and schedules, promulgated December 17, 2008 (73 FR 76539), replaced the Consolidated Emissions Reporting Requirements (CERR) established on June 10, 2002 (67 FR 39602). The CERR replaced prior reporting requirements under 40 CFR part 51, subpart Q. It expanded the pollutants covered and geographic areas reporting, and served as the basis for data collection in the EIS, which is used to develop the national emissions inventory. The AERR rulemaking was promulgated in an effort to harmonize various reporting requirements for the states, including those previously established with the CERR, additional reporting required for ozone and carbon monoxide

[5] The Knox County portion of the TN SIP already contemplates the use of ''alternative methods'' under Section ''27.2 Source Sampling and Analysis'' where it states that ''Any equivalent or alternative methods must first be approved by the EPA Administrator.'' Therefore, under the SIP, alternative methods may only be used upon approval by EPA.

[6] See the May 24, 2018 SIP revisions for the full text of these new definitions.

nonattainment areas, and reporting requirements under the oxides of nitrogen (NO_X) SIP Call. The AERR was later revised on February 19, 2015, to make those reporting requirements for nonattainment areas and the NO_X SIP Call optional under 40 CFR part 51, subpart A, among other changes. *See* 80 FR 8787.

The revision aligns with federal regulations, and EPA proposes to approve the addition of the rule into the SIP.

III. Incorporation by Reference

In this rule, 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 Knox County's Air Quality Management Regulations, Section 13.0—''Definitions,'' state effective January 24, 2018; Section 16.0—''Open Burning,'' state effective January 24, 2018; Section 25.11—''Limiting a Source's Potential to Emit of VOC by Recordkeeping,'' state effective October 18, 2017; and Section 26.0—''Monitoring, Recording, and Reporting,'' state effective October 18, 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).

IV. Proposed Action

EPA is proposing to approve the aforementioned changes to the Knox County portion of the Tennessee SIP because they are consistent with the CAA. EPA is proposing to approve the revisions presented in the May 24, 2018, SIP submittals that make changes to Knox County's Air Quality Management Regulations, Section 13.0—''Definitions,'' Section 16.0—''Open Burning,'' Section 25.11—''Limiting a Source's Potential to Emit of VOC by Recordkeeping,'' and Section 26—''Monitoring, Recording, and Reporting.''

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. These proposed actions merely propose to approve state law as meeting Federal requirements and would not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 23, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2019–21553 Filed 10–21–19; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 84, No. 204

Tuesday, October 22, 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

Agricultural Marketing Service

[Document Number AMS–SC–19–0078]

Fruit and Vegetable Industry Advisory Committee (FVIAC): Notice of Intent To Renew Charter and Call for Nominations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice: Intent to renew charter and call for nominations.

SUMMARY: This notice announces the following: The U.S. Department of Agriculture's (USDA) intent to renew the Charter of the Fruit and Vegetable Industry Advisory Committee (FVIAC); the solicitation of nominations for membership to fill three known vacancies on the FVIAC for appointment in 2020; and the solicitation of nominations for a pool of candidates to fill future unexpected vacancies in any of the position categories should that occur.

FVIAC is seeking members who represent the fruit and vegetable industry including growers, shippers, wholesalers/distributors, brokers, retailers/restaurant representatives, state agencies, state departments of agriculture, foodservice suppliers, and fresh-cut and other fruit and vegetable processors. It should also include representatives of farmers markets and food hubs, organic and non-organic fruit and vegetable representatives, farmer organizations, and produce trade associations.

Please note that federally registered lobbyists cannot be considered for USDA advisory committee membership. Members can only serve on one USDA advisory committee at a time. All nominees will undergo a USDA background check.

The following must be submitted to nominate yourself or someone else to the FVIAC: A resume (required), a USDA Advisory Committee Membership Background Information Form AD–755—available online at *https://www.ocio.usda.gov/document/ad-755* (required), a cover letter (required), and a list of endorsements or letters of recommendation (optional). The resume or curriculum vitae must be limited to five one-sided pages and should include a summary of the following information: Current and past organization affiliations; areas of expertise; education; career positions held; and any other notable positions held. For submissions received that are more than five one-sided pages in length, only the first five pages will be reviewed.

DATES: The current FVIAC Charter expires on March 26, 2020. Nomination packages including a cover letter to the Secretary, the nominee's typed resume or curriculum vitae, and a completed USDA Advisory Committee Membership Background Information Form AD–755 must be postmarked on or before November 21, 2019.

ADDRESSES: Nomination packages can be submitted electronically by email to *SCPFVIAC@usda.gov,* or mailed to: Darrell Hughes, U.S. Department of Agriculture, 1400 Independence Avenue SW, South Building—Room 2083–STOP 0235, Washington, DC 20250–0235, Attn: Fruit and Vegetable Industry Advisory Committee. Electronic submittals are preferred.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell Hughes, Designated Federal Officer, by telephone at (202) 378–2576 or by email *SCPFVIAC@ams.usda.gov*.

Comments: The Agricultural Marketing Service (AMS) invites interested persons to submit comments on this notice. Comments will be accepted on or before 11:59 p.m. ET on November 6, 2019, via *http://www.regulations.gov:* Document #AMS–SC–19–0078. The AMS Specialty Crops Program strongly prefers comments be submitted electronically. However, written comments may be submitted (*i.e.,* postmarked) via mail to the person listed in the **ADDRESSES** section by or before the abovementioned deadline.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), notice is hereby given that the Secretary of Agriculture intends to renew the FVIAC for two years. The purpose of the FVIAC is to examine the full spectrum of issues faced by the fruit and vegetable industry and provide suggestions and ideas to the Secretary on how USDA can tailor its programs to better meet the fruit and vegetable industry's needs.

The Deputy Administrator of the AMS Specialty Crops Program serves as the FVIAC Executive Secretary. Representatives from USDA mission areas and agencies affecting the fruit and vegetable industry could be called upon to participate in the FVIAC's meetings as determined by the FVIAC Executive Secretary and the FVIAC.

Industry members are appointed by the Secretary of Agriculture and serve 2-year terms, with a maximum of three 2-year terms. The Secretary of Agriculture appointed 25 members last year. Two members have reached their term limit and one member is no longer serving. The remaining 22 members will continue to serve for one additional term. The Secretary of Agriculture will appoint known or upcoming vacancies to serve a 2-year term of office beginning March 27, 2020 and ending March 26, 2022. Nominations received that could fill future unexpected vacancies in any of the position categories will be held as a pool of candidates that the Secretary of Agriculture can draw upon as replacement appointees if unexpected vacancies occur. A person appointed to fill a vacancy will serve for the remainder of the 2-year term of the vacant position. The Secretary of Agriculture invites those individuals, organizations, and groups affiliated with the categories listed in the **SUMMARY** section to nominate individuals or themselves for membership on the FVIAC.

The full Committee expects to meet at least twice a year in-person (or by teleconference), and the meetings will be announced in the **Federal Register**. FVIAC workgroup/subcommittees will meet as deemed necessary by the chairperson and may meet through teleconference or by computer-based conferencing. Subcommittees may invite technical experts to present information for consideration by the subcommittee. The subcommittee meetings will not be announced in the **Federal Register**. All data and records available to the full Committee are expected to be available to the public when the full Committee reviews and approves the work of the subcommittee. Members must be prepared to work

outside of scheduled Committee and subcommittee meetings and may be required to assist in document preparation. Committee members serve on a voluntary basis; however, travel expenses and per diem reimbursement are available.

The Secretary of Agriculture seeks a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. Equal opportunity practices will be followed in all appointments to the FVIAC in accordance with USDA policies. To ensure that FVIAC recommendations take into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, person with disabilities and limited resource agriculture producers.

The information collection requirements concerning the nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505–0001.

Dated: October 10, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–22923 Filed 10–21–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 16, 2019.

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

Comments regarding this information collection received by November 21, 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 20503. Commentors 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) 720–8681.

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.

Forest Service

Title: Land Exchanges.

OMB Control Number: 0596–0105.

Summary of Collection: Land exchanges are discretionary, voluntary real estate transactions between the Secretary of Agriculture (acting by and through the Forest Service) and a non-Federal exchange party (or parties). Land exchanges can be initiated by a non-Federal party (or parties), and agent of a landowners, a broker, a third party, or a non-Federal public agency, corporation, or other legal entity capable to hold title and convey land. Each land exchange requires preparation of an *Agreement to Initiate,* as required by Title 36 Code of Federal Regulations (CFR), part 254, subpart C, section 254.4—Agreement to Initiate and Exchange. As the exchange proposal develops, the Forest Service and the non-Federal party may enter into a binding Exchange Agreement, pursuant to Title 36 CFR part 254, subpart A, section 254.14—Exchange Agreement.

Need and Use of the Information: The *Agreement to Initiate* document specifies the preliminary and on-biding intentions of the non-Federal land exchange party and the Forest Service in pursuing a land exchange. The *Agreement to Initiate* contains information such as the description of properties considered for exchange, an implementation schedule of action items, identification of the party responsible for each action item, and target dates for completion of action items.

The Exchange Agreement documents the conditions necessary to complete the exchange. It contains information identifying parties, description of lands and interests to be exchanged, identification of all reserved and outstanding interests, and all other terms and conditions that are necessary to complete the exchange.

Description of Respondents: Business or other for-profit; Farms; Not-for-profit institutions; Individuals or households; State, Local or Tribal Government.

Number of Respondents: 3.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 20.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–22905 Filed 10–21–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of the Land Management Plan for the Colville National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of Approval of the Revised Land Management Plan for the Colville National Forest.

SUMMARY: Glenn Casamassa, Regional Forester, Pacific Northwest Region, has signed the final Record of Decision (ROD) for the revised Colville National Forest Land Management Plan (revised land management plan). The final ROD documents the rationale for approving the revised land management plan and is consistent with the Reviewing Officer's instructions on objections.

DATES: The revised land management plan for the Colville National Forest will become effective 30 days after the publication of this notice of approval in the **Federal Register** (36 CFR 219.17(a)(1)). To view the final ROD, final environmental impact statement (FEIS), the revised land management plan, and other related documents, please visit the Colville National Forest website at: *https://www.fs.usda.gov/detail/colville/landmanagement/planning/?cid=stelprd3824594.*

A legal notice of approval is also being published in the Pacific Northwest Regional Office's newspaper of record, *The Seattle Times.* A copy of this legal notice will be posted on the Colville National Forest's website described above.

FOR FURTHER INFORMATION CONTACT: Further information about the revised land management plan for the Colville National Forest may be obtained by contacting Lisa Larsen, Forest Environmental Coordinator, Colville National Forest, at 509–775–7454. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday. Written requests for information may be sent to Colville National Forest, Attn: Colville National Forest Plan Revision, 765 South Main, Colville, WA 99114.

SUPPLEMENTARY INFORMATION: The Colville National Forest covers 1.1 million acres across three counties in northeast Washington, contributing jobs and income for the local population. The revised land management plan, which was developed pursuant to the 1982 Planning Rule, will replace the land management plan approved in 1988. The revised land management plan provides for:

- Increased timber harvest to support the robust forest products industry and local communities while sustaining and restoring important ecosystems;
- A framework to promote partnerships and cooperative agreements to get more work accomplished on the ground; and
- A community-based approach to managing livestock grazing, recommending new wilderness areas, and providing access to forest resources.

A draft ROD, revised land management plan, and FEIS were released in September 2018, and were subject to a pre-decisional objection period. Twenty eligible objections were received. The primary objection issues were the:

- Amount, location, and management of recommended wilderness. Most objectors requested that the acres of recommended wilderness be reduced, while others requested the recommendation of additional acres;
- Potential of plan components related to aquatic ecosystems and wildlife to affect livestock grazing, and the number of acres of capable and suitable lands for livestock grazing;
- Importance of timber harvest, grazing, and mining to the local communities; and
- Inadequacy of the Wild and Scenic Rivers eligibility review.

The Responsible Official has completed review of the Reviewing Officer's instructions regarding objections, and has worked with the Colville National Forest in preparing the final planning documents for publication. The final ROD to approve the revised land management plan for the Colville National Forest has now been signed by the Responsible Official, and is available at: *https://www.fs.usda.gov/detail/colville/landmanagement/planning/?cid=stelprd3824594*.

Responsible Official

The responsible official for the revision of the land management plan for the Colville National Forest is Glenn Casamassa, Regional Forester, Pacific Northwest Region, 1220 SE 3rd Ave., Portland, OR 97204.

Dated: October 15, 2019.

Allen Rowley,

Associate Deputy Chief, National Forest System.

[FR Doc. 2019–22924 Filed 10–21–19; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of briefing meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a briefing meeting of the District of Columbia Advisory Committee to the Commission will convene at 9:00 a.m. (EST) on Thursday, November 7, 2019, in the Conference Room of the U.S. Commission on Civil Rights, National Place Building, 1331 Pennsylvania Avenue NW, 11th Floor, Washington, DC 20425 (the entrance is on F Street, NW, between 13th and 14th Streets, NW). The purpose of the briefing is to hear from mental health court experts, government officials, advocates, and members of the public about mental illness, mental health courts and the criminal justice system in the District of Columbia.

DATES: Thursday, November 7, 2019 (EST). Time: 9:00 a.m.–5:00 p.m. (EST).

ADDRESSES: Conference Room of the U.S. Commission on Civil Rights, National Place Building, 1331 Pennsylvania Avenue, 115th Floor, Washington, DC 20425 (the entrance is on F Street NW, between 13th and 14th Streets NW).

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ebohor@usccr.gov,* or 202–376–7533.

SUPPLEMENTARY INFORMATION: Time will be set aside at the conclusion of the panel presentations so that members of the public may address the Committee after the formal presentations have been completed. Persons interested in the issue are also invited to submit written comments and documents about the topic, which must be received in the regional office by Monday, December 9, 2019. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC, 20425, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533. Persons attending the briefing and requiring accommodations, must contact Evelyn Bohor by phone (202–276–7533) or by email (*ebohor@usccr.gov*) at the Eastern Regional Office at least ten (10) business days before the scheduled date of the meeting.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlKAAQ* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Thursday, November 7, 2019; at 9:00 a.m. (EST)

I. Welcome and Introductions (9:00 a.m. through 9:15 a.m.)

II. Briefing (from approximately 9:15 a.m. through 4:00 p.m.)

III. Open Public Comments (begin at approximately 4:00 p.m.)

IV. Adjournment (at approximately 5:00 p.m.)

Dated: October 16, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–22959 Filed 10–21–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Pennsylvania Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Pennsylvania Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EST) on Tuesday, November 19, 2019. The purpose of the briefing meeting will be via conference call to hear from speakers regarding the Committee's project titled, School Discipline and School-to-Prison Pipeline in PA.

DATES: Tuesday, November 19, 2019, at 12:00 p.m. (EDT).

ADDRESSES: Public Call-In Information: Conference call-in number: 800–353–6461 and conference call ID number: 6813288.

FOR FURTHER INFORMATION CONTACT: Ivy Davis at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 800–353–6461 and conference call ID number: 6813288. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 800–353–6461 and conference call ID number: 6813288.

Members of the public are invited to submit written comments, which must be received in the regional office approximately 30 days after the scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Corrine Sanders at *ero@usccr.gov.* Persons who desire additional information may phone the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzjZAAQ;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda: Tuesday, November 19, 2019

I. Rollcall
II. Welcome
III. Overview Panel of National Experts
IV. Other Business
V. Next Meetings
VI. Adjourn

Dated: October 16, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–22960 Filed 10–21–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems; Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on November 6 and 7, 2019, 9:00 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

Wednesday, November 6

Open Session

1. Welcome and Introductions
2. Working Group Reports
3. Wassenaar Proposals for 2020
4. USG presentation: CWC Program Overview
5. USG presentation: Draft Guidance on Exports of Surveillance Technology
6. Industry presentation: Network Visibility
7. New Business

Thursday, November 7

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than October 28, 2019.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on May 3, 2019, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (l0)(d))), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and l0(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202)482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2019–22952 Filed 10–21–19; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–805]

Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Under 4.5 Inches) From Romania: Final Determination of No Shipments; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) determines that there were no shipments of carbon and alloy seamless standard, line and pressure pipe (under 4.5 inches) (small diameter seamless pipe) from Romania during the period of review (POR) August 1, 2017 through July 31, 2018.

DATES: Applicable October 22, 2019.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or Samantha Kinney, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–2285, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* on July 1, 2019.[1] For events subsequent to the *Preliminary Results, see* Commerce's Issues and Decision Memorandum.[2]

Scope of the Order

The product covered by the order is small diameter seamless pipe. A full description of the scope of the order is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

In the Issues and Decision Memorandum, we addressed all issues raised in parties' case and rebuttal briefs. In the Appendix to this notice, we provide a list of the issues raised by parties. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit (CRU), Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Determination of No Shipments

In the *Preliminary Results,* we found that neither ArcelorMittal Tubular Products Roman S.A. (ArcelorMittal) nor Silcotub S.A. (Silcotub) made shipments of the subject merchandise to the United States during the POR. Also, in the *Preliminary Results,* we stated that consistent with our practice, it was not appropriate to rescind the review with respect to ArcelorMittal and Silcotub, but rather to complete the review and issue appropriate instructions to Customs and Border Protection (CBP) based on the final results of this review.[3]

After issuing the *Preliminary Results,* we received no information that contradicted our preliminary results. Therefore, for these final results, we continue to find that neither ArcelorMittal nor Silcotub made shipments of the subject merchandise to the United States during the POR.

Assessment Rates

Commerce determines, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results of review.[4] Consistent with Commerce's clarification to its assessment practice, because we determined that ArcelorMittal and Silcotub had no shipments of subject merchandise to the United States during the POR, for entries of subject merchandise during the POR produced, but not exported by, ArcelorMittal and Silcotub, we will instruct CBP to liquidate any entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[5]

We intend to issue instructions to CBP 15 days after the date of publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for ArcelorMittal and Silcotub will remain unchanged from the rate assigned to them in the most recently completed review of those companies; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 13.06 percent, the all-others rate established in the less-than-fair-value investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information

[1] *See Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Under 4.5 Inches) from Romania: Preliminary Determination of No Shipments; 2017–2018,* 84 FR 28007 (June 17, 2019) (*Preliminary Results*).

[2] *See* Memorandum, ''Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Under 4.5 Inches) from Romania: Issues and Decision Memorandum for the Final Determination of No Shipments; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[4] *See* 19 CFR 351.212(b).

[5] For a full discussion, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: October 15, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Issue: Certification of No Shipments
V. Recommendation

[FR Doc. 2019–22991 Filed 10–21–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–028]

Hydrofluorocarbon Blends From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) determines that Weitron International Refrigeration Equipment (Kunshan) Co., Ltd., (Weitron) had no shipments of subject merchandise covered by the antidumping duty order on hydrofluorocarbon blends from the People's Republic of China (China) for the period of review (POR) August 1, 2017 through July 31, 2018.

DATES: Applicable October 22, 2019.

FOR FURTHER INFORMATION CONTACT: Andrew Medley or Manuel Rey, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4987 or (202) 482–5518, respectively.

Background

Commerce published the *Preliminary Results* of the administrative review in the **Federal Register** on June 14, 2019.[1] For events subsequent to the *Preliminary Results, see* Commerce's Issues and Decision Memorandum.[2] Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products subject to this order are HFC blends. HFC blends covered by the scope are R–404A, a zeotropic mixture consisting of 52 percent 1,1,1 Trifluoroethane, 44 percent Pentafluoroethane, and 4 percent 1,1,1,2-Tetrafluoroethane; R–407A, a zeotropic mixture of 20 percent Difluoromethane, 40 percent Pentafluoroethane, and 40 percent 1,1,1,2-Tetrafluoroethane; R–407C, a zeotropic mixture of 23 percent Difluoromethane, 25 percent Pentafluoroethane, and 52 percent 1,1,1,2-Tetrafluoroethane; R–410A, a zeotropic mixture of 50 percent Difluoromethane and 50 percent Pentafluoroethane; and R–507A, an azeotropic mixture of 50 percent Pentafluoroethane and 50 percent 1,1,1-Trifluoroethane also known as R–507. The foregoing percentages are nominal percentages by weight. Actual percentages of single component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.[3]

Analysis of Comments Received

The single issue raised in the submitted case brief (*i.e.,* whether to rescind the review for Weitron) is listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce preliminarily determined that Weitron had no shipments of subject merchandise, during the POR.[4] As we have not received any information that undermines our preliminary findings, we determine that Weitron had no shipments of subject merchandise during the POR, and we intend to issue appropriate instructions to U.S. Customs and Border Protection (CBP) that are consistent with our ''automatic assessment'' clarification for these final results of review.

Assessment

Commerce determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review.

Additionally, consistent with Commerce's refinement to its assessment practice in non-market economy cases, for Weitron, the exporter under review, which we determined had no shipments of the subject merchandise during the POR, any suspended entries of subject merchandise from Weitron will be liquidated at the China-wide rate.[5]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate

[1] *See Hydrofluorocarbon Blends from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Final Rescission, in Part; 2017–2018,* 84 FR 27752 (June 14, 2019) (*Preliminary Results*).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Antidumping Duty Administrative Review: Hydrofluorocarbon Blends from the People's Republic of China; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] For a complete description of the scope of the order, *see* Issues and Decision Memorandum.

[4] *See Preliminary Results,* 84 FR at 27752, 27753.

[5] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

published for the most recent period; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate (*i.e.,* including Weitron, which did not demonstrate that it was entitled to a separate rate in the most recently-completed administrative review), the cash deposit rate will be the China-wide rate of 216.37 percent;[6] and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to Chinese exporter(s) that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notifications to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notifications to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 15, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Issues
V. Recommendation

[FR Doc. 2019–22916 Filed 10–21–19; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Hydrofluorocarbon Blends from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017,* 84 FR 17380, 17381 (April 25, 2019).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–828]

Stainless Steel Butt-Weld Pipe Fittings From Italy: Final Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) continues to find that Filmag Italia Spa (Filmag), an Italian producer/exporter of stainless steel butt-weld pipe fittings, did not make sales of subject merchandise at prices below normal value during the period of review of February 1, 2017 through January 31, 2018.

DATES: Applicable October 22, 2019.

FOR FURTHER INFORMATION CONTACT: John Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0195.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 2019, Commerce published in the **Federal Register** the *Preliminary Results* and provided parties an opportunity to comment.[1] A summary of the events that occurred since Commerce published the *Preliminary Results,* as well as a full discussion of the issues raised by parties for the final results, may be found in the Issues and Decision Memorandum.[2]

Scope of the Order

The merchandise covered by the order is certain stainless steel butt-weld pipe fittings from Italy.[3] For a complete description of the scope, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by interested parties are addressed in the Issues and Decision Memorandum. A list of the issues raised by parties is attached as the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and it is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our review of the record and analysis of the comments received from interested parties, we made certain changes to the margin calculation for Filmag.[4]

Final Results of Administrative Review

As a result of this administrative review, we determine the following weighted-average dumping margin exists for the period February 1, 2017 through January 31, 2018:

Producer/exporter	Weighted-average dumping margin (percent)
Filmag Italia Spa	0.00

Disclosure

We intend to disclose the margin calculations performed in this proceeding within five days of the date of publication of this notice, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.224(b).

Assessment Rates

Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries.[5] Because the

[1] *See Stainless Steel Butt-Weld Pipe Fittings from Italy: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 16464 (April 19, 2019), and accompanying Preliminary Decision Memorandum (collectively, *Preliminary Results*).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results in the Less-Than-Fair-Value Administrative Review of Stainless Steel Butt-Weld Pipe Fittings from Italy,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Antidumping Duty Orders: Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines,* 66 FR 11257 (February 23, 2001).

[4] *See* Issues and Decision Memorandum at Comments 1 and 2.

[5] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the*

Continued

weighted-average dumping margin of the sole respondent covered by this administrative review is zero, we will instruct CBP to liquidate entries covered by this review period without regard to antidumping duties. Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Filmag will be that established in the final results of this administrative review; (2) for previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent review period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the all-others rate of 26.59 percent, the rate established in the investigation of this proceeding.[6] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the period of review. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: October 16, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes Since the Preliminary Results
VI. Discussion of the Issues
VII. Recommendation

[FR Doc. 2019–22997 Filed 10–21–19; 8:45 am]

BILLING CODE 3510–DS–P

Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012).

[6] *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Italy,* 65 FR 81830, 81831 (December 27, 2000).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–813]

Polyethylene Retail Carrier Bags From Malaysia: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Euro SME Sdn Bhd (Euro SME), the sole producer and/or exporter subject to this administrative review, did not make sales of polyethylene retail carrier bags (PRCBs) at less than normal value (NV) during the August 1, 2017 through July 31, 2018, period of review (POR). Interested parties are invited to comment on these preliminary results.

DATES: Applicable October 22, 2019.

FOR FURTHER INFORMATION CONTACT: Kyle Clahane, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5449.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 2018, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping (AD) order on PRCBs from Malaysia, covering one company: Euro SME.[1] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[2] On May 6, 2019, we further extended the deadline for the preliminary results in this review to no later than October 10, 2019.[3] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[4]

Scope of the Order

The merchandise covered by this order is PRCBs from Malaysia, which also may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. Imports of merchandise included within the scope of this antidumping duty order are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading may also cover products that are outside the scope of this antidumping duty order. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this antidumping duty order is dispositive. For a full description of the scope of the order, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). We calculated

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 50077 (October 4, 2018) (*Initiation Notice*).

[2] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days. This extended the initial deadline for the preliminary results of this review to June 12, 2019.

[3] *See* Memorandum, ''Polyethylene Retail Carrier Bags from Malaysia: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated May 6, 2019.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Polyethylene Retail Carrier Bags: 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

export price and in accordance with section 772 of the Act. We calculated NV in accordance with section 773 of the Act. For a full description of the methodology underlying our calculations, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as the Appendix to this notice.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the following weighted-average dumping margin for the period August 1, 2017 through July 31, 2018:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Euro SME Sbn Bhd	0.00

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.

For any individually examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent) in the final results of this review, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[5] We intend to instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis.* If a respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review where applicable.

In accordance with our practice, for entries of subject merchandise during the POR for which a respondent did not know that the merchandise was destined for the United States, we intend to instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[6]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 84.94 percent, the all-others rate established in the LTFV investigation.[7] These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[8] Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[9] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[10] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[11] Case and rebuttal briefs should be filed using ACCESS.[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[13] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[14]

Commerce intends to issue the final results of this administrative review, including the results of its analysis raised in any written briefs, not later than 120 days after the date of publication of these preliminary results

[5] In these preliminary results, Commerce applied the assessment rate calculation methodology adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[6] *See* section 751(a)(2)(C) of the Act.

[7] *See Antidumping Duty Order: Polyethylene Retail Carrier Bags from Malaysia,* 69 FR 48203 (August 9, 2004).

[8] *See* 19 CFR 351.224(b).

[9] *See* 19 CFR 351.309(c)(1)(ii).

[10] *See* 19 CFR 351.309(d)(1).

[11] *See* 19 CFR 351.309(c)(2) and (d)(2) and 19 CFR 351.303 (for general filing requirements).

[12] *See* 19 CFR 351.303.

[13] *See* 19 CFR 351.310(c).

[14] *Id.*

in the **Federal Register**, unless otherwise extended.[15]

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h)(1).

Dated: October 9, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Product Comparisons
VI. U.S. Price
VII. Normal Value
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2019–22913 Filed 10–21–19; 8:45 am]

BILLING CODE 3510–DS–P

[15] *See* Section 751(a)(3)(A) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–106]

Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures

Corrections

In Notice document 2019–21998, appearing on pages 54106–54114, in the issue of Wednesday, October 9, 2019, make the following corrections:

1. On page 54107, on the fifth line, in the fourth column of the table, the Cash deposit rate entry that reads ''70.4'' should read ''70.42''.

2. On the same page, on the sixth line, in the same table, the Cash deposit rate entry that reads ''70.4'' should read ''70.42''.

3. On the same page, on the seventh line, in the fourth column of the same table, the Cash deposit rate entry that reads ''28.7'' should read ''28.71''.

4. On page 54109, on the seventh line, in the fourth column of the same table, the Cash deposit rate entry that reads ''28.7'' should read ''28.71''.

5. On the same page, on the twelfth line, in the fourth column of the same table, the Cash deposit rate entry that reads ''28.7'' should read ''28.71''.

6. On page 54110, on the seventh line, in the fourth column of the same table, the Cash deposit rate entry that reads ''28.7'' should read ''28.71''.

[FR Doc. C1–2019–21998 Filed 10–21–19; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain frozen fish fillets (fish fillets) from the Socialist Republic of Vietnam (Vietnam) are not being, or are not likely to be, sold in the United States at less than normal value (NV) during the period of review (POR), August 1, 2017 through July 31, 2018.

DATES: Applicable October 22, 2019.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, 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) 482–2243.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 2018, Commerce published in the **Federal Register** the notice of initiation of an administrative review of the antidumping duty (AD) order on fish fillets from Vietnam.[1] Commerce initiated a review with respect to 76 companies,[2] and selected three of these companies: Bien Dong Seafood Co., Ltd. (Bien Dong); Hung Vuong Group (HVG);[3] and Vinh Hoan Corporation (Vinh Hoan), as mandatory respondents.[4] Petitioners withdrew their request for review of Bien Dong and Bien Dong Hau Giang Seafood Joint Stock Company (Bien Dong HG) on December 20, 2018,[5] and respondent Bien Dong also withdrew its request for review for itself and for Bien Dong HG on that date.[6] On December 27, 2018, Vinh Hoan withdrew its review request.[7] On December 31, 2018, the petitioners withdrew their request with regard to Vinh Hoan and several other companies.[8] On February 4, 2019, NTSF Seafoods Joint Stock Company (NTSF) was selected as a replacement mandatory respondent.[9] On January 2, 2019, and February 8, 2019, the petitioners withdrew their request for additional companies.[10] On March 13, 2019, Commerce rescinded the review on 52 companies including Bien Dong, Vinh Hoan, and HVG.[11]

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 50077 (October 4, 2018) (*Initiation Notice*); *see* also Appendix II for the complete list of all companies upon which Commerce initiated an administrative review.

[2] *Id.*

[3] The Hung Vuong Group (HVG), includes: An Giang Fisheries Import & Export Joint Stock Company, Asia Pangasius Company Limited, Europe Joint Stock Company, Hung Vuong Ben Tre Seafood Processing Co., Ltd., Hung Vuong Joint Stock Company, Hung Vuong Mascato Company Limited, Hung Vuong—Vinh Long Co., Ltd., and Hung Vuong—Sa Dec Co., Ltd. *See* Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review, Preliminary Determination of No Shipments and Partial Rescission of the Antidumping Duty Administrative Review; *2016–2017*, 83 FR 46479 (September 13, 2018), and accompanying Preliminary Decision Memorandum at 4 unchanged in *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results, and Final Results of No Shipments of the Antidumping Duty Administrative Review; 2016–2017,* 84 FR 18007 (April 29, 2019).

[4] *See* Memorandum, ''Selection of Respondents for Individual Review,'' dated October 31, 2018.

[5] *See* Petitioners' Letter, ''Partial Withdrawal of Request for Administrative Review of Antidumping Duty Order,'' dated December 20, 2018.

[6] *See* Bien Dong's Letter, ''Withdrawal of Request for Administrative Review,'' dated December 20, 2018.

[7] *See* Vinh Hoan's Letter, ''Withdrawal of Request for Administrative Review,'' dated December 27, 2018.

[8] *See* Petitioners' Letter, ''Partial Withdrawal of Request for Administrative Review of Antidumping Duty Order,'' dated December 31, 2018.

[9] *See* Memorandum, ''Selection of Replacement Respondent for Individual Review,'' dated February 4, 2019.

[10] *See* Petitioners' Letters, ''Partial Withdrawal of Request for Administrative Review of Antidumping Duty Order,'' dated January 2, 2019; and ''Partial Withdrawal of Request for Administrative Review of Antidumping Duty Order,'' dated February 8, 2019.

[11] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam; 2017– 2018; Rescission of the Antidumping Duty Administrative Review in Part,* 84 FR 9087 (March 13, 2019).

Scope of the Order

The product covered by this review is certain frozen fish fillets from Vietnam. For a full description of the scope, *see* the Preliminary Decision Memorandum dated concurrently with and hereby adopted by this notice.[12]

Preliminary Determination of No Shipments

Based on the no-shipments letters filed by six companies,[13] Commerce preliminarily determines that these companies had no shipments during the POR. For additional information regarding this determination, including a list of these companies, *see* the Preliminary Decision Memorandum. Consistent with our assessment practice in non-market economy (NME) administrative reviews, Commerce is not rescinding this review for these companies, but intends to complete the review and issue appropriate instructions to CBP based on the final results of the review.[14]

Separate Rates

Commerce preliminarily determines that information placed on the record by the mandatory respondent NTSF, as well as by the separate rate respondent CASEAMEX,[15] demonstrates that these companies are entitled to separate rate status. Sixteen companies for which a review was requested have not established eligibility for a separate rate, and are considered to be part of the Vietnam-wide entity for these preliminary results. *See* Preliminary Results of Review section below. For additional information, *see* the Preliminary Decision Memorandum.

Vietnam-Wide Entity

Commerce's policy regarding conditional review of the Vietnam-wide entity applies to this administrative review.[16] Under this policy, the Vietnam-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the Vietnam-wide entity in this review, the entity is not under review and the weighted-average dumping margin determined for the Vietnam-wide entity is not subject to change (*i.e.,* $2.39 per kilogram) as a result of this review.[17] Other than the companies discussed above, Commerce considers all other companies for which a review was requested to be part of the Vietnam-wide entity. For additional information, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and 751(a)(2)(A) of the Act. Constructed export prices have been calculated in accordance with section 772 of the Act. Because Vietnam is an NME country within the meaning of section 771(18) of the Act, normal value (NV) has been calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

Commerce preliminarily determines that the following weighted-average dumping margins exist for the period August 1, 2017 through July 31, 2018:

Exporter/producer	Weighted-average dumping margin & cash deposit rate (dollars per kilogram)
NTSF	$0.00
CASEAMEX	0.00
Vietnam-wide Entity	2.39

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of these preliminary results, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[18] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this administrative review are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act, unless extended.

Assessment Rates

Commerce intends to issue appropriate assessment instruction to CBP 15 days after publication of this notice. Upon issuance of the final

[12] *See* Memorandum, ''Decision Memorandum for the Preliminary Results and Preliminary Determination of No Shipments for the 2017–2018 Antidumping Duty Administrative Review,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[13] These include: Golden Quality Seafood Corporation; Nam Viert Corporation; Hoa Phat Seafood Import-Export and Processing JSC; To Chau Joint Stock Company; Fatifish Company Limited; and, Godaco Seafood Joint Stock Company.

[14] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) and the ''Assessment Rates'' section, *infra.*

[15] Can Tho Import Export Seafood Joint Stock Company (CASEAMEX).

[16] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[17] *Id.*

[18] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[19] Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondent whose weighted average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, Commerce will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1). Where an importer-specific *ad valorem* rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.[20] Where either a respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[21]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is *de minimis,* then cash deposit rate will be zero); (2) for previously examined Vietnamese and non-Vietnamese exporters not listed above that at the time of entry are eligible for a separate rate based on a prior completed segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate; (3) for all Vietnam exporters of subject merchandise that have not been found to be entitled to a separate rate at the time of entry, the cash deposit rate will be that for the Vietnam-wide entity (*i.e.,* $2.39 per kilogram); and (4) for all non-Vietnamese exporters of subject merchandise which at the time of entry are not eligible for a separate rate, the cash deposit rate will be the rate applicable to the Vietnam exporter that supplied that non-Vietnam exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This preliminary determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 10, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Case History
III. Scope of the Order
IV. Selection of the Respondents
V. Preliminary Determination of No Shipments
VI. Non-Market Economy Country Status
VII. Separate Rates
VIII. Vietnam-Wide Entity
IX. Surrogate Country
X. Date of Sale
XI. Normal Value Comparisons
XII. Comparisons to Normal Value
XIII. Results of the Differential Pricing Analysis
XIV. Currency Conversion
XV. Recommendation

Appendix II

Companies For Which We Initiated a Review

1. An Giang Agriculture and Food Import-Export Joint Stock Company (also known as Afiex, An Giang Agriculture and Foods Import-Export Joint Stock Company, An Giang Agriculture and Food Import-Export Company, An Giang Agriculture and Foods Import and Export Company, or An Giang Agriculture and Foods Import-Export Company)
2. An Giang Fisheries Import and Export Joint Stock Company (also known as Agifish, AnGiang Fisheries Import and Export, or An Giang Fisheries Import & Export Joint Stock Company)
3. An My Fish Joint Stock Company (also known as Anmyfish or Anmyfishco)
4. An Phat Import-Export Seafood Co., Ltd. (also known as An Phat Seafood Co. Ltd. or An Phat Seafood Co., Ltd.)
5. An Phu Seafood Corporation (also known as ASEAFOOD or An Phu Seafood Corp.)
6. Anvifish Joint Stock Company (also known as Anvifish, Anvifish JSC, or Anvifish Co., Ltd.)
7. Asia Commerce Fisheries Joint Stock Company (also known as Acomfish JSC or Acomfish)
8. Asia Pangasius Company Limited (also known as ASIA)
9. Basa Joint Stock Company (BASACO)
10. Ben Tre Aquaproduct Import and Export Joint Stock Company (also known as Bentre Aquaproduct, Bentre Aquaproduct Import & Export Joint Stock Company, or Aquatex Bentre)
11. Bentre Forestry and Aquaproduct Import Export Joint Stock Company (also known as Bentre Forestry and Aquaproduct Import and Export Joint Stock Company, Ben Tre Forestry and Aquaproduct Import-Export Joint Stock Company, Ben Tre Forestry and Aquaproduct Import-Export Company, Ben Tre Forestry Aquaproduct Import-Export Company, Ben Tre Frozen Aquaproduct Export Company, or Faquimex)
12. Bien Dong Hau Giang Seafood Joint Stock Company (also known as Bien Dong HG or Bien Dong Hau Giang Seafood Joint Stock Co.)
13. Bien Dong Seafood Company Ltd. (also known as Bien Dong, Bien Dong Seafood, Bien Dong Seafood Co., Ltd., Biendong Seafood Co., Ltd., or Biendong Seafood Limited Liabilty Company)
14. Binh An Seafood Joint Stock Company (also known as Binh An or Binh An Seafood Joint Stock Co.)
15. Binh Dinh Import Export Company (also known as Binh Dinh)
16. Cadovimex II Seafood Import-Export and Processing Joint Stock Company (also known as Cadovimex II, Cadovimex II Seafood Import-Export, Cadovimex II Seafood Import Export and Processing Joint Stock Company, or Cadovimex II Seafood Import-Export & Processing Joint Stock Company)
17. Cafatex Corporation (also known as Cafatex)
18. Can Tho Animal Fishery Products Processing Export Enterprise (also known as Cafatex)
19. Cantho Import-Export Seafood Joint Stock Company (also known as CASEAMEX, Cantho Import Export Seafood Joint Stock Company, Cantho Import-Export Joint Stock Company, Can Tho Import Export Seafood Joint Stock Company, Can Tho Import- Export Seafood Joint Stock Company, or Can Tho Import-Export Joint Stock Company)
20. C.P. Vietnam Corporation
21. Cuu Long Fish Import-Export Corporation (also known as CL Panga Fish)
22. Cuu Long Fish Joint Stock Company (also known as CL-Fish, CL–FISH CORP, or Cuu Long Fish Joint Stock Company)
23. Da Nang Seaproducts Import-Export Corporation (also known as Da Nang or Da Nang Seaproducts Import/Export

[19] *See* 19 CFR 351.212(b).

[20] *See* 19 CFR 351.212(b)(1).

[21] *See* 19 CFR 351.106(c)(2).

Corp.)
24. Dai Thanh Seafoods Company Limited (also known as DATHACO, Dai Thanh Seafoods, or Dai Thanh Seafoods Co., Ltd.)
25. East Sea Seafoods LLC (also known as ESS LLC, ESS, ESS JVC, East Sea Seafoods Limited Liability Company, East Sea Seafoods Joint Venture Co., Ltd.)
26. Europe Joint Stock Company (also known as Europe JSC or EJS CO.)
27. Fatifish Company Limited (also known as FATIFISH or FATIFISHCO)
28. Go Dang An Hiep One Member Limited Company
29. Go Dang Ben Tre One Member Limited Liability Company
30. GODACO Seafood Joint Stock Company (also known as GODACO, GODACO Seafood J.S.C., GODACO Seafood, or GODOCO_SEAFOOD)
31. Golden Quality Seafood Corporation (also known Golden Quality, GoldenQuality, GoldenQuality Seafood Corporation, or GOLDENQUALITY)
32. Green Farms Seafood Joint Stock Company (also known as Green Farms, GreenFarm SeaFoods Joint Stock Company, Green Farms Seafoods Joint Stock Company, or Green Farms Seafood JSC)
33. Hai Huong Seafood Joint Stock Company (also known as HHFish, HH Fish, or Hai Houng Seafood)
34. Hiep Thanh Seafood Joint Stock Company (also known as Hiep Thanh or Hiep Thanh Seafood Joint Stock Co.)
35. Hoa Phat Seafood Import-Export and Processing J.S.C. (also known as HOPAFISH, Hoa Phat Seafood Import-Export and Processing Joint Stock Company, or Hoa Phat Seafood Import-Export and Processing JSC)
36. Hoang Long Seafood Processing Company Limited (also known as HLS, Hoang Long Seafood, Hoang Long Seafood Processing Co.,Ltd., Hoang Long, or HoangLong Seafood)
37. Hung Vuong Ben Tre Seafood Processing Company Limited (also known as Ben Tre, HVBT, or HVBT Seafood Processing)
38. Hung Vuong—Mien Tay Aquaculture Corporation (also known as HVMT or Hung Vuong Mien Tay Aquaculture Joint Stock Company)
39. Hung Vuong—Sa Dec Co., Ltd. (also known as Hung Vuong Sa Dec Company Limited)
40. Hung Vuong—Vinh Long Co., Ltd. (also known as Hung Vuong Vinh Long Company Limited)
41. Hung Vuong Corporation (as known as HVC or HV Corp.)
42. Hung Vuong Joint Stock Company
43. Hung Vuong Mascato Company Limited
44. Hung Vuong Seafood Joint Stock Company
45. International Development & Investment Corporation (also known as IDI or International Development and Investment Corporation)
46. Lian Heng Investment Co., Ltd. (also known as Lian Heng Investment or Lian Heng)
47. Lian Heng Trading Co., Ltd. (also known as Lian Heng or Lian Heng Trading)
48. Nam Phuong Seafood Co., Ltd. (also known as Nam Phuong, NAFISHCO, Nam Phuong Seafood, or Nam PhuongSeafood Company Ltd.)
49. Nam Viet Corporation (also known as NAVICO)
50. Ngoc Ha Co. Ltd. Food Processing and Trading (also known as Ngoc Ha or Ngoc Ha Co., Ltd. Foods Processing and Trading)
51. Nha Trang Seafoods, Inc. (also known as Nha Trang Seafoods-F89, Nha Trang Seafoods, or Nha Trang Seaproduct Company)
52. NTACO Corporation (also known as NTACO or NTACO Corp.)
53. NTSF Seafoods Joint Stock Company (also known as NTSF or NTSF Seafoods)
54. Quang Minh Seafood Company Limited (also known as Quang Minh, Quang Minh Seafood Co., Ltd., or Quang Minh Seafood Co.)
55. QVD Dong Thap Food Co., Ltd. (also known as Dong Thap or QVD DT)
56. QVD Food Company, Ltd. (also known as QVD, QVD Food Co., Ltd., or QVD Aquaculture)
57. Saigon-Mekong Fishery Co., Ltd. (also known as SAMEFICO or Saigon Mekong Fishery Co., Ltd.)
58. Seafood Joint Stock Company No. 4 Branch Dongtam Fisheries Processing Company (also known as DOTASEAFOODCO or Seafood Joint Stock Company No. 4-Branch Dong Tam Fisheries Processing Company)
59. Seavina Joint Stock Company (also known as Seavina)
60. Southern Fishery Industries Company, Ltd. (also known as South Vina, South Vina Co., Ltd., Southern Fisheries Industries Company, Ltd., Southern Fishery Industries Co., Ltd., or Southern Fisheries Industries Company Limited)
61. Sunrise Corporation
62. TG Fishery Holdings Corporation (also known as TG)
63. Thanh Binh Dong Thap One Member Company Limited (also known as Thanh Binh Dong Thap or Thanh Binh Dong Thap Ltd.)
64. Thanh Hung Co., Ltd. (also known as Thanh Hung Frozen Seafood Processing Import Export Co., Ltd. or Thanh Hung)
65. Thien Ma Seafood Co., Ltd. (also known as THIMACO, Thien Ma, Thien Ma Seafood Company, Ltd., or Thien Ma Seafoods Co., Ltd.)
66. Thuan An Production Trading and Service Co., Ltd. (also known as TAFISHCO, Thuan An Production Trading and Services Co., Ltd., Thuan An Production & Trading Service Co., Ltd., or Thuan An Production & Trading Services Co., Ltd.)
67. Thuan Hung Co., Ltd. (also known as THUFICO)
68. To Chau Joint Stock Company (also known as TOCHAU, TOCHAU JSC, or TOCHAU Joint Stock Company)
69. Van Duc Food Export Joint Stock Company (also known as Van Duc)
70. Van Duc Tien Giang Food Export Company (also known as VDTG)
71. Viet Hai Seafood Company Limited (also known as Viet Hai, Vietnam Fish-One Co., Ltd. Viet Hai Seafood Co., Viet Hai Seafood Co., Ltd., Vietnam Fish One Co., Ltd., or Fish One)
72. Viet Phu Foods and Fish Corporation (also known as Vietphu, Viet Phu, Viet Phu Food and Fish Corporation, or Viet Phu Food & Fish Corporation)
73. Viet Phu Foods & Fish Co., Ltd.
74. Vinh Hoan Corporation (also known as Vinh Hoan, Vinh Hoan Co., or Vinh Hoan Corp.)
75. Vinh Long Import-Export Company (also known as Vinh Long, Imex Cuu Long or Vinh Long Import/Export Company)
76. Vinh Quang Fisheries Corporation (also known as Vinh Quang, Vinh Quang Fisheries Joint Stock Company, Vinh Quang Fisheries Co. Ltd., or Vinh Quang Fisheries Corp.

[FR Doc. 2019–22990 Filed 10–21–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–943; C–570–944]

Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Amended Final Scope Ruling Pursuant to Court Decision

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

SUMMARY: On July 22, 2019, the United States Court of International Trade (CIT) issued its final judgment in *Bell Supply Co.* v. *United States,* Court No. 14–00066, affirming the Department of Commerce's (Commerce) remand redetermination concerning the final scope ruling, which found that seamless unfinished OCTG from China finished in third countries is not substantially transformed by the third country processing and is therefore covered by the scope of the *Orders.*

DATES: Applicable August 1, 2019.

FOR FURTHER INFORMATION CONTACT: John Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0195.

SUPPLEMENTARY INFORMATION:

Background

On February 7, 2014, the Department issued the *Bell Supply Scope Ruling,*[1] in which it determined that seamless unfinished OCTG (*i.e.,* green tubes) that

[1] *See* Memorandum, ''Final Scope Ruling on Green Tubes Manufactured in the People's Republic of China and Finished in Countries Other than the United States and the People's Republic of China'' (February 7, 2014) (*Bell Supply Scope Ruling*).

is finished in third countries is covered under the scope of the *Orders* based on an analysis of the factors under 19 CFR 351.225(k)(1).[2] Bell Supply Company, LLC (Bell Supply) challenged the Department's final ruling before the CIT. On July 9, 2015, the Court issued its opinion on the *Bell Supply Scope Ruling* remanding Commerce's determination back to the agency for further analysis.[3] Commerce issued a redetermination on remand, under protest, which continued to find that the merchandise in question was within the scope of the *Orders*.[4] On April 27, 2016, the CIT issued its opinion on the *First Remand Results,* again remanding Commerce's determination for further analysis.[5] On August 11, 2016, Commerce issued the *Second Remand Results,* determining that green tubes manufactured in China, and subsequently finished in a third country, are not covered by the scope of the *Orders*.[6] In *Bell Supply III,* the CIT sustained Commerce's *Second Remand Results*.[7] On January 19, 2017, Commerce published a notice of a court decision that is not ''in harmony'' with a Commerce determination,[8] in fulfillment of the publication requirements of *Timken,*[9] as clarified by *Diamond Sawblades*.[10] Commerce's *Timken Notice and Amended Final Scope Ruling* also amended the *Bell Supply Scope Ruling* to find that the scope of the *Orders* does not cover the products addressed in the *Bell Supply Scope Ruling*.[11]

Domestic interested parties appealed the CIT's affirmance of the *Second Remand Results* to the U.S. Court of Appeals for the Federal Circuit (CAFC). On April 25, 2018, the CAFC vacated the CIT's decision sustaining the *Second Remand Results,* and remanded the case to the CIT to determine whether Commerce properly applied its substantial transformation analysis in the *Bell Supply Scope Ruling*.[12] On October 18, 2018, the CIT remanded Commerce's *Bell Supply Scope Ruling,* finding that certain factors considered in Commerce's substantial transformation analysis were not supported by substantial evidence.[13] Commerce issued the *Third Remand Results* on March 28, 2019, in which Commerce reconsidered the aspects of its substantial transformation analysis remanded by the Court and continued to find that green tubes are not substantially transformed by the finishing process in third countries, and therefore are covered by the scope of the *Orders*.[14] On July 22, 2019, the CIT sustained Commerce's *Third Remand Results*.[15]

Amended Final Scope Ruling

There is now a final court decision with respect to the *Bell Supply Scope Ruling.* Previously, the *Timken Notice and Amended Final Scope Ruling* amended the *Bell Supply Scope Ruling* to find that the scope did not cover the merchandise at issue. Therefore, Commerce is amending its scope ruling and finds that the scope of the *Orders* covers the products addressed in the *Bell Supply Scope Ruling.* The period to appeal the CIT's ruling expired on September 22, 2019. Because no parties appealed the CIT's ruling, Commerce will instruct U.S. Customs and Border Protection to continue to suspend liquidation and to require a cash deposit of estimated duties on the merchandise subject to the scope ruling entered, or withdrawn from warehouse, for consumption on or after June 20, 2012, the date of initiation of the scope inquiry.

Dated: October 15, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–23011 Filed 10–21–19; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Certain Oil Country Tubular Goods from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 75 FR 3203 (January 20, 2010); *see also Certain Oil Country Tubular Goods from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 75 FR 28551 (May 21, 2010) (collectively, *Orders*).

[3] *See Bell Supply Co.* v. *United States,* Court No. 14–00066, Slip Op. 15–73 (CIT July 9, 2015) (*Bell Supply I*).

[4] *See* Final Results of Redetermination Pursuant to Remand, *Bell Supply Co.* v. *United States,* Court No. 14–00066, dated November 9, 2015 (*First Remand Results*).

[5] *See Bell Supply Co.* v. *United States,* Court No. 14–00066, Slip Op. 16–41 (CIT April 27, 2016) (*Bell Supply II*).

[6] *See* Final Results of Second Redetermination Pursuant to Remand, *Bell Supply Co.* v. *United States,* Court No. 14–00066, dated August 11, 2016 (*Second Remand Results*) at 14–19.

[7] *See Bell Supply Co.* v. *United States,* Court No. 14–00066, Slip Op. 16–109 (CIT Nov. 23, 2016) (*Bell Supply III*) at 16.

[8] *See Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision,* 82 FR 6490 (January 19, 2017) (*Timken Notice and Amended Final Scope Ruling*).

[9] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[10] *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[11] *See Timken Notice and Amended Final Scope Ruling*

[12] *See Bell Supply Co.* v. *United States,* 888 F.3d 1222, 1231 (Fed. Cir. 2018).

[13] *See Bell Supply Co.* v. *United States,* Court No. 14–00066, Slip Op. 18–141 (CIT Oct. 18, 2018) (*Bell Supply IV*).

[14] *See* Final Results of Redetermination Pursuant to Remand, *Bell Supply Co.* v. *United States,* Court No. 14–00066, dated March 28, 2019 (*Third Remand Results*).

[15] *See Bell Supply Co.* v. *United States,* Court No. 14–00066, Slip Op. 19–89 (CIT July 22, 2019) (*Bell Supply V*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–874]

Certain Steel Nails From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) determines that Daejin Steel Company (Daejin), Je-il Wire Production Co., Ltd. (Je-il), Koram Inc. (Koram), and Korea Wire Co. Ltd. (Kowire) made sales of certain steel nails (steel nails) from the Republic of Korea (Korea) at less than normal value during the period of review (POR), July 1, 2017 through June 30, 2018.

DATES: Applicable October 22, 2019.

FOR FURTHER INFORMATION CONTACT: Ariela Garvett (Daejin), Lilit Astvatsatrian (Je-il and Koram), or Maliha Khan (Kowire), AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3609, (202) 482–6412, or (202) 482–0895, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 2019, Commerce published the *Preliminary Results* of the 2017–2018 antidumping duty administrative review of steel nails from Korea.[1] On July 18, 2019, Daejin and Mid Continent Steel & Wire, Inc. (the petitioner) submitted case briefs.[2] On

[1] *See Certain Steel Nails from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 28278 (June 18, 2019) and accompanying Preliminary Decision Memorandum (*Preliminary Results*).

[2] *See* Daejin's Letter, ''Administrative Review of the Antidumping Order on Certain Steels Nails from Korea—Redacted Case Brief,'' dated September 24, 2019; *see also* Petitioner's Letter, ''Certain Steel Nails from Korea: Case Brief on Daejin Steel Company and Koram Inc.,'' dated July 18, 2019.

July 26, 2019, Daejin, Koram, and the petitioner submitted rebuttal briefs.[3]

Scope of the Order

The products covered by this order are nails having a nominal shaft length not exceeding 12 inches.[4] Merchandise covered by the order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Nails subject to this order also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. For a complete description of the scope of the order, *see* the Issues and Decision Memorandum.[5]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the IDM, which is hereby adopted by this notice. A list of the issues raised is attached to this notice as an Appendix. The IDM is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit (CRU), Room B8024 of the main Commerce building. In addition, a complete version of the IDM can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties, we made no revisions to the preliminary margin calculations for the mandatory respondents.[6]

Final Results of the Administrative Review

We have determined the following weighted-average dumping margins to the firms listed below for the period July 1, 2017 through June 30, 2018:

Exporter-producer	Weighted-average dumping margin (percent)
Daejin Steel Company	5.43
Je-il Wire Production Co., Ltd	6.06
Koram Inc	7.34
Korea Wire Co., Ltd	5.47

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protections (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. We will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).

For entries of subject merchandise during the POR produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. We intend to issue liquidation instructions to CBP 15 days after publication of this notice.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for the respondents noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 11.80 percent, the all-others rate established in the investigation.[7] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

[3] *See* Daejin's Letter, ''Administrative Review on of the Antidumping Order on Certain Steel Nails from Korea—Rebuttal Brief of Daejin Steel Company,'' dated July 26, 2019; *see also* Koram's Letter, ''Certain Steel Nails from the Republic of Korea: Rebuttal Brief,'' dated July 26, 2019; and Petitioner's Letter, ''Certain Steel Nails from Korea: Rebuttal Brief on Daejin Steel Company,'' dated July 26, 2019.

[4] The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

[5] *See* Memorandum, ''Issues and Decision Memorandum for Final Results of the 2017–2018 Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the Republic of Korea,'' dated concurrently with this notice.

[6] *See* Memorandum, ''Certain Steel Nails from the Republic of Korea: Final Results Analysis Memorandum for Daejin Steel Company,'' dated October 16, 2019; *see also* Memoranda, ''Certain Steel Nails from the Republic of Korea: Final Results Analysis Memorandum for Je-il Wire Production Co., Ltd.,'' dated October 16, 2019; ''Certain Steel Nails from the Republic of Korea: Final Results Analysis Memorandum for Koram Inc.,'' dated October 16, 2019; and ''Certain Steel Nails from the Republic of Korea: Final Results Analysis Memorandum for Korea Wire Co., Ltd.,'' dated October 16, 2019.

[7] *See Certain Steel Nails from the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 80 FR 28955 (May 20, 2015).

Dated: October 16, 2019.

Jeffrey I. Kessler,

Assistant Secretary For Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes Since the Preliminary Results
V. Discussion of the Issues
VI. Recommendation

[FR Doc. 2019–22992 Filed 10–21–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW011

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

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

ACTION: Notice; request for comments.

SUMMARY: NMFS announces the request for renewal of a 2019 exempted fishing permit application titled, ''*Year-round Coastwide Midwater Rockfish EFP: Monitoring and Minimizing Salmon Bycatch When Targeting Rockfish in the Shorebased IFQ Fishery*'' for the 2020 fishing year (herein referred to as the ''Trawl Gear EFP''). The application, submitted by the West Coast Seafood Processors Association, Environmental Defense Fund, Oregon Trawl Commission, and Midwater Trawlers Cooperative, requests a permit to test whether removing certain gear, time, and area restrictions for vessels fishing under the Trawl Rationalization Program's Shorebased Individual Fishing Quota Program may impact the nature and extent of bycatch of prohibited species (*e.g.,* Chinook salmon). This exempted fishing permit would allow participating groundfish bottom and midwater trawl vessels more flexibility than allowed in current regulations to target pelagic rockfish species, such as widow, chilipepper, and yellowtail rockfish. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed exempted fishing permits.

DATES: Comments must be received no later than 5 p.m., local time on November 6, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2019–0119, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0119,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. The EFP application will be available under ''Supporting Documents'' through the same link.
- *Mail:* Submit written comments to Lynn Massey, West Coast Region, NMFS, 501 W Ocean Blvd., Ste. 4200, Long Beach, CA 90802–4250.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and would generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender would be publicly accessible. NMFS would accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments would be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Lynn Massey, West Coast Region, NMFS, at (562) 436–2462, *lynn.massey@noaa.gov.*

SUPPLEMENTARY INFORMATION: This action is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR 600.745, which allow NMFS Regional Administrators to authorize exempted fishing permits (EFPs) to test fishing activities that would otherwise be prohibited.

At the September 2018 Pacific Fishery Management Council (Council) meeting, the Council voted to recommend the 2019 Trawl Gear EFP project to NMFS, and made the preliminary decision to recommend continuing the EFP project in 2020. NMFS published a description of the 2019 Trawl Gear EFP in the **Federal Register** on November 30, 2018 (83 FR 61603), and solicited public comments through December 17, 2018. NMFS issued a total of 46 EFPs to eligible vessels for the 2019 fishing year. As of September 30, 2019, 15 vessels have participated in the Trawl Gear EFP during the 2019 fishing year (7 vessels fished midwater only, 2 fished bottom trawl only, and 6 fished using both gear types). These vessels have caught 46 Chinook salmon, no eulachon, sturgeon, or Coho salmon, and approximately 13.7 million pounds of groundfish, totaling approximately $4.8 million in revenue.

At the September 2019 Council meeting, the EFP applicants requested renewal of the 2019 Trawl Gear EFP (described in additional detail at 83 FR 61603, November 30, 2019) with no changes for the 2020 fishing year. The same bycatch limits for Chinook salmon recommended by the Council in 2019 would be maintained during the 2020 fishing year (*i.e.,* 1,000 fish for Chinook salmon taken north of 42 degrees North latitude (N. lat.) and 100 fish for Chinook salmon taken south of 42 degrees N. lat).

The EFP applicants have not proposed a specific list of participating vessels, but rather are proposing that NMFS publish a public notice to gauge interest from limited entry groundfish midwater and bottom trawl vessels. Depending on the amount of interest and where vessels indicate interest in fishing, NMFS may need to limit participation by time and area to mitigate potential impacts.

After publication of this document in the **Federal Register**, NMFS may approve and issue the EFP after the close of the public comment period. NMFS will consider comments submitted, as well as the Council's discussion at their September 2019 meeting, in deciding whether to approve the application as requested. NMFS may approve the application in its entirety or may make any alterations needed to achieve the goals of the EFP.

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

Dated: October 17, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–22977 Filed 10–21–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV112

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Northeast Trawl Advisory Panel (NTAP) will hold a meeting.

DATES: The meeting will be held on Thursday, November 21, beginning at 9 a.m. and will conclude by 4 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the DoubleTree by Hilton Baltimore-BWI Airport located at 890 Elkridge Landing Road, Linthicum, MD 21090 and available via webinar (*http://www.mafmc.org/ntap*).

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at *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 purpose of the meeting is for the NTAP to (1) review from the flume tank experiment summary, (2) review the NOAA Bigelow door testing summary, (3) discuss catchability in the groundfish stock assessments, (4) discuss the Karen Elizabeth gear performance experiment, (5) discuss the 2020 fiscal year research plans, and (6) discuss any other relevant business.

Special Accommodations

These meetings are 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.

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

Dated: October 17, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–22988 Filed 10–21–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XR045]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Whittier Ferry Terminal Alaska Class Ferry Modification Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Alaska Department of Transportation and Public Facilities (ADOT&PF) for authorization to take marine mammals incidental to the Whittier Ferry Terminal Alaska Class Ferry Modification Project in Whittier, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than November 21, 2019.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Davis@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Leah Davis, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On June 6, 2019, NMFS received a request from ADOT&PF for an IHA to take marine mammals incidental to the relocation of one dolphin at the Whittier Ferry Terminal in Whittier, Alaska. The application was deemed adequate and complete on September 27, 2019. ADOT&PF's request is for take of a small number of five species of marine mammals by Level B harassment. Neither ADOT&PF nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

ADOT&PF is seeking an IHA for ferry terminal modifications at the Whittier Ferry terminal in Whittier, AK. Whitter is located at the head of Passage Canal, a deep-water fjord within Prince William Sound. The project includes relocation of one dolphin to accommodate a new, Alaska Class Ferry, the M/V Hubbard, as it is wider than the ferries currently operating in Prince William Sound. The dolphin will be removed using a vibratory hammer, and reinstalled using both vibratory and impact hammers. Additionally, construction will include modifying the existing catwalk and landing and modifying the bridge girder connection. Pile removal and installation associated with the project are expected to result in Level B harassment of humpback whale, killer whale, Dall's porpoise, Steller sea lion, and harbor seal. The ensonified area is expected to reach 12.0 km beyond the project site in Passage Canal. In-water construction is expected to occur over six work days during February and March 2020.

Dates and Duration

The IHA will be effective from February 2020 to January 2021. The project, including mobilization and demobilization, is expected to occur during February and March 2020. In-water work will occur over six days with pile extraction and pile reinstallation each expected to occur over three days. Pile driving activity is expected to range from 30 minutes to 150 minutes each day.

Specific Geographic Region

The dolphin proposed to be moved is located on state submerged land (ADL 23147) at 60.777° N, 148.683° W at the Whittier Ferry Terminal in Whitter, AK. Whittier is located at the head of Passage Canal, a deep-water fjord within Prince William Sound. Passage Canal itself is a deep (to nearly 244 m [800 ft]) fjord approximately 9.7 kilometers (km) (6 miles [mi]) long and 2.4 km (1.5 mi) wide. Several streams feed into the waterway including meltwater streams emanating from Learnard, Shakespeare, and Whittier glaciers. Tidal energy limits the production of nearshore kelps (*e.g., Fuscus*) and eelgrass (*Zostera marina*), and most marine invertebrates present are hard-bottom habitat species such as mussels, barnacles, limpets, chitons, and snails (U.S. Army Corps of Engineers (USACE) 2015). Pacific herring (*Clupea pallasii*) is seasonally present at the head of the Passage Canal and appears to be the dominate fish found in the project area (USACE 2015), although major herring spawning areas within Prince William Sound are well outside Passage Canal (Alaska Department of Environmental Conservation [ADEC] 2005). Returning hatchery king salmon (*Oncorhynchus tshawytscha*) are also found in Passage Canal mid-May to mid-June, while native silver salmon (*O. kisutch*) runs are found mid-July through late August. Passage Canal supports the largest colony of black-legged kittiwakes in Prince William Sound (located 2.4 km [1.5 mi] north of the terminal).

Because Whittier is connected to the Alaska Highway System via the Portage Glacier Highway and Anton Anderson Memorial Tunnel, it is a port of call for cruise ships and a popular destination for sport fisherman, tourists, and outdoor enthusiasts. It is also the marine hub of the only road system connecting Anchorage with Prince William Sound.

Figure 1: Project location in southern Alaska.

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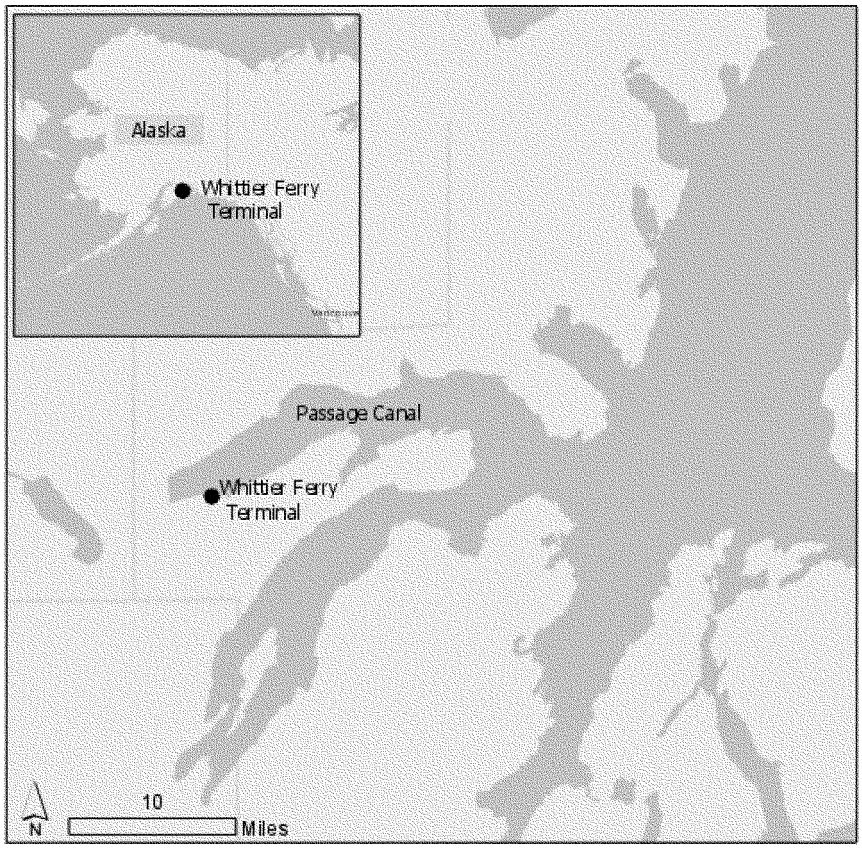

Figure 1: Project location in southern Alaska.

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Detailed Description of Specific Activity

The proposed project would use a vibratory hammer to extract four 30-inch (0.76m) piles, each 39.6 m (130 ft) in length, comprising dolphin S3 at the Whittier Ferry Terminal, and then reinstall them at a new location approximately 1.2 m (4 ft) southeast of the existing location using the same vibratory hammer. Each pile will then be proofed with an impact hammer to achieve a final depth of approximately 19.8 m (65 ft) into the seafloor. ADOT&PF estimates that an average of 1.5 piles will be removed or installed per day.

Additional construction components include modifying the existing catwalk and landing and modifying the bridge girder connection. These ancillary actions occur above water, and are only expected to impact pinnipeds that are hauled out in the area where sound levels exceed in-air harassment thresholds. There are no pinniped haul-out sites near the construction site, and no harassment from airborne sound is expected to result from project activities. Therefore, above-water construction activities will not be considered further in this document.

TABLE 1—PILE EXTRACTION AND REINSTALLATION ACTIVITY

Pile type/activity	Number of piles	Vibratory duration	Impact duration	Strike duration	Total hours	Average piles per day	Days of removal or reinstallation
30-in Steel Extraction.	4	30 min	N/A	N/A	2	1.5	3
30-in Steel Reinstallation.	4	45 min	30 min (400 strikes).	0.1 sec	5	1.5	3
Total	8	300 min	120 min (1600 strikes).	N/A	7	N/A	6

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://*

www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species with expected potential for occurrence in Passage Canal and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprise that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Alaska and U.S. Pacific SARs (*e.g.,* Muto *et al.,* 2019). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2018 SARs (Muto *et al.,* 2019 and Carretta *et al.,* 2019).

TABLE 2—MARINE MAMMALS THAT COULD OCCUR IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-, -, N	26,960 (0.05, 25,849, 2016).	801	139
Family Balaenopteridae (rorquals).						
Fin whale	*Balaenoptera physalus*	Northeast Pacific	E, D, Y	see SAR (see SAR, see SAR, 2013).	5.1	0.6
Humpback whale	*Megaptera novaeangilae*	Central North Pacific	-, -, Y	10,103 (0.300, 7,891, 2006).	83	26
		California/Oregon/Washington.	-, -, Y	2,900 (0.05, 2,784, 2014).	16.7	≥40.2
		Western North Pacific	E, D, Y	1,107 (0.300, 865, 2006).	3	3.0
Minke whale	*Balaenoptera acutorostra*	Alaska	-, -, N	N/A (see SAR, N/A, see SAR).	Undetermined	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orcinus orca*	Eastern North Pacific, Alaska Resident.	-, -, N	2,347c (N/A, 2,347, 2012).	24	1
		Gulf, Aleutian, Bering Transient.	-, -, N	587c (N/A, 587, 2012).	5.87	1
		AT1 Transient	-, D, Y	7c (N/A, 7, 2017)	0.01	0
Pacific white-sided dolphin.	*Lagenorhynchus obliquidens.*	North Pacific	-, -, N	26,880 (Unknown, Unknown, 1990).	Undetermined	0
Family Phocoenidae (porpoises):						
Dall's porpoise	*Phocoenoides dalli*	Alaska	-, -, N	83,400 (0.097, N/A, 1991).	Undetermined	38
Harbor porpoise	*Phocoena*	Gulf of Alaska	-, -, Y	31,046 (0.214, N/A, 1998).	Undetermined	72
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (N.A, 233,515, 2014)	14,011	≥321
Steller sea lion	*Eumetopias jubatus*	Western U.S.	E, D, Y	54,267a (Unknown, 54,267, 2017).	326	247
Family Phocidae (earless seals):						
Pacific harbor seal	*Phoca vitulina*	Prince William Sound	-, -, N	29,889 (see SAR, 27,936, 2011).	838	279

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species (or similar species) life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

Note: Italicized species are not expected to be taken or proposed for authorization.

All species that could potentially occur in the proposed survey areas are included in Table 2. However, the temporal and/or spatial occurrence of gray whale, fin whale, minke whale, Pacific white-sided dolphin, harbor porpoise, and California sea lion are such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Gray whales do not regularly enter Prince William Sound, and charter operators have only observed gray whales in Passage Canal twice in the past 20 years (M. Bender, Lazy Otter Charters, pers. comm.; M. Kopec, Whittier Marine Charters, pers. comm.). Fin whales typically arrive to the Gulf of Alaska in May, well after the February and March work window, and there is only one record of a fin whale occurring within Passage Canal in the past 20 years (M. Kopec, Whittier Marine Charters, pers. comm.). Minke whales are not expected to occur in the ensonified area, as in the past 20 years, marine mammal charter operators have seen fewer than five minke whales within Passage Canal, and they are typically found farther south during winter months (NMFS 2018b). Extensive marine mammal surveys conducted within Prince William Sound by Hall (1979) and Waite (2003) yielded no sightings of Pacific white-sided dolphins. Based on habitat preferences and past survey results, this dolphin is unlikely to occur in the Action Area, especially given the early spring work-window. Over the last 20 years, none have been observed in the inlet by charter operators (M. Bender, Lazy Otter Charters, pers. comm.; M. Kopec, Whittier Marine Charters, pers. comm.). Harbor porpoise have not been observed in Passage Canal during over two decades of whale watching by one charter operator (M. Bender, Lazy Otter Charters, pers. comm.), and are considered extremely rare in Passage Canal by another (M. Kopec, Whittier Marine Charters, pers. comm.). California sea lions are rarely sighted in southern Alaska. NMFS' anecdotal sighting database includes four sightings in Seward and Kachemak Bay, and they were also documented during the Apache 2012 seismic survey in Cook Inlet. However, California sea lions have not been observed in Passage Canal.

In addition, the northern sea otter may be found in Whittier, AK. However, northern sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Humpback Whale

The humpback whale (*Megaptera novaeangilae*) is distributed worldwide in all ocean basins. Relatively high densities of humpback whales are found in feeding grounds in southeast Alaska and northern British Columbia, particularly during summer months. Humpbacks migrate to Alaska to feed after months of fasting in low latitude breeding grounds. The timing of migration varies among individuals: Most humpbacks begin returning to Alaska in spring and most depart Alaska for southern breeding grounds in fall or winter. Peak numbers of humpbacks in southeast Alaska occur during late summer to early fall, but because there is significant overlap between departing and returning whales, humpbacks can be found in Alaska feeding grounds in every month of the year (Baker *et al.* 1985, Straley 1990, Witteveen and Wynne 2017). There is also an apparent increase in the number of humpbacks overwintering in feeding grounds in Alaska (Straley *et al.* 2018).

Based on over two decades of whale watching activity in Passage Canal, humpback whales have been observed in Passage Canal on only very rare occasions and remained for very short periods (M. Bender, Lazy Otter Charters, pers. comm.). Reported occurrence is approximately once per year (M. Kopec, Whittier Marine Charters, pers. comm.). However, there is a chance that a humpback may occur in Passage Canal if herring are present.

Based on extensive photo identification data, NMFS has determined that individual humpback whales encountered in the Gulf of Alaska have an 89 percent probability of being from the recovered (delisted) Hawaii Distinct Population Segment (DPS) (Wade *et al.* 2016). Therefore, there is an 89 percent probability that a humpback occurring in Passage Canal is from the Hawaii DPS and Central North Pacific stock. Given the low overall likelihood of encountering any humpbacks, other DPSs of humpback whale will not be considered further in this document and any humpback whales seen will belong to the Central North Pacific stock.

Killer Whale

Killer whales (*Orcinus orca)* are found in every ocean of the world (NMFS 2018c) and are the most widely distributed marine mammal (Leatherwood and Dahlheim 1978). NMFS considers three stocks of killer whales to seasonally inhabit Prince William Sound: Eastern North Pacific Alaska Resident stock (2,347 individuals); Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock (587 individuals); and the small AT1 Transient stock (7 individuals) (Muto *et al.* 2019).

On rare occasions killer whales have been reported to occur in Passage Canal, but they do not occur there on a regular basis (M. Bender, Lazy Otter Charters, pers. comm.). They are seen in the inlet approximately once each year (M. Kopec, Whittier Marine Charters, pers. comm.). Killer whales that may occur in Passage Canal during the project are expected to be either from the Eastern North Pacific Alaska Resident stock, or the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock. Based on the AT1 Transient killer whale small stock size (seven individuals), and the small stock size in comparison with all killer whales potentially present in Prince William Sound (2,941 individuals), we do not expect any AT1 Transients to enter Passage Canal during the project. AT1 Transient killer whales will not be considered further in this document.

Dall's Porpoise

Dall's porpoises (*Phocoenoides dalli)* are widely distributed in the North Pacific Ocean, usually in deep oceanic waters (183 m (≤600 ft)), over the continental shelf or along slopes (NMFS 2018d, Hall 1979, Muto *et al.* 2019). They occur along the west coast of the United States ranging from California to the Bering Sea in Alaska (NMFS 2018d). Dall's porpoises occur in Alaskan waters year-round (Muto *et al.* 2019) and typically give birth between June and September to single calves (NMFS 2018d). They have occasionally been observed near the entrance of Passage Canal, but within the inlet they are considered exceedingly rare (M. Bender, Lazy Otter Charters, pers. comm.; M. Kopec, Whittier Marine Charters, pers. comm.).

Steller Sea Lion

The Steller sea lion (*Eumetopias jubatus)* was listed as a threatened species under the ESA in 1990 following declines of 63 percent on certain rookeries since 1985 and declines of 82 percent since 1960 (55 FR

12645, April 5, 1990). In 1997, two DPSs of Steller sea lion were identified based on differences in genetics, distribution, phenotypic traits, and population trends (62 FR 24345, May 5, 1997; Fritz *et al.* 2013): the Eastern DPS found east of Cape Suckling (144° W) and the Western DPS found west of Cape Suckling. At that time the Western DPS was up-listed to endangered due to continuing declines. However, the Eastern DPS population increased and was eventually removed from the ESA listing in 2013 (78 FR 66140, November 4, 2013).

Steller sea lions are often seen near Whittier during May to August salmon runs but are irregularly seen in the project area the rest of the year, although as many as ten sea lions haul out year-round on a channel buoy within Shotgun Cove approximately 6 km (3.7 mi) northeast of the project location (M. Bender, Lazy Otter Charters, pers. comm.; M. Kopec, Whittier Marine Charters, pers. comm.).

Steller sea lion critical habitat within Prince William Sound includes three major haulouts (The Needle, Perry Island, and Point Eleanor), and several more haulouts plus two rookeries (Seal Rocks and Fish Island). When including the designated 20-nautical-mile (nm) zone around each denoting critical habitat (foraging), most of Prince William Sound falls within Steller sea lion critical habitat. However, the nearest major haulout is >20 nm from the project location; thus, no sea lion critical habitat falls within the Level B harassment zone.

Harbor Seal

Harbor seals (*Phoca vitulina)* range from Baja California north along the west coasts of California, Oregon, Washington, British Columbia, and southeast Alaska; west through the Gulf of Alaska, Prince William Sound, and the Aleutian Islands; and north in the Bering Sea to Cape Newenham and the Pribilof Islands. Harbor seals are irregularly present in the project area. Small numbers have been reported (K. Sinclair, Whittier Harbormaster, pers. comm.) in the Whittier boat harbor feeding on the mussels and barnacles growing on the harbor pilings but apparently remained only if this food source remained. They are occasionally seen mid-inlet throughout the year and four to ten individuals have recently been observed hauled out on a rock pinnacle at the mouth of Logging Camp Bay approximately 12.4 km (7.7 mi) northeast of the project area (M. Bender, Lazy Otter Charters, pers. comm.). Harbor seals are the species most likely to be present in the Level B harassment zone during the proposed pile driving.

Harbor seals forage on fish and invertebrates (Wynne 2012). They are opportunistic feeders that forage in marine, estuarine, and freshwater habitats, adjusting their foraging behavior to take advantage of prey that are seasonally and locally abundant (Payne and Selzer 1989). In Alaska, harbor seals typically give birth to single pups between May and mid-July. The birthing location of harbor seal pups occurs at many different haul-out sites and is not restricted to a few major rookeries (Kinkhart *et al.* 2008). Pupping and weaning coincide with the summer haulout. (Sease 1992).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018a) described generalized hearing ranges for these marine mammal hearing groups (NMFS 2018a). Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018a]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018a) for a review of available information. Five marine mammal species (three cetacean and two pinniped (one otariid and one phocid) species) have the reasonable potential to co-occur with the proposed project activities. Please refer to Table 2. Of the cetacean species that may be present, one is classified as a low-frequency cetacean (humpback whale),

one is classified as a mid-frequency cetacean (killer whale), and one is classified as a high-frequency cetacean (Dall's porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving, and vibratory pile removal. The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; ANSI 2005; NMFS 2018a). Non-impulsive sounds (*e.g.* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018a). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.* 2007).

Two types of pile hammers would be used on this project: Impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.* 2005).

The likely or possible impacts of ADOT&PF's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal is the primary means by which marine mammals may be harassed from ADOT&PF's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.* 2007). In general, exposure to pile driving and removal noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and removal noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.* 2004; Southall *et al.* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018a). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018a), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,*

how an animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018a). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.* 1958, 1959; Ward 1960; Kryter *et al.* 1966; Miller 1974; Ahroon *et al.* 1996; Henderson *et al.* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018a).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018a). Based on data from cetacean TTS measurements (see Southall *et al.* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.* 2000; Finneran *et al.* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale *(Delphinapterus leucas*), harbor porpoise (*Phocoena phocoena*), and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018a). Installing piles requires a combination of impact pile driving and vibratory pile driving. For the project, these activities would not occur at the same time and there would likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the ensonified area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007; NRC 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.* 1995; Wartzok *et al.* 2003; Southall *et al.* 2007; Weilgart 2007; Archer *et al.* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.* 2001; Nowacek *et al.*

2004; Madsen *et al.* 2006; Yazvenko *et al.* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

In 2016, ADOT&PF documented observations of marine mammals during construction activities (*i.e.,* pile driving and down-hole drilling) at the Kodiak Ferry Dock (see 80 FR 60636, October 7, 2015, for Final IHA **Federal Register** notice). In the marine mammal monitoring report for that project (ABR 2016), 1,281 Steller sea lions were observed within the behavioral disturbance zone during pile driving or drilling (*i.e.,* documented as Level B harassment take). Of these, 19 individuals demonstrated an alert behavior, 7 were fleeing, and 19 swam away from the project site. All other animals were engaged in activities such as milling, foraging, or fighting and did not change their behavior. In addition, two sea lions approached within 20 meters of active vibratory pile driving activities. Harbor seals were observed within the disturbance zone during pile driving activities; none of them displayed disturbance behaviors. Killer whales were also observed within the Level B harassment zone during pile driving, and were travelling or milling. No signs of disturbance were noted for killer whales. Given the similarities in activities and habitat and the fact the same species are involved, we expect similar behavioral responses of marine mammals to the specified activity. That is, disturbance, if any, is likely to be temporary and localized (*e.g.,* small area movements). Monitoring reports from other recent pile driving projects have observed similar behaviors.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels exceeding the acoustic thresholds. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

ADOT&PF's construction activities could have localized, temporary impacts on marine mammal habitat by increasing in-water sound pressure levels and slightly decreasing water quality. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater sound. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During impact and vibratory pile driving, elevated levels of underwater noise would ensonify the canal where both fish and mammals may occur and could affect foraging success.

In-Water Construction Effects on Potential Foraging Habitat

ADOT&PF's project involves moving the four piles comprising dolphin S3 1.2 m (4 feet), thus all habitat modification would remain within the same footprint as the existing ferry terminal and facilities. The total seafloor area affected from extracting and relocating piles is about 15 m^2 (161 ft^2), a small area compared to the vast foraging area available to marine mammals in Prince William Sound. The pile driving process may result in removing barnacles and mussels (potential harbor seal prey) from the pilings, but once reseated, these pilings would again be available as substrate for these invertebrates.

Pile installation and removal may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. ADOT&PF must comply with state water quality standards during these operations by limiting the extent of turbidity to the immediate project area. In general, turbidity associated with pile installation is localized to about a 25-foot radius around the pile (Everitt *et al.* 1980). Cetaceans are not expected to be close enough to the project pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area

would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity in Prince William Sound.

The duration of the construction activities is relatively short, with pile driving and removal activities expected to occur during just seven hours over six days. Impacts to habitat and prey are expected to be temporary and minimal based on the short duration of activities.

In-Water Construction Effects on Potential Prey (Fish)

Construction activities would produce continuous (*i.e.,* vibratory pile driving) and pulsed (*i.e.,* impact driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan 2001, 2002; Popper and Hastings 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.* 1992; Skalski *et al.* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality.

The most likely impact to fish from pile driving and drilling activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project. Additionally, fish species that are important marine mammal prey, such as Pacific herring and salmon, are unlikely to be present in appreciable numbers during the February-March work window (Bishop and Green 2009, NMFS 2019).

Construction activities, in the form of increased turbidity, have the potential to adversely affect fish in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 feet or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected, any effects on fish are expected to be minor or negligible. In addition, best management practices would be in effect, which would limit the extent of turbidity to the immediate project area.

In summary, given the short daily duration of sound associated with individual pile driving and drilling events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to pile driving and removal activities. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown zones) discussed in detail below in Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 microPascal (μPa) root mean square (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

ADOT&PF's proposed activity includes the use of continuous (vibratory pile driving and removal) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of

Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (NMFS, 2018a) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). ADOT&PF's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and removal) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT (PTS)

Hearing group	PTS Onset Acoustic Thresholds * (Received Level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving and removal). The maximum (underwater) area ensonified above the thresholds for behavioral harassment referenced above is 20.5 km² (7.9 mi²) and is governed by the inlet topography.

The project includes vibratory and impact pile installation of steel pipe piles and vibratory removal of steel pipe piles. Source levels of pile installation and removal activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Source levels for each pile size and driving method are presented in Table 5. The vibratory and impact source levels for 30-inch (0.76m) pile installation is from pile driving activities at the Auke Bay Ferry Terminal in November 2015 (Denes *et al.,* 2016). Source levels for vibratory installation and removal of piles of the same diameter are assumed to be the same.

TABLE 5—SOUND SOURCE LEVELS FOR PILE DRIVING METHODS

Pile size and method	Source level (SPL at 10m)			Literature source
	dB RMS	dB SEL [a]	dB peak	
30-inch Vibratory	168.0	N/A	N/A	Denes *et al.* 2016.
30-inch Impact	191.3	N/A	206.0	Denes *et al.* 2016.

[a] Sound exposure level (dB re 1 μPa²-sec).

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$TL = B * Log_{10} (R_1/R_2)$, where

TL = transmission loss in dB

B = transmission loss coefficient

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient in the above formula. Site-specific transmission loss data for Whittier are not available, therefore the default coefficient of 15 is used to determine the distances to the Level A and Level B harassment thresholds.

TABLE 6—PILE DRIVING SOURCE LEVELS AND DISTANCES TO LEVEL B HARASSMENT THRESHOLDS

Pile size and method	Source level at 10m (dB re 1 μPa rms)	Level B threshold (dB re 1 μPa rms)	Propagation (xLogR)	Distance to Level B threshold (km)	Level B harassment ensonified area (km^2)
30-inch Vibratory	168.0	120	15	15.8	20.5
30-inch Impact	191.3	160	15	1.2	1.24

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile driving, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below.

TABLE 7—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

Pile size and installation method	30-inch pile vibratory installation and removal	30-inch pile impact installation (SEL_{cum})	30-inch pile impact installation (PK)
Spreadsheet Tab Used	A.(1)Vibratory pile driving	E.(1) Impact pile driving	E.(1) Impact pile driving.
Weighting Factor Adjustment (kHz)	2.5	2	2.
Source Level (SPL@10m)	168.0 dB rms	191.3 dB rms	206 dB peak.
Number of piles within 24-h period	1.5	1.5.	
Duration to drive a single pile (minutes)	45.		
Strike Duration (seconds)		0.1.	
Number of strikes per pile		400.	
Activity Duration (seconds) within 24-h period	4050	60.	
Propagation (xLogR)	15	15.	
Distance from source level measurement (meters).	10	10	10.

TABLE 8—CALCULATED DISTANCES TO LEVEL A HARASSMENT ISOPLETHS

Activity	Level A harassment zone (m)				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
30-inch Pile Vibratory Installation and Removal	22	2	32	13	1
30-inch Pile Impact Installation (SEL_{cum})	547	20	652	293	21
30-inch Pile Impact Installation (PK)	1	NA	19	2	N/A

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. No systematic surveys for marine mammals have occurred in Passage Canal. Animal presence is based on the observations by whale watching charters based out of Whittier, which specifically search for marine mammals in Passage Canal and one of which operates during the February and March construction window.

Here we describe how the information provided above is brought together to produce a quantitative take estimate. Because reliable densities are not available and marine mammal presence in Passage Canal is minimal, take requests are species specific and a general take calculation formula does not apply.

Humpback Whale

Based on over two decades of whale watching activity in Passage Canal, humpback whales have been observed in Passage Canal on only very rare occasions and remained for very short periods (M. Bender, Lazy Otter Charters, pers. comm.). Reported occurrence is approximately once per year (M. Kopec, Whittier Marine Charters, pers. comm.).

ADOT&PF estimates that one humpback whale may enter Passage Canal and remain in the Canal for several days during the project if herring are present. Therefore, ADOT&PF has requested take of one whale for each of the six project days for a total of six humpback whale takes.

The largest Level A harassment zone for humpback whales extends 547m from the source during impact installation of 30-inch (0.76m) piles (Table 8). Given the irregular and small presence of humpback whales in Passage Canal, and the fact that PSOs are expected to detect humpback whales before they enter the Level A harassment zone and implement

shutdowns to prevent take by Level A harassment, Level A harassment takes of humpback whales have not been requested and are not proposed to be authorized.

Killer Whale

On rare occasions killer whales have been reported to make brief sorties into Passage Canal, but they are not regular residents there (M. Bender, Lazy Otter Charters, pers. comm.). They are seen in the inlet approximately once each year (M. Kopec, Whittier Marine Charters, pers. comm.). ADOT&PF estimates that one pod may enter the Level B harassment zone during the project. Based on that estimate, ADOT&PF requests 20 killer whale takes, which equates to the largest, single pod (AB) entering the project area on one day of pile driving.

The largest Level A harassment zone for killer whales extends 20 m from the source during impact installation of 30-inch (0.76m) piles (Table 8). Given the irregular and small presence of killer whales in Passage Canal, and the fact that PSOs are expected to detect killer whales before they enter the Level A harassment zone and implement shutdown zones to prevent take by Level A harassment, Level A harassment takes of killer whales have not been requested and are not proposed to be authorized.

Dall's Porpoise

Dall's porpoises have occasionally been observed near the entrance of Passage Canal, but within the inlet they are considered exceedingly rare (M. Bender, Lazy Otter Charters, pers. comm.; M. Kopec, Whittier Marine Charters, pers. comm.). ADOT&PF has requested take of five Dall's porpoise, based on the springtime average group size (4.59 individuals) from Prince William Sound surveys conducted by Moran *et al.* (2018). The estimate assumes that one group enters the Level B harassment zone on one day of pile driving.

The largest SEL_{cum} Level A harassment zone for Dall's porpoise extends 652m from the source during impact installation of 30-inch (0.76m) piles (Table 8), while the Peak Level A harassment zone for the same activity is 19m (Table 8). As noted in Table 10, a 200-m shutdown zone will be implemented for Dall's porpoises. The SEL_{cum} Level A harassment zone includes a time component, however, we do not expect Dall's porpoises to remain in the area within 652m during impact pile driving for a long enough period to experience Level A harassment. Therefore, takes of Dall's porpoises by Level A harassment have not been requested and are not proposed to be authorized.

Steller Sea Lion

Steller sea lions are often seen near Whittier during May to August salmon runs but are irregularly seen in the Action Area the rest of the year, although as many as ten sea lions haul out year-round on a channel buoy within Shotgun Cove approximately 6 km (3.7 mi) northeast of the Action Area (M. Bender, Lazy Otter Charters, pers. comm.; M. Kopec, Whittier Marine Charters, pers. comm.).

An average of five Steller sea lions haul out on the buoy in Shotgun Cove. ADOT&PF estimates that half of those animals (average of 2.5) may enter the Level B harassment zone on each of the six days of pile driving, and requests a total of 15 Level B harassment takes of Steller sea lions. Due to the limited prey availability in the project area in February and March (Bishop and Green 2009, NMFS 2019), NMFS acknowledges that the requested Level B harassment takes are unlikely to occur. However, the takes are being both proposed for authorization and analyzed at the request of the applicant to ensure MMPA coverage should they occur in the ensonified zone during the specified activities.

The largest Level A harassment zone for otariid pinnipeds extends 21m from the source during impact installation of 30-inch (0.76m) piles (Table 8). ADOT&PF is planning to implement a minimum 25-m shutdown zone during all pile installation and removal activities (see Proposed Mitigation section), which is expected to eliminate the potential for Level A harassment take of Steller sea lions. Therefore, takes of Steller sea lions by Level A harassment have not been requested and are not proposed to be authorized.

Harbor Seal

Harbor seal use of the project area is occasional and sporadic. If food is available, small numbers of harbor seals may remain for extended periods in the Whittier boat harbors feeding on sessile invertebrates growing on harbor pilings. Otherwise, they are only occasionally seen in the mid-inlet, although sightings do occur year-round. Recently, four to ten seals (typically about five) have been observed hauling out on a rock pinnacle in Logging Camp Bay located 12.4 km (7.7 mi) east of the project area (M. Bender, Lazy Otter Charters, pers. comm.). ADOT&PF assumes that on any given day, half (2.5 average) of these seals might occur in the Level B harassment zone during each of the six days of pile driving, and therefore is requesting 15 Level B harassment takes of harbor seals.

The largest SEL_{cum} Level A harassment zone for phocid pinnipeds extends 293m from the source during impact installation of 30-inch (0.76m) piles (Table 8), while the Peak Level A harassment zone for the same activity is 1.6m (Table 8) . ADOT&PF is planning to implement a 50-m shutdown zone during vibratory pile installation and removal activities and a 100-m shutdown zone during impact pile installation for phocid pinnipeds (Table 10). The SEL_{cum} Level A harassment zone includes a time component, however, we do not expect harbor seals to remain in the area within 293m during impact pile driving for a long enough period to experience Level A harassment. Therefore, takes of harbor seals by Level A harassment have not been requested and are not proposed to be authorized.

TABLE 9—ESTIMATED TAKE BY LEVEL B HARASSMENT ONLY, BY SPECIES AND STOCK

Common name	Stock	Stock abundance [a]	Level B take	Proposed take as percentage of stock
Humpback whale	Central North Pacific	10,103	[b] 6	0.06
Killer whale	Eastern North Pacific, Alaska Resident	2,347	20	0.85
	Gulf, Aleutian, Bering Transient	587	20	3.41
Dall's porpoise	Alaska	83,400	5	0.01
Steller sea lion	Western U.S	54,267	15	0.03
Harbor seal	Prince William Sound	29,889	15	0.05

[a] Stock or DPS size is Nbest according to NMFS 2018 Stock Assessment Reports.

[b] For ESA section 7 consultation purposes, 89% of humpbacks in the project area are designated to the Hawaii DPS, therefore, this individual humpback whale is expected to be from the Hawaii DPS.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In addition to the measures described later in this section, ADOT&PF will employ the following standard mitigation measures:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, *etc.*), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);
- To minimize impacts from vessel interactions with marine mammals, the crew aboard project vessels (tugs, barges, and monitoring vessels) will follow NMFS's marine mammal viewing guidelines and regulations as practicable
- Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted;
- For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal will shut down immediately if such species are observed within or on a path towards the monitoring zone (*i.e.,* Level B harassment zone); and
- If take reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take.

The following mitigation measures would apply to ADOT&PF's in-water construction activities:

Establishment of Shutdown Zone for Level A Harassment—For all pile driving/removal and drilling activities, ADOT&PF will establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type and marine mammal hearing group (see Table 10). The largest shutdown zones are generally for low frequency and high frequency cetaceans as shown in Table 10. The placement of Protected Species Observers (PSOs) during all pile driving and pile removal activities (described in detail in the Proposed Monitoring and Reporting Section) will ensure that the entire shutdown zone is visible during pile installation.

TABLE 10—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL

Activity	Shutdown zone (m)				
	LF cetaceans	MF cetaceans	HF cetaceans	Phocids	Otariids
Vibratory pile installation and removal	50				
Impact pile installation	550	25	200	100	25

Establishment of Monitoring Zones for Level B Harassment—ADOT&PF would establish monitoring zones to correlate with Level B harassment zones or zones of influence which are areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory driving and drilling. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. The proposed monitoring zones are described in Table 11. Placement of PSOs on the shorelines around Passage Canal allow PSOs to observe marine mammals within Passage Canal. Should PSOs determine the monitoring zone cannot be effectively observed in its entirety, Level B harassment exposures will be recorded and extrapolated based upon the number of observed take and the percentage of the Level B harassment zone that was not visible.

TABLE 11—MARINE MAMMAL MONITORING ZONES

Activity	Monitoring zone (m)
Vibratory pile installation and removal	12,000
Impact pile installation	1,200

Soft Start—The use of soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure would be conducted a total of three times before impact pile driving begins. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal or drilling of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and no species for which take is not authorized are present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment monitoring zone. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. As stated above, if the entire Level B harassment zone is not visible at the start of construction, piling or drilling activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment and shutdown zones will commence.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

There will be at least two PSOs employed during all pile driving/removal activities. PSO will not perform duties for more than 12 hours in a 24-hour period. For impact and vibratory pile driving and removal, one PSO would be positioned at the end of the terminal catwalk near the pile driving/removal activities at the best practical vantage point. A second PSO would be stationed approximately 2.5km down Shotgun Cove Road and Trail. For vibratory pile driving and removal, two additional PSOs will be stationed along Shotgun Cove Road and Trail, each approximately 2.5km down the trail from the previous PSO. Observed take will be extrapolated across unobserved portions of the Level B harassment zone.

If Station 2 is not accessible by way of Shotgun Cove Road and Trail, a vessel will be used as a monitoring station. If Stations 3 or 4 are not accessible by way of Shotgun Cove Road and Trail, take observed by PSOs at Stations 1 and 2 will be extrapolated across the unobserved portion of the project area.

As part of monitoring, PSOs would scan the waters using binoculars, and/or spotting scopes, and would use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained and/or experienced professionals, with the following minimum qualifications:

• Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

• Independent observers (*i.e.,* not construction personnel);

• Observers must have their CVs/resumes submitted to and approved by NMFS;

• Advanced education in biological science or related field (*i.e.,* undergraduate degree or higher). Observers may substitute education or training for experience;

• Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);

• At least one observer must have prior experience working as an observer;

• Experience or training in the field identification of marine mammals, including the identification of behaviors;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

• Date and time that monitored activity begins or ends;

• Construction activities occurring during each observation period;

• Weather parameters (*e.g.,* percent cover, visibility);

• Water conditions (*e.g.,* sea state, tide state);

• Species, numbers, and, if possible, sex and age class of marine mammals;

• Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;

• Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

• Locations of all marine mammal observations;

• An estimate of total take based on proportion of the monitoring zone that was observed; and

• Other human activity in the area.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, ADOT&PF would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report would include the following information:

• Description of the incident;

• Environmental conditions (*e.g.,* Beaufort sea state, visibility);

• Description of all marine mammal observations in the 24 hours preceding the incident;

• Species identification or description of the animal(s) involved;

• Fate of the animal(s); and

• Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with ADOT&PF to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ADOT&PF would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that ADOT&PF discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), ADOT&PF would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with ADOT&PF to determine whether modifications in the activities are appropriate.

In the event that ADOT&PF discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ADOT&PF would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator, within 24 hours of the discovery. ADOT&PF would provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their

impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving installation and removal activities associated with the project as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment, from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in zones ensonified above the thresholds for Level B harassment identified above when these activities are underway.

The takes from Level B harassment would be due to potential behavioral disturbance. No Level A harassment is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for Level A harassment and the scale and intensity of Level B harassment are minimized through the construction method and the implementation of the planned mitigation measures (see Proposed Mitigation section).

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; HDR, Inc. 2012; Lerma 2014; ABR 2016). Most likely for pile driving, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving and drilling, although even this reaction has been observed primarily only in association with impact pile driving. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While vibratory driving associated with the proposed project may produce sound at distances of many kilometers from the project site, thus intruding on some habitat, the ensonified area is already less-preferred habitat when the project is not underway. Therefore, we expect that animals annoyed by project sound would simply avoid the area and use more-preferred habitats.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- No injury is anticipated or authorized;
- Any resulting Level B harassment is expected to be short-term and of relatively low impact;
- The activity area does not include any known biologically important areas. In fact, nearby habitat is considered non-optimal given the low likelihood of many known prey resources during the months of the activity;
- The area impacted by the specified activity is very small relative to the overall habitat ranges of all species;
- The project area does not include ESA-designated critical habitat and does not overlap with any Biologically Important Areas (BIAs);
- The project is only taking place over six total pile driving/removal days;
- The project has the potential to impact less than 3.5% of each impacted stock; and
- The proposed mitigation measures are expected to reduce the effects of the specified activity to the level of least practicable adverse impact.

In addition, although affected Steller sea lions are from a DPS that is listed under the ESA, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the stocks' ability to recover. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 9 demonstrates the number of animals that could be exposed to received noise levels that could cause Level B harassment for the proposed work in Whittier. Our analysis shows that less than 1 percent of most affected stocks could be taken by Level B harassment, with the exception of the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock of killer whales, for which less than four percent of the stock could be taken. The numbers of animals proposed to be taken for these stocks would be considered small relative to the relevant stock's abundances even if each estimated taking occurred to a new individual, which is an extremely unlikely scenario.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR

216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Hunters from two native villages—Chenega Bay and Tatitlek—and native hunters living in Cordova annually harvest marine mammals within Prince William Sound as part of a subsistence lifestyle (Fall and Zimpelman 2016). Chenega Bay hunters annually harvest a few harbor seals and sea otters and have hunted Steller sea lions in the past (Wolfe et al. 2009). Most hunting occurs locally. Hunters from Tatitlek harvest harbor seals and sea lions over most of central Prince William Sound, although their hunting range does not extend to Passage Canal (Fall and Zimpelman 2016). Native hunters living in Cordova mostly harvest harbor seals but occasionally take sea otters and sea lions (Fall and Zimpelman 2016). All villages are greater than 100 km (62 mi) by boat travel from Passage Canal. The short-term, relatively low-impact, Level B harassment takes resulting from construction activities associated with the Whittier Ferry Terminal modifications project will have no impact on the ability of hunters from these villages to harvest marine mammals. Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Region, Protected Resource Division Office, whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of western stock Steller sea lions under the MMPA. For purposes of the Endangered Species Act, the NMFS Permits and Conservation Division has preliminarily determined that this action is not likely to adversely affect western DPS Steller sea lions because we do not expect Steller sea lions to use habitats near Whittier during the season when construction will occur. Effects on western DPS Steller sea lions are thus extremely unlikely to occur, and considered discountable under the ESA. The Permits and Conservation Division will request concurrence in this determination from the NMFS Alaska Region, per section 7 of the ESA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to ADOT&PF for conducting pile installation and removal activities at the Whittier Ferry Terminal in Whittier, Alaska between February and March 2020, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed pile driving project. We also request at this time comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal.

On a case-by-case basis, NMFS may issue a one-year IHA renewal with an additional 15 days for public comments when (1) another year of identical or nearly identical activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the Renewal).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: October 16, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–22966 Filed 10–21–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV110

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 67 data webinars for Gulf of Mexico vermilion snapper.

SUMMARY: The SEDAR 67 assessment process of Gulf of Mexico vermilion snapper will consist of a series of data and assessment webinars. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR 67 data webinars will be held November 12, 2019, from 10 a.m. to 12:30 p.m., Eastern Time; November 13, 2019, from 10 a.m. to 12:30 p.m., Eastern Time; and November 14, 2019, from 10 a.m. to 12:30 p.m., Eastern Time.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested

in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the data webinars are as follows:

Panelists will review the data sets being considered for the assessment and discuss initial modeling efforts.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 17, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–22986 Filed 10–21–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV109

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Management Strategy Evaluation (MSE) for EBFM Steering Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, November 5, 2019 at 9 a.m.

ADDRESSES:

Council address: The meeting will be held at the Hampton Inn and Suites, 2 Foxborough Blvd., Foxborough, MA 02035; telephone: (508) 623–2555.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

Based on the recently completed example Fishery Ecosystem Plan (eFEP) for Georges Bank, the Steering Committee will identify the core approach of Ecosystem-Based Fishery Management and develop recommendations on drafting a less technical and publicly digestible document using a science communicator. The will also develop and draft recommendations on how the Council should structure and conduct public information workshops with stakeholders. Other business may be discussed as necessary.

Although non-emergency issues not contained on this agenda may come before this Council for discussion, those issues may not be the subject 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 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. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 17, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–22985 Filed 10–21–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV111

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold two public webinars to solicit public comments on the Draft 2020–24 Strategic Plan.

DATES: The webinars will be held November 12, 2019, beginning at 6 p.m. and concluding by 8 p.m., and November 13, 2019, beginning at 10 a.m. and concluding by 12 p.m. Written comments must be received on or before 11:59 EST, November 15, 2019. For additional instructions for submitting written comments, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meetings will be held via webinar, which can be accessed at: *http://mafmc.adobeconnect.com/mafmc-strategic-plan/.* Meeting audio can also be accessed via telephone by dialing 1–800–832–0736 and entering room number 2122298.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council has released its Draft 2020–24 Strategic Plan for public review and comment. The plan includes updated vision and mission statements and proposes five major goals to guide the Council's activities and management priorities for the next five years. Development of the plan was informed by public input provided through a survey and outreach meetings in early 2019. The Draft Strategic Plan is available on the Council's website at *http://www.mafmc.org/strategic-plan.* All interested stakeholders and members of the public are invited to provide comments on the draft plan. The Council will hold two public input webinars during which participants will have an opportunity to ask questions and offer public comments on the draft strategic plan. The webinars will be held on the following dates:

1. Tuesday, November 12, 2019 at 6 p.m.
2. Wednesday, November 13, 2019 at 10 a.m.

The webinars can be accessed at: *http://mafmc.adobeconnect.com/mafmc-strategic-plan/.* Meeting audio can also be accessed via telephone by dialing 1–800–832–0736 and entering room number 2122298.

Written comments may also be submitted by any of the following methods:

1. Online at *http://www.mafmc.org/comments/2020-2024-strategic-plan*
2. Email to *michelleduval22@gmail.com*
3. Mail to Dr. Chris Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901
4. Fax to (302) 674–5399

Please include ''Strategic Plan Comments'' in the subject line if using email or fax or on the outside of the envelope if submitting comments by mail.

Comments must be submitted by Friday, November 15, 2019, 11:59 EST. The Council will review public comments and approve the final plan at its December meeting in Annapolis, MD.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: October 17, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–22987 Filed 10–21–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Multistakeholder Process on Promoting Software Component Transparency

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA) will convene a meeting of a multistakeholder process on promoting software component transparency on November 18, 2019.

DATES: The meeting will be held on November 18, 2019, from 10:00 a.m. to 4:00 p.m., Eastern Time.

ADDRESSES: The meeting will be held at the American Institute of Architects, 1735 New York Ave. NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Allan Friedman, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4725, Washington, DC 20230; telephone: (202) 482–4281; email: *afriedman@ntia.gov.* Please direct media inquiries to NTIA's Office of Public Affairs: (202) 482–7002; email: *press@ntia.gov.*

SUPPLEMENTARY INFORMATION:

Background: This National Telecommunications and Information Administration cybersecurity multistakeholder process focuses on promoting software component transparency. Most modern software is not written completely from scratch, but includes existing components, modules, and libraries from the open source and commercial software world. Modern development practices such as code reuse, and a dynamic IT marketplace with acquisitions and mergers, make it challenging to track the use of software components. The Internet of Things compounds this phenomenon, as new organizations, enterprises, and innovators take on the role of software developer to add ''smart'' features or connectivity to their products. While the majority of libraries and components do not have known vulnerabilities, many do, and the sheer quantity of software means that some software products ship with vulnerable or out-of-date components.

The first meeting of this multistakeholder process was held on July 19, 2018, in Washington, DC.[1] Stakeholders presented multiple perspectives, and identified several inter-related work streams: Understanding the Problem, Use Cases and State of Practice, Standards and Formats, and Healthcare Proof of Concept. Since then, stakeholders have been discussing key issues and developing products such as guidance documents. NTIA acts as the convener, but stakeholders drive the outcomes. Success of the process will be evaluated by the extent to which broader findings on software component transparency are implemented across the ecosystem.

The main objectives of the November 18, 2019, meeting are to finalize and identify next steps in this effort, including how progress can be made on extending and refining the basic model, cataloging tooling needs and resources, and promoting awareness and adoption of stakeholder work. More information about stakeholders' work is available at: *https://www.ntia.gov/SoftwareTransparency.*

Time and Date: NTIA will convene the next meeting of the multistakeholder process on Software Component

[1] Notes, presentations, and a video recording of the July 19, 2018, kickoff meeting are available at: *https://www.ntia.gov/SoftwareTransparency.*

Transparency on November 18, 2019, from 10:00 a.m. to 4:00 p.m. Eastern Time. Please refer to NTIA's website, *https://www.ntia.gov/SoftwareTransparency,* for the most current information.

Place: The meeting will be held at the American Institute of Architects, 1735 New York Ave. NW, Washington, DC 20006. The location of the meeting is subject to change. Please refer to NTIA's website, *https://www.ntia.gov/SoftwareTransparency,* for the most current information.

Other Information: The meeting is open to the public and the press on a first-come, first-served basis. Space is limited.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Allan Friedman at (202) 482–4281 or *afriedman@ntia.gov* at least seven (7) business days prior to each meeting. The meetings will also be webcast. Requests for real-time captioning of the webcast or other auxiliary aids should be directed to Allan Friedman at (202) 482–4281 or *afriedman@ntia.gov* at least seven (7) business days prior to each meeting. There will be an opportunity for stakeholders viewing the webcast to participate remotely in the meetings through a moderated conference bridge, including polling functionality. Access details for the meetings are subject to change. Please refer to NTIA's website, *https://www.ntia.gov/SoftwareTransparency,* for the most current information.

Dated: October 16, 2019.

Kathy Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2019–22953 Filed 10–21–19; 8:45 am]

BILLING CODE 3510–60–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meetings

TIME AND DATE: 1:00 p.m.–4:00 p.m., October 28, 2019.

PLACE: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Room 7019, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: In this open meeting, representatives of the Department of Energy and the National Nuclear Security Administration will brief the Board on their basis for rejecting Recommendation 2019–2, Safety of the Savannah River Site Tritium Facilities, and the actions completed, underway, or planned to ensure adequate protection of public health and safety at the Savannah River Site. More information, including an agenda for the meeting, can be found at *www.dnfsb.gov.*

CONTACT PERSON FOR MORE INFORMATION: Glenn Sklar, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: October 17, 2019.

Bruce Hamilton,

Chairman.

[FR Doc. 2019–23106 Filed 10–18–19; 4:15 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–4–000]

North Carolina Eastern Municipal Power Agency v. Duke Energy Progress, LLC; Notice of Complaint

Take notice that on October 11, 2019, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e, 825e and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, North Carolina Eastern Municipal Power Agency (Complainant) filed a formal complaint against Duke Energy Progress, LLC, (Respondent) alleging that 11.0 percent return on common equity included in the Fifth Amended and Restated Full Requirements Power Supply Agreement between Complainant and Respondent is excessive and therefore unjust and unreasonable, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondent in the Commission's list of Corporate Officials and on affected regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for 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.

Comment Date: 5:00 p.m. Eastern Time on October 31, 2019.

Dated: October 16, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–22999 Filed 10–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ20–2–000]

Oncor Electric Delivery Company LLC; Notice of Filing

Take notice that on October 16, 2019, Oncor Electric Delivery Company LLC submitted its tariff filing: Oncor Tex-La Tariff Rate Changes to be effective 9/27/19.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on November 6, 2019.

Dated: October 16, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23001 Filed 10–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ20–1–000]

Oncor Electric Delivery Company LLC; Notice of Filing

Take notice that on October 16, 2019, Oncor Electric Delivery Company LLC submitted its tariff filing: Oncor TFO Tariff Rate Changes to be effective 9/27/19.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on November 6, 2019.

Dated: October 16, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23000 Filed 10–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF19–4–000]

Venture Global Delta LNG, LLC, and Venture Global Delta Express, LLC; Supplemental Notice of Intent for the Planned Delta LNG and Delta Express Pipeline Project Request for Comments on Environmental Issues Related to New Route Modifications Under Consideration

October 16, 2019.

As previously noticed on July 30, 2019, and supplemented herein, the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Delta LNG and Delta Express Pipeline Project (Project) involving construction and operation of facilities by Venture Global Delta LNG, LLC and Venture Global Delta Express, LLC (collectively referred to as Delta LNG) in Plaquemines, Richland, Franklin, Catahoula, Concordia, Avoyelles, St. Landry, Pointe Coupee, West Baton Rouge, Iberville, Ascension, Assumption, Lafourche, and Jefferson Parishes, Louisiana. The general location of the Project is shown in appendix 1.[1]

With this Supplemental Notice of Intent (NOI) we[2] are specifically seeking comments on modifications to the route of the Delta Express Pipeline and the location of Compressor Station 4 as proposed by Delta LNG on October 11, 2019. These modifications were incorporated based on the results of ongoing field surveys and to address comments from agencies and other stakeholders. The majority of the landowners potentially affected by these modifications have previously received notification of the Commission's review of the Project. However, some of the modifications would affect new landowners; therefore, the Commission is issuing this Supplemental NOI to provide these new landowners an opportunity to comment on the Project. You can access detailed mapping of the modifications to the proposed pipeline route on the Commission's website (*www.ferc.gov*) using eLibrary. For instructions on connecting to eLibrary, refer to the last page of this Notice.

This Notice is being sent to the Commission's current environmental mailing list for this Project, including the newly affected landowners along the planned pipeline route. State and local government representatives should notify their constituents of this planned Project and encourage them to comment on their areas of concern.

If you are a newly affected landowner receiving this notice, a Delta LNG representative may have already contacted you or may contact you soon about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the Project, that approval conveys with it the right of eminent domain. Therefore, if the easement negotiations fail to produce an agreement, the company could initiate condemnation

The FERC is the lead federal agency responsible for conducting the environmental review of the Project. As mentioned above, the Commission's staff is preparing an EIS that discusses the environmental impacts of the Project. This EIS will be used to inform the Commission as it determines whether to approve the Project.

This Notice announces the opening of an additional scoping period the Commission will use to gather input

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

from the new landowners potentially affected by the Project. Comments may be submitted in writing as described in the public participation section of this notice. Please note that comments on this Notice should be filed with the Commission by November 15, 2019. If you sent comments on this Project prior to the opening of this additional comment period, you do not need to refile your comments. We have received your comments and will use the information in the preparation of the EIS.

Information in this Notice was prepared to notify newly affected landowners of the new route and Project modifications and inform them about the Commission's environmental review process, and instruct them on how to submit comments.

To help potentially affected landowners better understand the Commission and its environmental review process, the ''For Citizens'' section of the FERC website (*www.ferc.gov*) provides information about getting involved in FERC jurisdictional projects. A citizens' guide entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need to Know?'' is also available in this section of the Commission's website. This guide addresses a number of frequently asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Proposed Project Changes

The Project would involve the construction of a liquefied natural gas (LNG) export terminal in Plaquemines Parish, Louisiana and two parallel, 42-inch-diameter pipelines in a single approximately 285-mile-long right-of-way in 14 parishes in Louisiana. Domestically sourced natural gas would be transported by the Delta Express Pipeline to the Delta LNG terminal, which would produce, store, and deliver up to 24 million tons per annum of LNG to LNG carriers for export overseas.

Changes to the Project include re-routing certain segments of the dual pipelines based on landowner requests and the results of field surveys in order to avoid sensitive resources. The majority of these changes involve shifts of less than 0.5 mile from the originally proposed route, with a maximum shift of approximately 2 miles to the west between approximate milepost 12 to milepost 14 in Richland Parish. In addition, a compressor station, CS–4, has been moved approximately 14 miles north from its originally planned location in Lafourche Parish to near milepost 200.8 in Ascension Parish.

As mentioned above, these changes are depicted on the maps included in Appendix 1.

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files, which can reduce the amount of time you spend researching proceedings. To sign up go to *www.ferc.gov/docs-filing/esubscription.asp.*

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the Project docket number (PF19–4–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Please note this is not your only public input opportunity; please refer to the review process flow chart in appendix 2.

The EIS Process

The EIS will discuss impacts that could occur as a result of the construction and operation of the planned Project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation, fisheries, and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate possible alternatives to the planned Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, Commission staff have already initiated a NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the Commission receives an application. As part of the pre-filing review, Commission staff have begun contacting federal and state agencies to discuss their involvement in the scoping process and the preparation of the EIS.

The EIS will present Commission staffs' independent analysis of the issues. The draft EIS will be available in electronic format in the public record through eLibrary [3] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the draft EIS is issued. The draft EIS will be issued for an allotted public comment period. After the comment period on the draft EIS, Commission staff will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure Commission staff have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 3.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

the public on the Project's potential effects on historic properties.[4] The EIS for this Project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

Commission staff have already identified several issues that deserve attention based on a preliminary review of the planned facilities and the environmental information provided by Delta LNG. This preliminary list of issues may change based on your comments and our analysis.

- Impacts on wetlands including coastal marsh and forested wetlands;
- cumulative impacts on air quality, noise, wetlands, socioeconomics, and other resources associated with construction and operation of the planned Delta LNG export terminal and the nearby Plaquemines LNG export terminal and other large projects at various stages of planning and construction in the region;
- LNG terminal site alternatives;
- Delta Express Pipeline route alternatives;
- Environmental Justice impacts; and
- alternative construction methods and workspace configurations that would avoid or reduce impacts.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the planned Project.

A *Notice of Availability* of the draft EIS will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 3).

Becoming an Intervenor

Once Delta LNG files its application with the Commission, you may want to become an ''intervenor,'' which is an official party to the Commission's proceeding. Only intervenors have the right to seek rehearing of the Commission's decision and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the Project, after which the Commission will issue a public notice that establishes an intervention deadline.

Additional Information

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. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* PF19–4). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23006 Filed 10–21–19; 8:45 am]

BILLING CODE 6717–01–P

[4] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–759]

Duke Energy Carolinas, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 2232–759.

c. *Date Filed:* October 2, 2019.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* Lake James in Burke County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Dennis Whitaker, Manager Lake Services, EC12Y, 526 S Church Street, Charlotte, NC 28201–1006, (704) 382–1594.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* November 15, 2019.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations 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,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). 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 number P–2232–759.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must

also serve a copy of the document on that resource agency.

k. *Description of Request:* Duke Energy Carolinas, LLC proposes to allow the expansion of Lake James Marina from the existing 68 boat slips to a total of 240 boat slips. The marina would also serve as a staging area for dock construction and shoreline stabilization activities. The marina would continue to be operated as a True Public Marina, providing public restrooms, a fuel dock, a waste pump station, and marina store.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: October 16, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23003 Filed 10–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–501–000]

Texas Eastern Transmission LP; Notice of Schedule for Environmental Review of the Bailey East Mine Project

On August 19, 2019, Texas Eastern Transmission LP (Texas Eastern) filed an application in Docket No. CP19–501–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project, known as the Bailey East Mine Project (Project), would ensure safe and efficient operation of existing Texas Eastern pipeline facilities for the duration of planned longwall mining activities.

On September 3, 2019, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—January 28, 2020
90-day Federal Authorization Decision Deadline—April 27, 2020

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Texas Eastern proposes excavate and elevate sections of four natural gas transmission pipelines due to longwall mining activities in Marshall County, West Virginia. The project would allow for safe and efficient operation of Texas Eastern's existing pipeline facilities for the duration of the longwall mining activities planned by CONSOL Energy Inc. in the area beneath Texas Eastern's pipelines. The four mainline segments will remain in-service and be elevated using sandbags and skids for about 2 years until the longwall mining activities have completed and any potential ground subsidence has settled.

Background

On October 3, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Bailey East Mine Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received no comments to date. All substantive comments will be addressed in the EA.

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.,* CP19–501), 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 rule makings.

Dated: October 16, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–22998 Filed 10–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4492–003]

Montgomery Worsted Mills, City Winery Hudson Valley LLC; Notice of Transfer of Exemption

1. On June 11, 2019, as supplemented July 16, 2019, Montgomery Worsted Mills, exemptee for the Montgomery Worsted Mills Hydroelectric Project No. 4492, filed a letter notifying the Commission that the project was transferred from the Montgomery Worsted Mills to City Winery Hudson Valley LLC. The exemption from licensing was originally issued on September 29, 1981.[1] The project is located on the Wallkill River, Orange County, NY. The transfer of an exemption does not require Commission approval.

2. City Winery Hudson Valley LLC is now the exemptee of the Worsted Mills Hydroelectric Project No. 4492. All correspondence must be forwarded to: Mr. Dylan Rocke, City Winery Hudson Valley LLC, 23 Factory Street, Montgomery, NY 12549, Phone: 201–403–1549, Email: *dilan@citywinery.com.*

Dated: October 16, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23005 Filed 10–21–19; 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 corporate filings:

Docket Numbers: EC19–142–000.
Applicants: Energy Center Dover LLC, DB Energy Assets, LLC.
Description: Supplement to September 26, 2019 Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Energy Center Dover LLC, et al.
Filed Date: 10/11/19.
Accession Number: 20191011–5109.
Comments Due: 5 p.m. ET 10/25/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–1255–014; ER15–2679–013; ER15–2680–013; ER15–762–017; ER16–1609–007; ER16–1738–011; ER16–1901–011; ER16–1955–011; ER16–2201–010; ER16–2224–010; ER16–2541–010; ER16–2578–011; ER16–468–011; ER16–474–012; ER16–890–012; ER17–1864–009; ER17–1871–009; ER17–1909–009; ER17–306–010; ER17–544–010; ER18–1667–004; ER18–2327–003; ER18–2492–005; ER19–846–004; ER19–847–004.
Applicants: Antelope Big Sky Ranch LLC, Antelope DSR 1, LLC, Antelope DSR 2, LLC, Antelope DSR 3, LLC, Antelope Expansion 2, LLC, Bayshore Solar B, LLC, Bayshore Solar A, LLC, Bayshore Solar C, LLC, Beacon Solar 1, LLC, Beacon Solar 3, LLC, Beacon Solar 4, LLC, Central Antelope Dry Ranch C LLC, Elevation Solar C LLC, FTS Master Tenant 1, LLC, FTS Master Tenant 2, LLC, ID Solar 1, LLC, Latigo Wind Park, LLC, North Lancaster Ranch LLC, Pioneer Wind Park I, LLC, Riverhead Solar Farm, LLC, San Pablo Raceway, LLC, Sandstone Solar LLC, Sierra Solar Greenworks LLC, Solverde 1, LLC, Summer Solar LLC, Western Antelope Blue Sky Ranch A LLC, Western Antelope Blue Sky Ranch B LLC, Western Antelope Dry Ranch LLC, 65HK 8me LLC, 67RK 8me LLC, 87RL 8me LLC.
Description: Supplement to June 28, 2019 Triennial Market Power Analysis for the Northwest Region of Antelope Big Sky Ranch LLC, et al.
Filed Date: 10/15/19.
Accession Number: 20191015–5371.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER19–2383–002.
Applicants: AEP Texas Inc.
Description: Tariff Amendment: SA772 AEPTX-Karankawa Wind Interconnection Agr 1st Amend & Restat—Amendment to be effective 6/20/2019.
Filed Date: 10/16/19.
Accession Number: 20191016–5160.
Comments Due: 5 p.m. ET 11/6/19.

Docket Numbers: ER19–956–001.
Applicants: Midcontinent Independent System Operator, Inc., ITC Midwest LLC.
Description: Tariff Amendment: 2019–10–16_Amendment to ITCM Intangible Plant Filing to be effective 1/1/2020.
Filed Date: 10/16/19.
Accession Number: 20191016–5056.
Comments Due: 5 p.m. ET 10/28/19.

Docket Numbers: ER20–122–000.
Applicants: Crowned Ridge Interconnection, LLC.
Description: Baseline eTariff Filing: Crowned Ridge Interconnection, LLC Application for Market-Based Rates to be effective 12/4/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5323.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–123–000.
Applicants: J. Aron & Company LLC.
Description: § 205(d) Rate Filing: CIS & NW Cat 2 Notice to be effective 10/16/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5358.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–124–000.
Applicants: Evergy Missouri West, Inc.
Description: Tariff Cancellation: Request for Cancellation, KCP&L GMO Vol. 28 (MBR) Tariff Title Database to be effective 12/16/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5359.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–125–000.
Applicants: Evergy Missouri West, Inc.
Description: Tariff Cancellation: Request for Cancellation, KCP&L GMO Vol. 33 (CB) Tariff Title Database to be effective 12/16/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5361.
Comments Due: 5 p.m. ET 11/5/19.

Docket Numbers: ER20–126–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to Original ISA No. 4401, Queue No. AA1–095 to be effective 1/25/2016.
Filed Date: 10/16/19.
Accession Number: 20191016–5077.
Comments Due: 5 p.m. ET 11/6/19.

Docket Numbers: ER20–127–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: BPA Construct Agmt for Lost Creek BAA Move to be effective 12/16/2019.
Filed Date: 10/16/19.
Accession Number: 20191016–5105.
Comments Due: 5 p.m. ET 11/6/19.

Docket Numbers: ER20–128–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Orginal ISA SA No. 5492; Queue No. AE2–272 to be effective 9/17/2019.
Filed Date: 10/16/19.
Accession Number: 20191016–5106.
Comments Due: 5 p.m. ET 11/6/19.

Take notice that the Commission received the following qualifying facility filings:

[1] *Steinberger Bros., Inc./Montgomery Worsted Mills,* 16 FERC ¶ 62,610 (1981).

Docket Numbers: QF20–57–000.
Applicants: Eco Green Generation LLC.
Description: Form 556 of Eco Green Generation LLC [Clean Power #5] under QF20–56, et al.
Filed Date: 10/15/19.
Accession Number: 20191015–5400.
Comments Due: Non Applicable.

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: October 16, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22968 Filed 10–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP20–59–000.
Applicants: Dominion Energy Transmission, Inc.
Description: § 4(d) Rate Filing: DETI—Modifications to GT&C Section 42 to be effective 11/12/2019.
Filed Date: 10/10/19.
Accession Number: 20191010–5102.
Comments Due: 5 p.m. ET 10/22/19.

Docket Numbers: RP20–60–000.
Applicants: TOTAL E&P USA, INC.,Murphy Exploration & Production Company.
Description: Joint Petition for Limited Waiver of Commission Policies, Capacity Release Regulations and Policies, et al. of TOTAL E&P USA, Inc., et al. under RP20–60.
Filed Date: 10/11/19.
Accession Number: 20191011–5107.
Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: RP20–61–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Non-Conforming 2019–10–11 GPS to be effective 12/1/2019.
Filed Date: 10/11/19.
Accession Number: 20191011–5120.
Comments Due: 5 p.m. ET 10/23/19.

Docket Numbers: RP19–1582–001.
Applicants: Gulf South Pipeline Company, LP.
Description: Tariff Amendment: Amendment to Filing in Docket No. RP19–1582–000 to be effective 9/23/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5004.
Comments Due: 5 p.m. ET 10/28/19.

Docket Numbers: RP20–62–000.
Applicants: LA Storage, LLC.
Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreement (Sequent) to be effective 10/15/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5005.
Comments Due: 5 p.m. ET 10/28/19.

Docket Numbers: RP20–63–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Filing to Incorporate Approved Changes (RP19–1473 into RP19–1539) to be effective 10/15/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5183.
Comments Due: 5 p.m. ET 10/28/19.

Docket Numbers: RP20–64–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Update to Non-Conforming Agreements RW0068 and RW0074 to be effective 11/1/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5298.
Comments Due: 5 p.m. ET 10/28/19.

Docket Numbers: RP20–65–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Targa) to be effective 11/15/2019.
Filed Date: 10/15/19.
Accession Number: 20191015–5360.
Comments Due: 5 p.m. ET 10/28/19.

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: October 16, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22969 Filed 10–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2206–089]

Duke Energy Carolinas, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-project use of project lands and water.
b. *Project No:* 2206–089.
c. *Date Filed:* September 19, 2019.
d. *Applicant:* Duke Energy Carolinas, LLC (licensee).
e. *Name of Project:* Yadkin Pee-Dee Hydroelectric Project.
f. *Location:* The project is located on the Yadkin and Pee Dee Rivers in Anson, Montgomery, Richmond, and Stanly Counties, North Carolina.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.
h. *Applicant Contact:* Duke Energy, Mr. Kelvin Reagan, Duke Energy Lake Services, 526 S. Church Street, EC12Q, Charlotte, NC. 28202; phone (704) 382–9386, *kelvin.reagan@duke-energy.com.*
i. *FERC Contact:* Robert Ballantine at (202) 502–6289 or *robert.ballantine@ferc.gov.*
j. *Deadline for filing comments, motions to intervene, and protests:* November 15, 2019.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests 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,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). 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 number P–2206–089. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee requests Commission approval of a non-project use of project lands and water for the construction and operation of a municipal water treatment plant. The proposed construction would affect 0.34 acres of project land. The Town of Norwood and Union County, North Carolina seek to withdrawal an instantaneous maximum daily withdrawal of 49.0 million gallons of water per day (MGD), with an annual average withdrawal of 19.6 MGD from Lake Tillery. A maximum monthly average of 23.3 MGD of the water withdrawn from the proposed intake would be transferred out of the Yadkin River Basin into the Rocky River Basin.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call (866) 208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS''; ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests, must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: October 16, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23002 Filed 10–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

	Project Nos.
Midwest Hydro, LLC	2347–051
Midwest Hydro, LLC	2348–042
Midwest Hydro, LLC	2373–012
STS Hydropower, LLC	2446–051

a. *Type of Filing:* Notices of Intent to File License Applications and Request to Use the Traditional Licensing Process.

b. *Project Nos.:* 2347–051, 2348–042, 2373–012, and 2446–051.

c. *Date Filed:* August 30, 2019.

d. *Submitted By:* Eagle Creek Renewable Energy, LLC, on behalf of Midwest Hydro, LLC (Midwest Hydro) and STS Hydropower, LLC (STS Hydropower).

e. *Name of Projects:* Janesville Central, Beloit, Rockton, and Dixon Hydroelectric Projects.

f. *Location:* The four existing projects are located on the Rock River. The Dixon Project is located at river mile (RM) 87 in Lee and Ogle Counties, Illinois. The Rockton Project is located at RM 159 in Winnebago County, Illinois. The Beloit Project is located at RM 163 in Rock County, Wisconsin. The Janesville Central Project is located at RM 180 in Rock County, Wisconsin. No federal lands are occupied by the project works or located within the respective project boundaries.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Michael Scarzello, Regulatory Director, Eagle Creek Renewable Energy, LLC, 116 N State Street, P.O. Box 167, Neshkoro, WI 54960-0167; phone: 973–998–8400; email—*Michael.Scarzello@eaglecreekre.com.*

i. *FERC Contact:* Laura Washington at (202) 502–6072; or email at *Laura.Washington@ferc.gov.*

j. Midwest Hydro and STS Hydropower filed separate requests to use the Traditional Licensing Process on August 30, 2019. Midwest Hydro and STS Hydropower provided public notice of their requests on August 30, 2019. In a letter dated October 16, 2019, the Director of the Division of Hydropower Licensing approved the requests to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or National Oceanic and Atmospheric Administration (NOAA) Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation the Wisconsin and Illinois

State Historic Preservation Officers, as required by section 106, National Historical 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 Midwest Hydro and STS Hydropower as the Commission's non-federal representatives for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Midwest Hydro and STS Hydropower filed Pre-Application Documents (PAD); including a proposed process plan and schedule for each project with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PADs are 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 number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONline Support@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.

o. The licensees state their unequivocal intent to submit an application for a new license for Project Nos. 2347, 2348, 2373, and 2446. Pursuant to 18 CFR 16.8, 16.9, and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for these projects must be filed by August 31, 2022.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

Dated: October 16, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23004 Filed 10–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–122–000]

Crowned Ridge Interconnection, 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 Crowned Ridge Interconnection, 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 November 5, 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: October 16, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22970 Filed 10–21–19; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests that the Office of Management and Budget (''OMB'') extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements in its Energy Labeling Rule. The existing clearance expires on November 30, 2019.

DATES: Comments must be submitted on or before November 21, 2019.

ADDRESSES: Comments in response to this notice should be submitted to the OMB Desk Officer for the Federal Trade Commission within 30 days of this notice. You may submit comments using any of the following methods:

Electronic: Write ''Energy Labeling Rule, PRA Comment, FTC File No. R611004,'' on your comment and file your comment online at *https://www.regulations.gov,* by following the instructions on the web-based form.

Email: MBX.OMB.OIRA.Submission@OMB.eop.gov.

Mail: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FTC has submitted to the Office of Management and Budget (''OMB'') this request for

extension of the previously approved collection of information discussed below.

Title: Energy Labeling Rule.

OMB Control Number: 3084–0069.

Type of Review: Extension without change of currently approved collection.

Estimated Annual Hours Burden: 478,000 hours (rounded).

The estimated hours burden imposed by Section 324 of the Energy Policy and Conservation Act of 1975 and the Commission's Rule includes burden for testing (354,802 hours); reporting (1,828 hours); recordkeeping (1,019 hours); labeling (108,864 hours); retail and online catalog disclosures (6,800 hours); and online label posting (4,533 hours). The total burden for these activities is 478,000 hours (rounded to the nearest thousand).

Testing: 354,802 hours and $10,065,733 in associated labor costs.

Reporting: 1,828 hours and $29,687 in associated labor costs.

Recordkeeping: 1,019 hours and $16,549 in associated labor costs.

Labeling: 108,864 hours and $1,767,951 in associated labor costs.

Online and catalog disclosures: 6,800 hours and $110,432 in associated labor costs.

Online label posting: 4,533 hours and $73,616 in associated labor costs.

The total estimated burden is 478,000 hours (rounded) and $12,063,968 in associated labor costs. Commission staff estimates that the Energy Labeling Rule imposes negligible capital or other non-labor costs, as affected entities are likely to have already invested in the necessary supplies and equipment to comply with the associated information collection provisions. Manufacturers that elect to submit required reports to the Commission directly (rather than electronically or through trade associations) would incur some nominal costs for paper and postage. Staff estimates that these costs do not exceed $2,500. Manufacturers must also incur the cost of procuring labels used in compliance with the Rule. Staff estimates the cost associated with procuring labels by covered entities is approximately $5,670,000.

Request for Comment: On June 24, 2019, the Commission sought comment on the information collection requirements associated with the Energy Labeling Rule. 84 FR 29515. One comment was received. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for those information collection requirements. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential'' as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

Heather Hippsley,

Deputy General Counsel.

[FR Doc. 2019–22950 Filed 10–21–19; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Infectious Diseases (BSC, OID)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Board of Scientific Counselors, Office of Infectious Diseases (BSC, OID). This meeting is open to the public, limited only by the space available; the meeting room will accommodate up to 100 people. The public is also welcome to listen to the meeting by telephone, limited only by the number of ports available (100); the toll-free dial-in number is 1–877–951–7311, with a pass code of 5421098.

DATES: The meeting will be held on December 4, 2019, 12:30 p.m. to 5:30 p.m., EST, and December 5, 2019, 8:30 a.m. to 3:30 p.m., EST.

ADDRESSES: CDC, Global Communications Center, 1600 Clifton Road NE, Building 19, Auditorium B3, Atlanta, Georgia 30329–4027; also 1–877–951–7311, with a pass code of 5421098.

FOR FURTHER INFORMATION CONTACT: Sarah Wiley, MPH, Designated Federal Officer, CDC, 1600 Clifton Road NE, Mailstop H24–12, Atlanta, Georgia 30329–4027, Telephone (404) 639–4840; *SWiley@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The BSC, OID, provides advice and guidance to the Secretary, Department of Health and Human Services; the Director and the Deputy Director for Infectious Diseases (DDID), CDC; and the Directors of the National Center for Emerging and Zoonotic Infectious Diseases, the National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, and the National Center for Immunization and Respiratory Diseases, CDC, in the following areas: Strategies, goals, and priorities for programs; research within the national centers; and overall strategic direction and focus of DDID and the national centers.

Matters To Be Considered: The agenda will include updates on CDC activities from CDC's Deputy Director for Infectious Diseases along with focused discussions on recent outbreaks and affected populations and on vector-borne diseases. Reports back from four workgroups will also be given: (1) The Board's Acute Flaccid Myelitis (AFM) Task Force; (2) the Board's Food Safety Modernization Act Surveillance Working Group; (3) the Board's Infectious Diseases Laboratory Working Group; and (4) the Vector-borne Diseases Workgroup of the BSC, OID, and the Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–22980 Filed 10–21–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–0607; Docket No. CDC–2019–0089]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled The National Violent Death Reporting System (NVDRS). The NVDRS is designed to continue collection of detailed and timely state-based surveillance data on violent deaths.

DATES: CDC must receive written comments on or before December 23, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0089 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

The National Violent Death Reporting System (NVDRS) (OMB Control No. 0920–0607, Exp. 11/30/2020)—Revision—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Violence is an important public health problem. In the United States, suicide and homicide are the second and third leading causes of death, respectively, in the 1–34 year-old age group. Unfortunately, public health agencies do not know much more about the problem than the numbers and the sex, race, and age of the victims, or information obtainable from the standard death certificate. Death certificates, however, carry no information about key facts necessary for prevention, such as the relationship of the victim and suspect and the circumstances of the deaths. Furthermore, death certificates are typically available 20 months after the completion of a single calendar year. Official publications of national violent death rates, *e.g.* those in Morbidity and Mortality Weekly Report, rarely use data that is less than two years old.

Local and Federal criminal justice agencies such as the Federal Bureau of Investigation (FBI) provide slightly more information about homicides, but they do not routinely collect standardized data about suicides, which are, in fact, much more common than homicides. The FBI's Supplemental Homicide Report (SHR) does collect basic information about the victim-suspect relationship and circumstances related to the homicide. SHRs, do not link violent deaths that are part of one incident such as homicide-suicides. However, it is a voluntary system in which some 10–20 percent of police departments nationwide do not participate. The FBI's National Incident Based Reporting System (NIBRS) provides slightly more information than SHRs, but it covers less of the country. NIBRS also only provides data regarding homicides. The Bureau of Justice Statistics Reports do not use data that is less than two years old.

The National Violent Death Reporting System (NVDRS), implemented by the Centers for Disease Control and Prevention (CDC), is a state-based surveillance system developed to monitor the occurrence of violent deaths (*i.e.,* homicide, suicide, undetermined deaths, and unintentional firearm deaths) in the United States (U.S.) by collecting comprehensive, detailed, useful, and timely data from multiple sources (*e.g.,* death certificates, coroner/medical examiner reports, law enforcement reports) into a useable, anonymous database. In 2018, the NVDRS expanded by adding 10 new states. Now, all 50 states, the District of Columbia, and Puerto Rico participate in the system. CDC requests OMB approval in order to revise its state-based surveillance system for violent deaths that will allow it to collect more detailed and timely information. The

purpose of this revision is three-fold: (1) Implement updates to the web-based system to improve performance, functionality, and accessibility, (2) add new data elements to the system and minimal revisions to the NVDRS coding manual; and (3) modify burden hours to account for the increase in violent deaths that have occurred in the U.S. since 2003.

Consequently, these revisions impact the number of responses per respondent, increasing it from 1,000 (as written in previous OMB requests) to 1,350, resulting in an increase in the total burden hours for retrieval of these records from 29,500 to 37,800. NVDRS has always had the goal to be a nationally representative surveillance system, operating in all 50 states, the District of Columbia, and U.S. territories. In the previous OMB package, we calculated the number of respondents to be 56, which included 50 states, the District of Columbia, and 5 U.S. territory health departments (Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (Northern Marianas, U.S. Virgin Islands). Our request is to continue with the number of respondents at 56, continuing to exclude large local health departments as an independent respondent in NVDRS. CDC requests approval for an estimated 37,800 burden hours, annually. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	No. of respondents	No. responses per respondent	Average burden per response (in hours)	Total burden hours
Public Agencies	Retrieving and refile records (Att. 6)	56	1,350	30/60	37,800
Total					37,800

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–23017 Filed 10–21–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–19AWX]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled WISEWOMAN National Program Evaluation to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on May 30, 2019 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

WISEWOMAN National Program Evaluation—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC has supported the WISEWOMAN (Well-Integrated Screening and Evaluation for Women Across the Nation) program since 1995. The WISEWOMAN program is designed to serve low-income women ages 40–64 who have elevated risk factors for cardiovascular disease (CVD) and have no health insurance, or are underinsured for medical and preventive care services. Through the WISEWOMAN program, women have access to screening services for selected CVD risk factors such as elevated blood cholesterol, hypertension, and abnormal blood glucose levels; referrals to heathy behavior support programs; and referrals to medical care. WISEWOMAN participants must be co-enrolled in the CDC-sponsored National Breast and Cervical Cancer Early Detection Program (NBCCEDP).

The WISEWOMAN program is administered through cooperative agreements with state, territorial, or tribal health departments. Each WISEWOMAN recipient submits to CDC an annual progress report that describes program objectives and activities, and semi-annual data reports (known as minimum data elements, or MDE) on the screening, assessment, and healthy behavior support services offered to women who participate in the program. Participant-level MDE are de-identified prior to transmission to CDC.

In 2018, CDC released the fifth funding opportunity announcement (FOA) for the WISEWOMAN program (DP18–1816), which resulted in five-year cooperative agreements with 24 state, territorial, and tribal health

departments, including six new and 18 continuing awardees from the previous NOFO. Key program elements were retained (*e.g.,* provision of screening services, promotion of healthy lifestyle behaviors, and linkage to healthy behavior support services and community based resources), but a number of changes were incorporated into the program at that time. The current FOA reflects increased emphasis on three strategies to reduce CVD risk and support hypertension control and management, including: (1) Tracking and monitoring clinical measures, (2) implementing team-based care, and (3) linking community resources and clinical services to support care coordination, self-management, and lifestyle change.

CDC seeks to conduct a one-time, multi-component evaluation to assess the effectiveness of the program on individual-, organizational-, and community-level outcomes. The in-depth assessment is designed to complement the routine progress and MDE information already being collected from WISEWOMAN program recipients. The new data collection will focus on obtaining qualitative and quantitative information at the organizational and community levels about process and procedures implemented, and barriers, facilitators, and other contextual factors that affect program implementation and participant outcomes. Data collection activities will include a Program Survey with all WISEWOMAN awardee programs, administered in the second and fourth program years, and a one-time site visit to each recipient spread across the three-year data collection effort. During site visits, semi-structured interviews will be conducted with WISEWOMAN staff members and staff at partner organizations, such as clinical providers and community-based resource providers, who are positioned to provide a variety of perspectives on program implementation.

OMB approval is requested for three years. Participation is voluntary and there are no costs to respondents other than their time. The estimated annual burden is 84 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
WISEWOMAN Recipient Administrators	Program survey	18	1	1
	Site Visit Discussion Guide	8	1	90/60
	Innovation Site Visit Discussion Guide	2	1	45/60
Recipient partners	Site Visit Discussion Guide	16	1	1
	Innovation Site Visit Discussion Guide	2	1	45/60
Healthy behavior support staff	Site Visit Discussion Guide	16	1	1
	Innovation Site Visit Discussion Guide	2	1	45/60
Clinical providers	Site Visit Discussion Guide	16	1	1
	Innovation Site Visit Discussion Guide	2	1	45/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–23018 Filed 10–21–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–4466]

Determination That PROAMATINE (Midodrine Hydrochloride) Tablets, 2.5 Milligrams, 5 Milligrams, and 10 Milligrams, Were 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 PROAMATINE (midodrine hydrochloride) tablets, 2.5 milligrams (mg), 5 mg, and 10 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination allows FDA to approve abbreviated new drug applications (ANDAs) for midodrine hydrochloride tablets, 2.5 mg, 5 mg, and 10 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Kristiana Brugger, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6262, Silver Spring, MD 20993–0002, 301–796–3601.

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)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)(A)), 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.

PROAMATINE (midodrine hydrochloride) tablets, 2.5 mg, 5 mg, and 10 mg, is the subject of NDA 019815, held by Shire Development LLC (Shire), and initially approved on September 6, 1996, under the accelerated approval process (see 21

CFR 314.510). PROAMATINE is indicated for the treatment of orthostatic hypotension. PROAMATINE (midodrine hydrochloride) tablets, 2.5 mg, 5 mg, and 10 mg, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book. Shire no longer markets PROAMATINE in any strength; although there are approved ANDAs referencing NDA 019815, PROAMATINE has been withdrawn from sale.

We have carefully reviewed our files for records concerning the withdrawal of PROAMATINE (midodrine hydrochloride) tablets, 2.5 mg, 5 mg, and 10 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. FDA has determined under § 314.161 that PROAMATINE (midodrine hydrochloride) tablets, 2.5 mg, 5 mg, and 10 mg, were not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, FDA will continue to list PROAMATINE (midodrine hydrochloride) tablets, 2.5 mg, 5 mg, and 10 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. We note that, because PROAMATINE (midodrine hydrochloride) tablets, 2.5 mg, 5 mg, and 10 mg, were approved under the accelerated approval pathway, Shire was required to conduct post-approval studies to verify the clinical benefit of PROAMATINE (midodrine hydrochloride) tablets, 2.5 mg, 5 mg, and 10 mg. The clinical benefit of PROAMATINE (midodrine hydrochloride) tablets, 2.5 mg, 5 mg, and 10 mg, remains subject to verification.

ANDAs that refer to PROAMATINE (midodrine hydrochloride) tablets, 2.5 mg, 5 mg, and 10 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA 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: October 15, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–23014 Filed 10–21–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice To Announce Project Period Extensions With Funding for Health Center Program Award Recipients in Pago Pago, American Samoa; Bishop, California; Baltimore, Maryland; and Worcester, Massachusetts

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Additional grant funds were provided to four Health Center Program award recipients with project periods ending in fiscal year (FY) 2019 to extend their project periods by up to four months to ensure the ongoing delivery of services until a new award could be made.

SUPPLEMENTARY INFORMATION:

Recipients of the Award: Four award recipients, as listed in Table 1, in Pago Pago, American Samoa; Bishop, California; Baltimore, Maryland; and Worcester, Massachusetts.

Amount of Non-Competitive Awards: $3,066,387.

Period of Supplemental Funding: FY 2019.

Assistance Listings (CFDA) Number: 93.224.

Authority: Public Health Service Act, Section 330, as amended (42 U.S.C. 254b, as amended).

Justification: HRSA extended the FY 2019 project periods with prorated supplemental grant funds to four award recipients by up to four months until a new award is made for each service area. Continued funding to the Health Center Program award recipients ensured that individuals in the service areas received uninterrupted access to needed health care services. The approvals enabled HRSA to support consistent health care to beneficiaries, eliminate delays in funding gaps, and demonstrate administrative efficiencies. HRSA awarded approximately $3 million to the four existing Health Center Program award recipients noted in Table 1.

TABLE 1—RECIPIENTS AND AWARD AMOUNTS

Grant No.	Award recipient name	City, state	Extension length (months)	Award amount
H80CS02470	American Samoa Government Department of Health.	Pago Pago, American Samoa	3	$775,917
H80CS26629	Toiyabe Indian Health Project, Inc	Bishop, California	4	382,549
H80CS00067	Parkwest Health Systems, Inc	Baltimore, Maryland	4	1,326,373
H80CS00003	Community Healthlink, Inc	Worcester, Massachusetts	4	581,548

FOR FURTHER INFORMATION CONTACT: Olivia Shockey, Expansion Division Director, Office of Policy and Program Development, Bureau of Primary Health Care, Health Resources and Services Administration, at *oshockey@hrsa.gov* or 301–594–4300.

Dated: October 8, 2019.

Thomas J. Engels,

Acting Administrator.

[FR Doc. 2019–22984 Filed 10–21–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on September 1, 2019, through September 30, 2019. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of HHS) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: October 11, 2019.

Thomas J. Engels,

Acting Administrator.

List of Petitions Filed

1. Dianna Heiner, McKinney, Texas, Court of Federal Claims No: 19–1339V
2. Phillip Shaak, Lancaster, Pennsylvania, Court of Federal Claims No: 19–1341V
3. Jonathan Ledee, Greenvale, New York, Court of Federal Claims No: 19–1342V
4. Renee Wyn, Dallas, Texas, Court of Federal Claims No: 19–1343V
5. Paul Eidsness, Excelsior, Minnesota, Court of Federal Claims No: 19–1344V
6. Jeffrey Warbritton, Tampa, Florida, Court of Federal Claims No: 19–1345V
7. Susan Coats, Greenville, South Carolina, Court of Federal Claims No: 19–1347V
8. Danae Plank, Charlotte, North Carolina, Court of Federal Claims No: 19–1350V
9. Shirley Worth Bodie, Gainesville, Florida, Court of Federal Claims No: 19–1351V
10. Andres DelReal, Waupun, Wisconsin, Court of Federal Claims No: 19–1352V
11. Mary Jones, Picayune, Mississippi, Court of Federal Claims No: 19–1355V
12. Aretta Diane James, Nutter Fort, West Virginia, Court of Federal Claims No: 19–1357V
13. Carmine Maiorano, Trevose, Pennsylvania, Court of Federal Claims No: 19–1358V
14. Tamara A. Walker, Greensboro, North Carolina, Court of Federal Claims No: 19–1359V
15. Joanna Holle, Georgetown, Texas, Court of Federal Claims No: 19–1360V
16. Kevin Kelly, Washington, Michigan, Court of Federal Claims No: 19–1362V
17. Angela Hiatt, Ogden, Utah, Court of Federal Claims No: 19–1363V
18. Saeeda Syed, West Valley City, Utah, Court of Federal Claims No: 19–1364V
19. Susan Kaye Roselli, Corning, California, Court of Federal Claims No: 19–1365V
20. Sherrie Lewis, Durham, North Carolina, Court of Federal Claims No: 19–1369V
21. Kristin Kelley-Stanberry, Broken Arrow, Oklahoma, Court of Federal Claims No: 19–1371V
22. Karleen Witt, St. Paul, Minnesota, Court of Federal Claims No: 19–1372V
23. Ennetta Jeans, Gainesville, Virginia, Court of Federal Claims No: 19–1374V
24. Kim Boyer, Valencia, Pennsylvania, Court of Federal Claims No: 19–1377V
25. Lisa Spratt, Garden City, New York, Court of Federal Claims No: 19–1379V
26. Jennifer Joyce, Washington, District of Columbia, Court of Federal Claims No: 19–1380V
27. Megan Lynagh, New York, New York, Court of Federal Claims No: 19–1381V
28. Ira Shankar, Sugar Land, Texas, Court of Federal Claims No: 19–1382V
29. Dana Nelson, Sioux Falls, South Dakota, Court of Federal Claims No: 19–1383V
30. David Smith, Belmont, North Carolina, Court of Federal Claims No: 19–1384V
31. Dilip Thekkoodan, Cambridge, Massachusetts, Court of Federal Claims No: 19–1385V
32. Josephine Crowley, Staten Island, New York, Court of Federal Claims No: 19–1386V
33. Lisa Clark, Safety Harbor, Florida, Court of Federal Claims No: 19–1387V
34. Yenia Castillo, Boston, Massachusetts, Court of Federal Claims No: 19–1388V
35. Richard P. McKenna, Carmel, Indiana, Court of Federal Claims No: 19–1389V
36. Martha Sue Riley, Booneville, Kentucky, Court of Federal Claims No: 19–1392V
37. Linda Joy Davis, Fort Smith, Arkansas, Court of Federal Claims No: 19–1393V
38. Matthew Karp, Norwalk, Connecticut, Court of Federal Claims No: 19–1395V
39. Michele Mulloy, Duck, North Carolina,

Court of Federal Claims No: 19–1396V
40. Catalina Sastre, New York, New York, Court of Federal Claims No: 19–1397V
41. Joanne Seivwright, Bolingbrook, Illinois, Court of Federal Claims No: 19–1398V
42. Claudia Collingnon-Harvath, Stockton, California, Court of Federal Claims No: 19–1399V
43. Mariann Bird, Orange Park, Florida, Court of Federal Claims No: 19–1400V
44. Renee Goree, Milwaukee, Wisconsin, Court of Federal Claims No: 19–1401V
45. Michelle Leatherman, Weatherford, Texas, Court of Federal Claims No: 19–1402V
46. Kevin Sarni on behalf of Audrey Hinojosa (Hernandez) Sarni, Oro Valley, Arizona, Court of Federal Claims No: 19–1403V
47. Ronald Davison on behalf of Estate of Gary Davison, North Chicago, Illinois, Court of Federal Claims No: 19–1404V
48. Joseph Filipovich, Cottage Grove, Minnesota, Court of Federal Claims No: 19–1406V
49. Roxanna Commanche, Farmington, New Mexico, Court of Federal Claims No: 19–1409V
50. Jennifer Lee Smith, Salt Lake City, Utah, Court of Federal Claims No: 19–1410V
51. Alaina Guymon, Seattle, Washington, Court of Federal Claims No: 19–1411V
52. Kathie Smith, Chevy Chase, Maryland, Court of Federal Claims No: 19–1412V
53. Tandy Thomas, McAlester, Oklahoma, Court of Federal Claims No: 19–1413V
54. Ellen Moss, Hudson, New York, Court of Federal Claims No: 19–1415V
55. Jeanette Peregoy, Dunkirk, Maryland, Court of Federal Claims No: 19–1416V
56. Jesus Garcia, Spring Hill, Florida, Court of Federal Claims No: 19–1418V
57. Eden Williams, Dresher, Pennsylvania, Court of Federal Claims No: 19–1420V
58. Darla Johnson, Greensboro, North Carolina, Court of Federal Claims No: 19–1422V
59. Kelly Bradley, Charlotte, North Carolina, Court of Federal Claims No: 19–1423V
60. Julia Simpson, Germantown, Tennessee, Court of Federal Claims No: 19–1424V
61. Antoinette Norris, Stuart, Florida, Court of Federal Claims No: 19–1425V
62. Sean Holtzclaw, Fort Wayne, Indiana, Court of Federal Claims No: 19–1426V
63. Kimberly Melhado, Huntington, New York, Court of Federal Claims No: 19–1427V
64. Lisa McGuire, Fountainville, Pennsylvania, Court of Federal Claims No: 19–1428V
65. Craig Pederson, San Antonio, Texas, Court of Federal Claims No: 19–1429V
66. Charles Kootsares, Easton, Pennsylvania, Court of Federal Claims No: 19–1430V
67. Katherine D. Wham, Seattle, Washington, Court of Federal Claims No: 19–1431V
68. Amy Norton, Somerville, Massachusetts, Court of Federal Claims No: 19–1432V
69. Alexi Stoev, Lakewood Ranch, Florida, Court of Federal Claims No: 19–1433V
70. Brianna Zabek, Woodstock, Georgia, Court of Federal Claims No: 19–1434V
71. Ronald Adkins, Senatobia, Mississippi, Court of Federal Claims No: 19–1435V
72. Matthew Driggers, Tallahassee, Florida, Court of Federal Claims No: 19–1436V
73. Kenneth Lauria, Schaumburg, Illinois, Court of Federal Claims No: 19–1437V
74. Debra Blom, South Lyon, Michigan, Court of Federal Claims No: 19–1438V
75. Stacy Helton, Mt. Sterling, Kentucky, Court of Federal Claims No: 19–1440V
76. Benjamin Mynhier, Mt. Sterling, Kentucky, Court of Federal Claims No: 19–1441V
77. Michael G. McCarty, Mt. Sterling, Kentucky, Court of Federal Claims No: 19–1442V
78. John Thomas, Mt. Sterling, Kentucky, Court of Federal Claims No: 19–1443V
79. Richard Lykins, Mt. Sterling, Kentucky, Court of Federal Claims No: 19–1444V
80. Jeremy Adams, Mt. Sterling, Kentucky, Court of Federal Claims No: 19–1445V
81. Elaine Dimeo, Belmont, North Carolina, Court of Federal Claims No: 19–1447V
82. Kathleen Carlow, Albuquerque, New Mexico, Court of Federal Claims No: 19–1449V
83. Katherine Krietor, Phoenix, Arizona, Court of Federal Claims No: 19–1450V
84. Sabrina Compton and Wayne Compton on behalf of L.C., Crystal River, Florida, Court of Federal Claims No: 19–1455V
85. Kristinia Brooks, Greenville, South Carolina, Court of Federal Claims No: 19–1456V
86. Karen Conley, Santa Fe, New Mexico, Court of Federal Claims No: 19–1458V
87. Ernest Robirts on behalf of Estate of Harriet Robirts, Deceased, Jacksonville, Florida, Court of Federal Claims No: 19–1460V
88. Roy Levitt, Boston, Massachusetts, Court of Federal Claims No: 19–1461V
89. Joann Manzella, Boston, Massachusetts, Court of Federal Claims No: 19–1462V
90. Elizabeth Loughren, Cooperstown, New York, Court of Federal Claims No: 19–1463V
91. Joseph Crocker, Gainesville, Georgia, Court of Federal Claims No: 19–1465V
92. Mary Ann Jones, New Bern, North Carolina, Court of Federal Claims No: 19–1466V
93. Billy Beene, Russiaville, Indiana, Court of Federal Claims No: 19–1467V
94. Denise Wunderler and Michael Savino on behalf of V.C.S., Deceased, Louisville, Kentucky, Court of Federal Claims No: 19–1468V
95. William Forney, Severn, Maryland, Court of Federal Claims No: 19–1469V
96. Jeffrey Pritchett, Fargo, North Dakota, Court of Federal Claims No: 19–1470V
97. Tammy Kramer, Washington, District of Columbia, Court of Federal Claims No: 19–1471V
98. Dionne Spell, Wilson, North Carolina, Court of Federal Claims No: 19–1472V
99. Brandy Phipps, Warrensville, North Carolina, Court of Federal Claims No: 19–1473V
100. Michael Berge, Marshall, Virginia, Court of Federal Claims No: 19–1474V
101. Daniel Van Doren, Bay Pines, Florida, Court of Federal Claims No: 19–1475V
102. Deborah N. Coleman, Lynchburg, Virginia, Court of Federal Claims No: 19–1476V
103. Julie Pierantoni, Dripping Springs, Texas, Court of Federal Claims No: 19–1477V
104. Tony Riddell, Louisville, Kentucky, Court of Federal Claims No: 19–1479V
105. Shawna O'Brien, Sonora, California, Court of Federal Claims No: 19–1480V
106. Nikki Aune, Hibbing, Minnesota, Court of Federal Claims No: 19–1481V
107. George Stattner, Chicago, Illinois, Court of Federal Claims No: 19–1482V
108. Christa Beate Hamilton, Renton, Washington, Court of Federal Claims No: 19–1483V
109. Carl Haught, Hawley, Pennsylvania, Court of Federal Claims No: 19–1484V
110. Christine Rottino, Wayne, New Jersey, Court of Federal Claims No: 19–1485V
111. Yvonne Sewell, Clarence, New York, Court of Federal Claims No: 19–1486V
112. Donna Baxter, St. Petersburg, Florida, Court of Federal Claims No: 19–1488V
113. Marcelina Academia, San Diego, California, Court of Federal Claims No: 19–1490V
114. Brian Oberschmid and Heather Oberschmid on behalf of J.O., Woodbury, Minnesota, Court of Federal Claims No: 19–1491V
115. Yalawa Johnson, Boston, Massachusetts, Court of Federal Claims No: 19–1493V
116. Brad Yorgy and Rachel Yorgy on behalf of H.Y., Red Lion, Pennsylvania, Court of Federal Claims No: 19–1494V
117. Michelle McNabb, Columbus, Georgia, Court of Federal Claims No: 19–1495V
118. Brittany Bartlett, Marietta, Georgia, Court of Federal Claims No: 19–1500V
119. Anna Krupp, New York, New York, Court of Federal Claims No: 19–1501V
120. Tiffany Hale, Marion, Illinois, Court of Federal Claims No: 19–1502V
121. Doris Lamberton, Sebring, Florida, Court of Federal Claims No: 19–1504V
122. Maija Harkonen, Washington, District of Columbia, Court of Federal Claims No: 19–1505V
123. Jessica Bechhofer, Boston, Massachusetts, Court of Federal Claims No: 19–1506V
124. Elizabeth Hurlbutt, Asheville, North Carolina, Court of Federal Claims No: 19–1507V
125. Brian Davis, Elizabethtown, Pennsylvania, Court of Federal Claims No: 19–1508V
126. Barbara Gill, Murrieta, California, Court of Federal Claims No: 19–1509V
127. Leo Damon, Jr., Baltimore, Maryland, Court of Federal Claims No: 19–1510V
128. William Elias, Pittsfield, Massachusetts, Court of Federal Claims No: 19–1512V
129. Barry Taylor, Dallas, Texas, Court of Federal Claims No: 19–1513V

[FR Doc. 2019–22989 Filed 10–21–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of a Maternal and Child Health Bureau (MCHB)-Initiated Supplemental Award to the National Academy for State Health Policy (NASHP) for the Supporting State Maternal and Child Health Policy Innovation Program (MCH PIP)

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of a MCHB Initiated Supplemental award to the NASHP for the Supporting State MCH PIP—Grant Number U1XMC31658.

SUMMARY: HRSA announces the award of a supplement of $74,841 for the Supporting State MCH PIP for the period of May 1, 2019–April 30, 2020. The supplement will allow the current recipient to investigate and evaluate opportunities for strengthening collaboration and coordination among federal, state, community, and other stakeholders to effectively leverage Medicaid for evidence-based home visiting and related maternal and child health services.

FOR FURTHER INFORMATION CONTACT: Kelsi Feltz, Office of Policy and Planning, MCHB, HRSA, 5600 Fishers Lane, Room 18W10C, Rockville, MD 20852, Phone: (301) 945–3088, Email: *kfeltz@hrsa.gov*.

SUPPLEMENTARY INFORMATION:

Intended Recipient of Award: National Academy for State Health Policy, Washington, DC.

Amount of Non-Competitive Award: $74,841.

Period of Supplemental Funding: 05/01/2019–04/30/2020.

CFDA Number: 93.110.

Authority: Social Security Act, Title V, § 501(a)(2) (42 U.S.C. 701(a)(2)).

Justification: Many Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program state recipients seek to effectively leverage Medicaid for evidence-based home visiting and related maternal and child health services but face significant administrative and policy challenges. MCHB seeks to provide supplemental funding to the MCH PIP to investigate and evaluate opportunities for strengthening collaboration and coordination among federal, state, community, and other stakeholders to address these challenges. The current MCH PIP recipient, NASHP, is best situated to support this function. Through its work over the past 30 years, NASHP has developed strong long-term relationships with Medicaid Directors and other key Medicaid officials and staff (Deputy Directors, Managed Care Bureau Chiefs, Medical Directors, and child health staff), who represent the key target populations necessary for successful execution of this work. NASHP works with state health officials, including Medicaid agency leaders and staff (*e.g.,* Early and Periodic Screening, Diagnostic, and Treatment coordinators), to support policy strategies that improve access to care for the MCH population, which represents the goal of these supplemental funds. Additionally, through the development of technical assistance resources, NASHP has demonstrated significant subject matter expertise on public insurance financing mechanisms to support maternal and child health services, including home visiting.

Consistent with HRSA–18–086, this funding will benefit the state MCH policymakers, MIECHV Program and Title V Maternal and Child Health Block Grant recipients, MCH populations, and the general public, and include funding for the recipient to:

- Engage multiple states and their key health policymakers to implement policy initiatives that will improve access to home visiting services for their MCH populations;
- Develop, implement, and evaluate Medicaid financing policy initiatives in collaboration with participating states;
- Convene key state-level and federal health policymakers to support the effective implementation of policy initiatives; and
- Develop a plan to disseminate reports, products, and/or project outputs so project information is provided to state-level policymakers and made available to other stakeholders, as appropriate.

Dated: October 11, 2019.

Thomas J. Engels,

Acting Administrator.

[FR Doc. 2019–22993 Filed 10–21–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0937–0025]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before December 23, 2019.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0937–0025–60D, and project title for reference, to Sherrette Funn, the Reports Clearance Officer, *Sherrette.funn@hhs.gov,* or call 202–795–7714.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Request Title: The Commissioned Corps of the U.S. Public Health Service application.

Abstract: The principal purpose for collecting the information is to permit HHS to determine eligibility for appointment of applicants into the Commissioned Corps of the U.S. Public Health Service (Corps). The Corps is one of the seven Uniformed Services of the United States (37 U.S.C. 101(3)), and appointments in the Corps are made pursuant to 42 U.S.C. 204 *et seq.* and 42 CFR 21.58. The application consists of forms PHS–50, PHS–1813, and the Commissioned Corps Personal Statement.

Likely Respondents: Candidates/Applicants to the Commissioned Corps of the U.S. Public Health Service.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Type of of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Prequalification Questionnaire.	Interested Health Professionals	6,000	1	15/60	1500
Form PHS–50	Health Professionals	1,000	1	1.0	1000
Form PHS–1813	References (college professors/teachers)	4,000	1	15/60	1000
Addendum: Commissioned Corps Personal Statement.	Health Professionals	1,000		45/60	750
Total					4,250

Terry Clark,

Office of the Secretary, Asst Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2019–22951 Filed 10–21–19; 8:45 am]

BILLING CODE 4150–49–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; Advanced Laboratories for Accelerating the Reach and Impact Research Centers (P50).

Date: November 14, 2019

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications

Place: The Dupont Hotel, 1500 New Hampshire Avenue NW, Washington, DC 20036.

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; Silvio O. Conte Centers for Basic Neuroscience or Translational Mental Health Research (P50).

Date: November 15, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue NW, Washington, DC 20036.

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 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: October 16, 2019.

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22929 Filed 10–21–19; 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 Neuroimmunology: Frontotemporal Lobar Degeneration and Brain Tumors.

Date: November 4, 2019.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Samuel C. Edwards, Ph.D., Chief, Brain Disorders and Clinical Neuroscience, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immunology Bioinformatics.

Date: November 12, 2019.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David B. Winter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1152, *dwinter@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Discovery & Validation of Novel Safe and Effective Pain Treatment.

Date: November 13, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sepandarmaz Aschrafi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040D, Bethesda, MD 20892, (301) 451- 4251, *Armaz.aschrafi@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Discovery & Validation of Novel Safe and Effective Pain Treatment.

Date: November 13, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: M. Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Topics in Computational Biosciences.

Date: November 13–14, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph D. Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892 (301) 435–2344, *moscajos@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Musculoskeletal, Oral, Skin, Rheumatology and Rehabilitation Sciences R15 Review.

Date: November 13, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Flow Cytometry.

Date: November 13, 2019.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Charles Selden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–451–3388, *seldens@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Virology.

Date: November 13, 2019.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting)

Contact Person: Marci Scidmore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–435–1149, *marci.scidmore@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Substance Abuse and Mental Disorders.

Date: November 13, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health,, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Samuel C. Edwards, Ph.D., Chief, Brain Disorders and Clinical Neuroscience IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Gastroenterology.

Date: November 13, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Meenakshisundar Ananthanarayanan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178 Bethesda, MD 20892, 301–827–6281, *meena.ananthanarayanan@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel;: Neural Regulation of Cancer.

Date: November 13, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health,, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Angela Y. Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Alcohol and Motivated Behavior.

Date: November 13, 2019.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health,, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5164, MSC 7844, Bethesda, MD 20892, 301–435–1119, *selmanom@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: October 16, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22930 Filed 10–21–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0020]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Petition for Amerasian, Widow(er), or Special Immigrant

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 23, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0020 in the body of the letter, the agency name and Docket ID USCIS–2007–0024. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0024;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW,

Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0024 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for Amerasian, Widow(er), or Special Immigrant.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–360; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households.* The Form I–360 may be used by an Amerasian; a widow or widower; a battered or abused spouse or child of a U.S. citizen or lawful permanent resident; a battered or abused parent of a U.S. citizen son or daughter; or a special immigrant (religious worker, Panama Canal company employee, Canal Zone government employee, U.S. government employee in the Canal Zone; physician, international organization employee or family member, juvenile court dependent; armed forces member; Afghanistan or Iraq national who supported the U.S. Armed Forces as a translator; Iraq national who worked for the or on behalf of the U.S. Government in Iraq; or Afghan national who worked for or on behalf of the U.S. Government or the International Security Assistance Force [ISAF] in Afghanistan) who intend to establish their eligibility to immigrate to the United States. The data collected on this form is reviewed by U.S. Citizenship and Immigration Services (USCIS) to determine if the petitioner may be qualified to obtain the benefit. The data collected on this form will also be used to issue an employment authorization document upon approval of the petition for battered or abused spouses, children, and parents, if requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Petition for Amerasian, Widower, or Special Immigration (Form I–360); *Iraqi & Afghan Petitioners* is 2,874 and the estimated hour burden per response is 3.1 hours; the estimated total number of respondents for the information collection Petition for Amerasian, Widower, or Special Immigration (Form I–360); *Religious Workers* is 2,393 and the estimated hour burden per response is 2.35 hours; the estimated total number of respondents for the information collection Petition for Amerasian, Widower, or Special Immigration (Form I–360); *All Others* is 14,362 and the estimated hour burden per response is 2.1 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 44,693 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $2,404,430.

Dated: October 16, 2019.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–22983 Filed 10–21–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R1–ES–2019–0091; FXES11140100000–190–FF01E00000]

Draft Environmental Impact Statement and Draft Habitat Conservation Plan; Receipt of Applications for Incidental Take Permits; Klamath, Deschutes, Jefferson, Crook, Wasco, and Sherman Counties, Oregon

Correction

In notice document 2019–21631, appearing on pages 53164 through 53167, in the issue of Friday, October 4, 2019 make the following corrections:

1. On page 53165, in the first column, in the **DATES** section, on the thirteenth line, ''6 a.m. to 8 p.m.'' should read ''6 to 8 p.m.''

2. On the same page, in the same column, in the same section, on the fifteenth line, ''6 a.m. to 8 p.m.'' should read ''6 to 8 p.m.''

[FR Doc. C1–2019–21631 Filed 10–21–19; 8:45 am]

BILLING CODE 1300–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2019–N116; FXIA16710900000–190–FF09A30000; OMB Control Number 1018–0093]

Agency Information Collection Activities; Federal Fish and Wildlife Permit Applications and Reports—Management Authority

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service, we), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before December 23, 2019.

ADDRESSES: Send your comments on the information collection request by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0093 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503.

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 information collection request (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 Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service 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: All of the laws, treaties, and regulations administered by the Service that authorize activities requiring permits authorize such permits in 50 CFR 13 (General Permit Requirements). The requirements in 50 CFR part 13 are in addition to any other permit regulations that may apply to a specific circumstance and are outlined in other sections of our regulations.

The Wild Bird Conservation Act (WBCA) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) use a system of permits and certificates to help ensure that international trade is legal and does not threaten the survival of wildlife or plant species in the wild. Permits under the U.S. Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA) ensure that activities are consistent with the intent and purposes of the ESA and MMPA. Permitted activities under the Bald and Golden Eagle Act (BGEPA) must be compatible with the preservation of the eagle, and Lacey Act (injurious wildlife) permits are issued when the Service finds the activity will not be harmful to either the health or welfare of humans. Prior to the import or export of species listed under the MMPA, BGEPA, Lacey Act, WBCA, ESA, and/or CITES, the Management Authority and Scientific Authority must make appropriate determinations and issue the appropriate documents. Section 8A of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) designates the Secretary of the Interior as the U.S. Management Authority and U.S. Scientific Authority for CITES. The Secretary delegated these authorities to the Service.

Before a country can issue an export permit for CITES Appendix I or II specimens, the CITES Scientific Authority of the exporting country must determine that the export will not be detrimental to the species, and the Management Authority must be satisfied that the specimens were acquired legally. For the export of Appendix III specimens, the Management Authority must be satisfied that the specimens were acquired legally (CITES does not require findings from the Scientific Authority). Prior to the importation of Appendix I specimens, both the Scientific Authority and the Management Authority of the importing country must make required findings. The Scientific Authority must also monitor trade of all species to ensure that the level of trade is sustainable.

Article VIII(3) of the CITES treaty states that participating parties should make efforts to ensure that CITES specimens are traded with a minimum of delay. Section XII of Resolution Conf. 12.3 (Rev. CoP13) recommends use of simplified procedures for issuing CITES documents to expedite trade that will have no impact, or a negligible impact, on conservation of the species involved.

All Service permit applications are in the 3–200 series of forms, each tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all permits, such as the name of the applicant and the applicant's address, telephone and fax numbers, tax identification number, and email address. Standardization of general information common to the application forms makes the filing of applications easier for the public, as well as expediting our review of applications.

The information that we collect on applications and reports is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity. Respondents submit application forms periodically as needed; submission of reports is generally on an annual basis. We examined applications in this collection, focusing on questions frequently misinterpreted or not addressed by applicants. We have made clarifications to many of our applications to make it easier for the applicant to know what information we need and to accommodate future electronic permitting. We have subdivided our application Form 3–200–37 (tentatively into seven forms: Forms 3–200–37a through 3–200–37g) because it has become lengthy and cumbersome for the applicant to read through in order to find the appropriate activity for which they need a permit. Use of these forms will:

- Reduce burden on applicants.
- Improve customer service.
- Allow us to process applications and complete reviews quickly.

Proposed Revisions to This Information Collection

With this submission, we are proposing the following revisions to the existing information collection:

Transfer of Forms to OMB Control No. 1018–0092

We will request OMB approval to transfer the below-listed forms currently

approved by OMB under this information collection (OMB Control No. 1018–0093) into OMB Control No. 1018–0092, ''Federal Fish and Wildlife Applications and Reports—Law Enforcement; 50 CFR 13 and 14'':

• *FWS Form 3–200–44,* ''Permit Application Form: Registration of an Agent/Tannery under the Marine Mammal Protection Act (MMPA),'' and

• *FWS Form 3–200–44a,* ''Registered Agent/Tannery Bi-Annual Inventory Report.''

The Service's Office of Law Enforcement in the Alaska Region uses the information collected on FWS Form 3–200–44 to register qualified agents and tanneries for polar bear (*Ursus maritimus*), walrus (*Odobenus rosmarus*), and northern sea otter (*Enhydra lutris kenyoni*) under the MMPA. This registration facilitates the transfer of marine mammal specimens taken by Alaska Natives for the purposes of subsistence or creation of authentic Native handicraft articles and clothing. As such, it is more appropriate that these forms be transferred to, and approved by OMB under, OMB Control No. 1018–0092, ''Federal Fish and Wildlife Applications and Reports—Law Enforcement; 50 CFR 13 and 14.''

Biannually (twice a year) on or before the 10th day of January and July, we require that the permittee submit to us FWS Form 3–200–44a, containing detailed activities of each registered agent or registered tannery for each transaction related to Polar bear, walrus, and northern sea otter. If no transactions occurred, the permittee must submit a negative report. The associated estimated annual burden of Forms 3–200–44/44a is 45 responses and 42 burden hours. If OMB approves this revision request, we will revise OMB Control No. 1018–0092 to add those two forms to avoid duplication of burden.

International Reporting Requirements

Additionally, with this submission, we will submit to OMB for approval the information collection requirements associated with international reporting requirements specified in 50 CFR 13.21(5), 50 CFR 17.22(b)(v), 50 CFR 17.31(b)(v), 50 CFR 18.30(c)(2), 50 CFR 23.6, and 50 CFR 23.33(b). These reporting requirements are associated with the findings we must make under the various laws, treaties, and regulations administered by the Service. This may include consultation on sustainable use, population data, management practices, and verification of information received from other sources. The Service does not provide a form for this collection; rather, we request specific information based on the most current data we hold, in order to enable us to update or clarify that data. We estimate the annual burden associated with the international reporting requirements to be 24 responses and 192 burden hours. There is no nonhour burden cost associated with the international reporting requirements.

ePermits Initiative

The Service's new ''ePermits'' initiative is an automated permit application system that will allow the agency to move towards a streamlined permitting process to reduce public burden. Public burden reduction is a priority for the Service; the Assistant Secretary for Fish, Wildlife, and Parks; and senior leadership at the Department of the Interior. The intent of the ePermits initiative is to fully automate the permitting process to improve the customer experience and to reduce time burden on respondents. This new system will enhance the user experience by allowing users to enter data from any device that has internet access, including PCs, tablets, and smartphones. It will also link the permit applicant to the Pay.gov system for payment of the associated permit application fee.

We anticipate including the following Service forms in the ePermits initiative: 3–200–19 through 3–200–37, 3–200–39 through 3–200–43, 3–200–46 through 3–200–53, 3–200–58, 3–200–61, 3–200–64 through 3–200–66, 3–200–69, 3–200–70, 3–200–73 through 3–200–76, 3–200–80, and 3–200–85 through 3–200–88.

Title of Collection: Federal Fish and Wildlife Permit Applications and Reports—Management Authority; 50 CFR 12, 13, 14, 15, 16, 17, 18, 21, 23.

OMB Control Number: 1018–0093.

Form Numbers: FWS Forms 3–200–19 through 3–200–37, 3–200–39 through 3–200–43, 3–200–46 through 3–200–53, 3–200–58, 3–200–61, 3–200–64 through 3–200–66, 3–200–69, 3–200–70, 3–200–73 through 3–200–76, 3–200–80, and 3–200–85 through 3–200–88.

Type of Review: Revision of a currently approved collection.

Description of Respondents/Affected Public: Individuals; biomedical companies; circuses; zoological parks; botanical gardens; nurseries; museums; universities; antique dealers; exotic pet industry; hunters; taxidermists; commercial importers/exporters of wildlife and plants; freight forwarders/brokers; and State, tribal, local, and Federal governments.

Estimated Number of Annual Respondents: 6,315.

Estimated Number of Annual Responses: 8,224.

Estimated Completion Time per Response: Varies from 15 minutes to 43.5 hours, depending on activity.

Estimated Annual Burden Hours: 6,833.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion or annually, depending on activity.

Total Estimated Annual Nonhour Burden Cost: $552,336 for costs associated with application processing fees, which range from $0 to $250. There is no fee for reports. Federal, tribal, State, and local government agencies and those acting on their behalf are exempt from processing fees.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: October 17, 2019.

Madonna L. Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2019–22964 Filed 10–21–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2019–N145; FXES11140400000–178–FF04EF2000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink and Blue-Tailed Mole Skink; Polk County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Sunbeam Properties, Inc. (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink and blue-tailed mole skink incidental to construction in Polk County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded under the National Environmental Policy Act. To make this determination, we used our environmental action statement and

low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before November 21, 2019.

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents by any of the following methods:

- *Telephone:* Alfredo Begazo, 772–469–4234.
- *Email: alfredo_begazo@fws.gov.*
- *U.S. mail:* Alfredo Begazo, South Florida Ecological Services Office, Attn. Sunbeam Properties, Inc. Permit TE48273D–0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.
- *In-person:* The documents may be reviewed by appointment during regular business hours at the above address. Please call to make an appointment.
- *Fax:* Alfredo Begazo, 772–562–4288, Attn: Permit number TE48273D–0.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing via the above email address, U.S. mail address, or fax number, or you may hand-deliver comments to the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Alfredo Begazo, by U.S. mail (see **ADDRESSES**) or via phone at 772–469–4234. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service, announce receipt of an application from Sunbeam Properties, Inc. (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) and blue-tailed mole skink (*Eumeces egregious*) (skinks) incidental to the construction of a residential development project in Polk County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Project

Sunbeam Properties, Inc. requests a 5-year ITP to take skinks incidental to the conversion of approximately 6.78 acres of occupied skink foraging and sheltering habitat for the construction of a residential development located on a 150-acre parcel in Section 13, Township 25 South, Range 26 East, Polk County, Florida. The applicant proposes to mitigate for take of the skinks by purchasing credits equivalent to 13.56 acres of skink-occupied habitat from a Service-approved mitigation bank in Polk County. The Service would require the applicant to purchase the credits prior to engaging in land clearing activities on the parcel.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, construction of the residential development, and the proposed mitigation measure, would individually and cumulatively have a minor or negligible effect on the skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonable foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE48273D–0 to Sunbeam Properties, Inc. for incidental take of skinks.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Roxanna Hinzman,

Field Supervisor, South Florida Ecological Services Office, Southeast Region.

[FR Doc. 2019–23016 Filed 10–21–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2019–N137; FXES11140200000–201–FF02ENEH00]

Draft Environmental Assessment for an Application for an Incidental Take Permit; Diamond Spring Wind Project Habitat Conservation Plan for the Endangered American Burying Beetle in Pontotoc and Johnston Counties, Oklahoma

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from Diamond Spring Wind, LLC for an ITP pursuant to the Endangered Species Act. The application includes habitat conservation plan (HCP) for the American burying beetle (ABB) in Pontotoc and Johnston Counties, Oklahoma. The HCP and associated incidental take permit (ITP) would authorize incidental take resulting from activities covered by the HCP (*e.g.,* construction, infrastructure, maintenance and habitat restoration). We also announce the availability of a draft environmental assessment (dEA) that has been prepared to evaluate the ITP application in accordance with the requirements of the National Environmental Policy Act. We are making the permit application package, including the HCP and dEA, available for public review and comment.

DATES: *Submission of Comments:* We will accept comments received or postmarked on or before November 21, 2019.

ADDRESSES: *Obtaining documents:* The documents this notice announces, as well as any comments and other materials that we receive, are available for public inspection by any of the following means.

• *Internet:* You may obtain electronic copies of the dEA and HCP on the Service's website at *http://www.fws.gov/southwest/es/oklahoma/.*

• *In-Person:* Copies of the DEA and HCP are available for public inspection and review, by appointment (telephone 918–581–7458) and written request only, between the hours of 8 a.m. to 4:30 p.m. at the following locations:

➢ U.S. Fish and Wildlife Service, 500 Gold Avenue SW, Room 6034, Albuquerque, NM 87103

➢ U.S. Fish and Wildlife Service, 9014 East 21st Street, Tulsa, OK 74129.

Submitting comments: You may submit written comments by one of the following methods:

• *Email: okes_nepa@fws.gov;* or

• *Facsimile:* 918–581–7467, Attn: OKES Diamond Spring Wind HCP EA.

• *U.S. mail:* Field Supervisor, Oklahoma Ecological Services Field Office (at the Tulsa street address above).

Please specify that your information request or comments concern the Diamond Spring Wind EA/HCP.

FOR FURTHER INFORMATION CONTACT: Jonna Polk, by U.S. mail at the U.S. Fish and Wildlife Service, Oklahoma Ecological Services Field Office (at the Tulsa street address above), or by phone at 918–581–7458. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Diamond Spring Wind, LLC for an incidental take permit (ITP) pursuant to section 10(c) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1539(c)). The application includes a habitat conservation plan (HCP) for the American burying beetle (ABB) in Pontotoc and Johnston Counties, Oklahoma. Diamond Spring Wind, LLC is developing the Diamond Spring Wind project in Pontotoc and Johnston Counties, Oklahoma. The ITP would authorize incidental take of ABB resulting from activities associated with construction of approximately 137 wind turbines (*i.e.,* 112 primary and 25 alternate turbine locations); associated infrastructure facilities, including roads, underground collector lines, meteorological towers, a substation, a 345–kV transmission line, crane paths, and/or maintenance; and habitat restoration activities. We also announce the availability of a draft environmental assessment (dEA) that has been prepared to evaluate the permit application in accordance with the requirements of the National Environmental Policy Act, as amended (NEPA; 42 U.S.C. 4321 *et seq.*), and its implementing regulations (40 CFR 1501.7, 1506.6, and 1508.22). We are making the ITP application package, including the HCP and dEA, available for public review and comment.

Background

Section 9 of the ESA prohibits ''take'' of fish and wildlife species listed as endangered or threatened (16 U.S.C. 1531–1544). Under section 3 of 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'' is further defined by regulation as an act which actually kills or injures wildlife. Such acts may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

Under section 10(a)(1)(B) of the ESA, the Secretary of the Interior may authorize the taking of federally listed species if such taking occurs incidental to otherwise legal activities and where a conservation plan has been developed under ESA section 10(a)(2)(A) that describes (1) the impact that will likely result from such taking; (2) the steps an applicant will take to minimize and mitigate that take to the maximum extent practicable, and the funding that will be available to implement such steps; (3) the alternative actions to such taking that an applicant considered and the reasons why such alternatives are not being utilized; and (4) other measures that the Service may require as being necessary or appropriate for the purposes of the plan. Issuance criteria under section 10(a)(2)(B) for an incidental take permit requires the Service to find that (1) the taking will be incidental to otherwise lawful activities; (2) an applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (3) an applicant has ensured 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 measures, if any, we require as necessary or appropriate for the purposes of the plan will be met. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

Proposed Action

The proposed action is the issuance of a 5-year ITP to authorize incidental take of ABB resulting from activities covered by the HCP and associated with construction of the proposed Diamond Spring Wind project in Johnston and Pontotoc Counties, Oklahoma. The plan area is 930.4 acres (ac), of which 568.74 ac are considered favorable ABB habitat and 361.67 ac are considered unfavorable ABB habitat.

The proposed HCP, which must meet the requirements in section 10(a)(2)(A) of the ESA, was developed in coordination with the Service and would be implemented by Diamond Spring Wind, LLC. The proposed action will allow for Diamond Spring Wind, LLC to comply with the ESA, and their renewable wind-generated energy would be made available to public utilities. Covered activities in the HCP include construction of approximately 137 wind turbines (including 112 primary and 25 alternate turbine locations); associated infrastructure facilities, including roads, underground collector lines, meteorological towers, a substation, a 345-kV transmission line, an operation and maintenance building, and construction areas; and habitat restoration activities. The applicant proposes to minimize and mitigate impacts to ABB through conservation measures identified in the HCP, as well as through the purchase of 177.92 credits (ac) at a Service-approved conservation bank with a service territory that includes the plan area, or through the undertaking of other measures approved by the Service consistent with existing mitigation policies.

Alternatives

We considered one alternative to the proposed action as part of the environmental assessment process: The no-action alternative. The no-action alternative represents estimated future conditions without the application for, or issuance of, an ITP. No-action represents the status quo.

Under the no-action alternative, Diamond Spring Wind, LLC would comply with the ESA by avoiding impacts (take) to the ABB where practicable. If take could not be avoided and there is Federal involvement in the project (for example, a Federal permit such as a Corps of Engineers section 404 Clean Water Act permit, authorization, or funding exists), Diamond Spring Wind, LLC could receive take coverage through a biological opinion issued by the Service to the Federal action agency. If there is no Federal involvement in the project, Diamond Spring Wind, LLC could apply for an ITP from the Service.

Next Steps

We will evaluate the permit application, associated documents, and comments we receive to determine whether the permit application meets the requirements of the ESA, NEPA, and implementing regulations. If we determine all requirements are met, we will approve the HCP and issue the ITP under section 10(a)(1)(B) of the ESA to Diamond Spring Wind, LLC for take of ABB in accordance with the terms of the HCP and specific terms and conditions of the authorizing permit. We will not make our final decision until after the end of the 30-day public comment period, and we will fully consider all comments we receive during the public comment period.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under the authority of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: October 10, 2019.

Amy Lueders,

Regional Director, Southwest Region.

[FR Doc. 2019–23022 Filed 10–21–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2019–N146; FXES11140400000–190–FF04EF2000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink, Blue-Tailed Mole Skink, and Florida Scrub-Jay, Highlands County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Palmetto Lake Placid-Lakes Blvd., LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests an ITP to take the federally listed sand skink, blue-tailed mole skink, and Florida scrub-jay incidental to construction in Highlands County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments by November 21, 2019.

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents by any of the following methods:

- *Telephone:* Heather Hitt, 772–469–4267.
- *Email: heather_hitt@fws.gov.*
- *U.S. mail:* Heather Hitt, South Florida Ecological Services Field Office, Attn: Permit number TE50012D–0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.
- *In person:* The documents may be reviewed by appointment during normal business hours at the above address. Please call to make an appointment.
- *Fax:* Heather Hitt, 772–562–4288, Attn.: Permit number TE50012D–0.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing via the above email address, U.S. mail address, or fax number, or you may hand-deliver comments to the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Heather Hitt, by U.S. mail (see **ADDRESSES**) or via phone at 772–469–4267. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service, announce receipt of an application from Palmetto Lake Placid-Lakes Blvd., LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) and blue-tailed mole skink (*Eumeces egregius lividus*) (skinks) and Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jays) incidental to the construction of a commercial development (project) in Highlands County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Project

Palmetto Lake Placid-Lakes Blvd., LLC requests a 5-year ITP to take skinks and scrub-jays incidental to the conversion of approximately 1.51 acres of occupied skink and scrub-jay foraging and sheltering habitat for the construction of a commercial development located on a 151-acre parcel in Sections 10 and 15, Township 37 South, Range 29 East, Highlands County, Florida. The applicant proposes to mitigate for take of the skinks and scrub-jays by purchasing credits equivalent to 3.02 acres of skink-occupied habitat from the Backbone Conservation Bank and to 3.02 acres of scrub-jay occupied habitat from the Tippen Bay Scrub-Jay Conservation Bank. The Service would require the applicant to purchase the credits prior to engaging in land clearing activities on the parcel.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal

identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, construction of the commercial development, and the proposed mitigation measure, would individually and cumulatively have a minor or negligible effect on skinks, scrub-jays, and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonable foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE50012D–0 to Palmetto Lake Placid-Lakes Blvd., LLC.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Roxanna Hinzman,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2019–23015 Filed 10–21–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/ A0A501010.999900 253G; OMB Control Number 1076–0157]

Agency Information Collection Activities; Grazing Permits

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 December 23, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mr. Jarvis Gust, Bureau of Indian Affairs, Rocky Mountain Region, 2021 4th Avenue North, Billings, Montana 59101; or by email *jarvis.gust@bia.gov.* Please reference OMB Control Number 1076–0157 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mr. Jarvis Gust by email at *jarvis.gust@bia.gov,* or by telephone at 406–247–7946.

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 ''American Indian Agricultural Resource Management Act,'' (AIARMA), 25 U.S.C. 3701 *et seq.,* authorizes the Secretary of the Interior, in participation with the beneficial owner of the land, to manage Indian agricultural lands in a manner consistent with identified Tribal goals and priorities for conservation, multiple use, sustained yield, and consistent with trust responsibilities. The regulations at 25 CFR 166, Grazing Permits; implement the AIARMA and include the specific information collection requirements. Submission of this information allows individuals or organizations to acquire or modify a grazing permit on Tribal land, individually-owned Indian land, or government land and to meet bonding requirements.

Title of Collection: Grazing Permits.

OMB Control Number: 1076–0157.

Form Number: Form 5–5423—Performance Bond, Form 5–5514—Bid for Grazing Privileges, 5–5515 Grazing Permit, Form 5–5516— Grazing Permit for Organized Tribes, Form 5–5517—Free Grazing Permit, Form 5–5519—Cash Penal Bond, Form 5–5520—Power of Attorney, Form 5–5521—Certificate and Application for On-and-Off Grazing Permit, Form 5522—Modification of Grazing Permit, Form 5–5523—Assignment of Grazing Permit, Form 5–5524—Application for Allocation of Grazing Privileges, 5–5525 Authority to Grant Grazing Privileges on Allotted Lands, Form 5–5528—Livestock Crossing Permit, and Form 5–5529—Removable Range Improvement Records.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Tribes, Tribal organizations, individual Indians, and non-Indian individuals and associations.

Total Estimated Number of Annual Respondents: 800.

Total Estimated Number of Annual Responses: 7,810.

Estimated Completion Time per Response: Varies from 20 minutes to

one hour, with an average of less than one hour per response.

Total Estimated Number of Annual Burden Hours: 2,701.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: $0.

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. 2019–22981 Filed 10–21–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000.L63100000.HD0000. 20XL1116AF.HAG 20–0012]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Oregon State Office, Portland, Oregon, 30 calendar days from the date of this publication.

DATES: Protests must be received by the BLM prior to the scheduled date of official filing, November 21, 2019.

ADDRESSES: A copy of the plats may be obtained from the public room at the Bureau of Land Management, Oregon State Office, 1220 SW 3rd Avenue, Portland, Oregon 97204, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, 503–808–6124, Branch of Geographic Sciences, Bureau of Land Management, 1220 SW 3rd Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon:

WILLAMETTE MERIDIAN, OREGON

T. 39 S, R. 4 E, accepted August 9, 2019
T. 35 S, R. 3 W, accepted September 10, 2019
T. 35 S, R. 2 E, accepted September 10, 2019
T. 38 S, R. 7 W, accepted October 2, 2019
T. 36 S, R. 4 W, accepted October 2, 2019
T. 35 S, R. 4 W, accepted October 2, 2019
T. 22 S, R. 29 E, accepted October 2, 2019
T. 30 S, R. 6 W, accepted October 2, 2019

WILLAMETTE MERIDIAN, WASHINGTON

T. 34 N., R. 2 W, accepted September 19, 2019

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the Chief Cadastral Surveyor for Oregon/ Washington, Bureau of Land Management. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be filed before the scheduled date of official filing for the plat(s) of survey being protested. Any notice of protest filed after the scheduled date of official filing will be untimely and will not be considered. A notice of protest is considered filed on the date it is received by the Chief Cadastral Surveyor for Oregon/ Washington during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the Chief Cadastral Surveyor for Oregon/ Washington within 30 calendar days after the notice of protest is filed. If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day following the resolution of all protests of the plat. Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Mary J.M. Hartel,

Chief Cadastral Surveyor of Oregon/ Washington.

[FR Doc. 2019–23023 Filed 10–21–19; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR02054000, 19XR0687NA, RX.18527901.3000000]

Central Valley Project Improvement Act Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Reclamation has made available to the public the Water Management Plans for 4 entities. For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. Reclamation is publishing this notice in order to allow the public an opportunity to review the Plans and comment on the preliminary determinations.

DATES: Submit written comments on the preliminary determinations on or before November 21, 2019.

ADDRESSES: Send written comments to Ms. Charlene Stemen, Bureau of Reclamation, 2800 Cottage Way, CGB–400, Sacramento, CA 95825; or via email at *cstemen@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Ms. Charlene Stemen at *cstemen@usbr.gov,* or at 916–978–5218 (TDD 978–5608).

SUPPLEMENTARY INFORMATION: Section 3405(e) of the Central Valley Project Improvement Act (Title 34 Pub. L. 102–575), requires the Secretary of the Interior to, amongst other things, ''develop criteria for evaluating the adequacy of all water conservation plans'' developed by certain contractors. According to Section 3405(e)(1), these criteria must promote, ''the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.'' In accordance with this legislative mandate, the Bureau of Reclamation developed and published the Criteria for Evaluating Water Management Plans (Criteria). Each of the 4 entities listed below developed a Plan that Reclamation evaluated and

preliminarily determined meets the requirements of the Criteria. The following Plans are available for review:

- City of Tracy.
- Clear Creek Community Services District.
- Sacramento County Water Agency.
- Westlands Water District.

We invite the public to comment on our preliminary (*i.e.,* draft) determination of Plan adequacy.

A copy of these Plans will be available for review at Reclamation's Mid-Pacific Regional Office, 2800 Cottage Way, CGB–410, Sacramento, CA 95825. If you wish to review a copy of these Plans or to receive an electronic copy via email, please contact Ms. Stemen or visit *https://www.usbr.gov/mp/watershare/wcp.html.*

Dated: October 16, 2019.

Richard Woodley,

Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 2019–22958 Filed 10–21–19; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–524]

Bulk Manufacturer of Controlled Substances Application: Johnson Matthey, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before December 23, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on September 10, 2019, Johnson Matthey, Inc., 2003 Nolte Drive, West Deptford, New Jersey 08066–1743 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Dihydromorphine	9145	I
Difenoxin	9168	I
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Nabilone	7379	II
Cocaine	9041	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Diphenoxylate	9170	II
Ecgonine	9180	II
Hydrocodone	9193	II
Levorphanol	9220	II
Meperidine	9230	II
Methadone	9250	II
Methadone intermediate	9254	II
Morphine	9300	II
Thebaine	9333	II
Opium tincture	9630	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to bulk manufacture the listed controlled substances for internal use as intermediates or for sale to its customers. In reference to drug codes 7360 (marihuana), and 7370 (tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Dated: October 9, 2019.

William T. McDermott,

Acting Assistant Administrator.

[FR Doc. 2019–23012 Filed 10–21–19; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (19–070)]

Name of Information Collection: NASA Software Release Request System

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection—new information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 proposed and/or continuing information collections.

DATES: Comments are due by December 23, 2019.

ADDRESSES: All comments should be addressed to Claire Little, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email *claire.a.little@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA Software Release Request System (SRRS) is a workflow tool that allows Agency Software Release Authorities (SRAs) to easily develop and route software release documents, such as the Software Release Request Authorization (SRRA) and Section 508 Compliance Matrix in an automated fashion. SRAs have the added ability to perform parallel routing, including the use of time-based email reminders, tracking and reporting progress on the processing of the software release requests so they can effectively manage this process at their respective centers. Software owners/developers can submit the Software Release Requests or view their submitted Software Release Requests that may need their attention.

II. Methods of Collection

Web based—only accessible via NASA's internal network (e.g., on site or remotely via a NASA issued VPN)

III. Data

Title: NASA Software Release Request System.

OMB Number: 2700–xxxx.

Type of review: New Information Collection.

Affected Public: NASA Funded Contractors and Government Employees.

Average Expected Annual Number of Activities: On average 126 software packages are released per year.

Average number of Respondents per Activity: At least one respondent will complete the form per activity (software release) which will result in approximately 126 respondents.

Annual Responses: 126.

Frequency of Responses: As needed.

Average minutes per Response: 240 minutes.

Burden Hours: 504.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Cheryl Parker,

Federal Liaison Officer.

[FR Doc. 2019–23020 Filed 10–21–19; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[FDMS docket: NARA–19–0015; Agency number: NARA–2020–005]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: NARA must receive comments by December 6, 2019.

ADDRESSES: You may submit comments by either of the following methods. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Records Appraisal and Agency Assistance (ACR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Records Management Operations by email at *request.schedule@nara.gov,* by mail at the address above, or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final

approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Commerce, National Oceanic and Atmospheric Administration, Marine Operations Center Records (DAA–0370–2019–0001).

2. Department of Defense, Defense Contract Audit Agency, Caseware Audit Management System (DAA–0372–2018–0001).

3. Department of Homeland Security, Transportation Security Administration, Joint Vulnerability Assessments (DAA–0560–2019–0011).

4. Department of Justice, Bureau of Prisons, Telephone Monitoring System (DAA–0129–2019–0005).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2019–22948 Filed 10–21–19; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Comments should be received on or before November 21, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Suite 6032, Alexandria, VA 22314, or email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Dawn Wolfgang at (703) 548–2279, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0004.

Type of Review: Revision of a currently approved collection.

Title: NCUA Call Report.

Forms: NCUA Form 5300.

Abstract: Sections 106 and 202 of the Federal Credit Union Act require federally insured credit unions (FICUs) to make financial reports to the NCUA. Section 741.6 of the NCUA Rules and Regulations requires all FICUs to submit a Call Report (NCUA Form 5300) quarterly.

Financial information collected through the Call Report is essential to NCUA supervision of federal credit unions. This information also facilitates NCUA monitoring of other credit unions with share accounts insured by the National Credit Union Share Insurance Fund (NCUSIF).

Estimated Total Annual Burden Hours: 84,928.

Reasons for change: The Profile (NCUA Form 4501A) and its burden requirements have been removed from this OMB control number and NCUA will obtain a separate OMB control number. The burden hours reflect this adjustment and a reduction in the number of respondents due to the decline in the number of FICUs from 5,375 to 5,308. Revisions are attributed to the issuance of account standards codifications (ASC) by the Financial Accounting Standards Board and the modification to the Payday Alternative Loan caption to include PALs II. These revisions will not alter the estimated burden hours to complete this filing. Modifications to the account code classifications and the revisions to text will not impact the burden.

OMB Number: 3133–NEW.

Type of Review: New collection.

Title: NCUA Form 4501A.

Abstract: Sections 106 and 202 of the Federal Credit Union Act require federally insured credit unions to make financial reports to the NCUA. Section 741.6 requires insured credit unions to submit a Credit Union Profile (NCUA Form 4501A) and update the Profile with 10 days of election or appointment of senior management or volunteer officials or 30 days of other changes in Program information. The NCUA website further directs credit unions to review and certify their Profiles every Call Report (OMB No. 3133–0004) cycle.

Statistical information collected through the Profile is essential to NCUA supervision of federal credit unions. This information also facilitates NCUA monitoring of other credit unions with share accounts insured by the National Credit Union Share Insurance Fund (NCUSIF).

Estimated Total Annual Burden Hours: 42,464.

Reasons for change: The Profile (NCUA Form 4501A) and its burden requirements have been removed from

OMB control number 3133–0004 due to technology resource constraints that have created different revision cycles. A revision to this form from the previous submission includes a modification to the Payday Alternative Loan caption to include PALs II.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on October 16, 2019.

Dated: October 17, 2019.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2019–22965 Filed 10–21–19; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION (NSF)

Sunshine Act Meetings; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended, (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of a change in the date and time of a meeting for the transaction of National Science Board business.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 84 FR 55990, published on Friday, October 18, 2019.

PREVIOUSLY ANNOUNCED TELECONFERENCE MEETING TIME AND DATE: Tuesday, October 22, 2019 at 4:00–4:30 p.m. EDT.

NEW TELECONFERENCE MEETING TIME AND DATE: Wednesday, October 23, 2019, at 1:00–1:30 p.m. EDT. All other information about the meeting remains the same.

CONTACT PERSON FOR MORE INFORMATION: Reba Bandyopadhyay, *rbandyop@nsf.gov,* 703/292–7000. Please refer to the National Science Board website for additional information. Meeting information and schedule updates (time, place, subject matter, and status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.*

SUPPLEMENTAL INFORMATION: This change is being made on short notice. Two NSB members participating in the teleconference are now expected to testify before Congress at the originally scheduled time. All participating members (the majority) of the NSB Executive Committee approved the change in the date and time and affirmed that Board business justified the change on short notice.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2019–23142 Filed 10–18–19; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 21, 2019. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2020–016

1. *Applicant* Ari Friedlaender, UC Santa Cruz, Institute of Marine Sciences, 115 McAllister Way, Santa Cruz, CA 96050.

Activity for Which Permit is Requested: Take, Harmful Interference, Import into USA, Enter Antarctic Specially Protected Areas (ASPAs). The applicant proposes to engage in research activities to understand the population demography, health, behavior, and ecology of cetaceans, pinnipeds, and seabirds in the Antarctic Peninsula region. To study these species, the applicant and agents would assess body condition, health, behavior, and distribution using remotely piloted aircraft systems (RPAS). Population demography and growth rates of cetaceans would be evaluated from remote biopsy samples that would be imported to the US for analysis. Behavior and ecology of individual whales would be studied using multi-sensor suction cup tags that collect high-resolution behavioral information for 1–2 days, dart/barb tags that to collect spatial and dive data for up to one month, and implantable tags that collect movement and behavioral data on individual whales for months. The applicant and agents would biopsy, tag, and operate RPAS over humpback whales, Antarctic minke whales, blue whales, fin whales, sei whales, southern right whales, killer whales, and Arnoux's beaked whales. The applicant and agents would also operate RPAS over Antarctic fur seals, crabeater seals, leopard seals, Weddell seals, elephant seals, Adelie penguins, gentoo penguins, chinstrap penguins, brown skua, south polar skua, giant petrel, kelp gull, blue-eyed shag, and snowy sheathbill. In order to capture imagery of some seals and seabird species, the applicant and agents would enter the ASPA 117, Avian Island. The proposed research focusing on cetaceans requires a permit under the Marine Mammal Protection Act. The proposed research on pinnipeds would be authorized by a Letter of Confirmation issued by the National Marine Fisheries Service (expiry date: November 15, 2022).

Location: Antarctic Peninsula region.

Dates of Permitted Activities: November 1, 2019—October 31, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2019–22982 Filed 10–21–19; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0201]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from September 24, 2019 to October 8, 2019. The last biweekly notice was published on October 8, 2019.

DATES: Comments must be filed by November 21, 2019. A request for a hearing must be filed by December 23, 2019.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0201. Address questions about NRC docket IDs in *Regulations.gov* to Anne Frost; telephone: 301–287–9232; email: *Anne.Frost@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1384, email: *janet.burkhardt@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0201, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0201.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *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–2019–0201, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment

period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (First Floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic

storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly-available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Date of amendment request: September 11, 2019. A publicly-available version is in ADAMS under Accession No. ML19254D105.

Description of amendment request: The amendments would revise the technical specification surveillance requirements ultimate heat sink inventory verification from a level-based to a volume-based verification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises a Technical Specifications Surveillance Requirement to replace the requirement to verify bottom level of the Ultimate Heat Sink (UHS) with a requirement to verify the volume of the UHS. The design basis inventory requirement is unchanged; the change only pertains to the method of inventory verification. The UHS is not an initiator of any accident previously evaluated. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of

accident from any accident previously evaluated?

Response: No.

The proposed change revises a Technical Specifications Surveillance Requirement to replace the requirement to verify bottom level of the Ultimate Heat Sink (UHS) with a requirement to verify the volume of the UHS. The proposed change will not affect the design function or operation of any structures, systems or components (SSCs). No new equipment will be installed. As a result, the proposed change will not create any credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment revises a Technical Specifications Surveillance Requirement to replace the requirement to verify bottom level of the Ultimate Heat Sink (UHS) with a requirement to verify the volume of the UHS. The volume of the UHS is already a requirement of the design analysis. This change modifies the method of verifying the volume, however, it does not change the required volume documented in the analysis of record.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Acting Branch Chief: Lisa M. Regner.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1 (DBNPS), Ottawa County, Ohio

Date of amendment request: August 26, 2019. A publicly-available version is in ADAMS under Package Accession No. ML19241A267.

Description of amendment request: The proposed amendment would revise the technical specification (TS) requirements for the containment leakage rate testing program. Specifically, the licensee is requesting to use the Nuclear Energy Institute (NEI) topical report NEI 94–01, Revision 3–A, ''Industry Guideline for Implementing Performance-Based Option of 10 CFR part 50, Appendix J'' (ADAMS Accession No. ML12221A202), and the limitations and conditions specified in NEI 94–01, Revision 2–A (ADAMS Accession No. ML100620847), for Type A and Type B containment leak rate testing. The proposed amendment would allow extension of the Type A test interval up to one test in 15 years, based on acceptable performance history as defined in NEI 94–01, Revision 3–A.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed test interval extensions do not involve either a physical change to the plant or a change in the way the plant is operated or controlled. The containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the containment and the testing requirements invoked to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve the prevention or identification of any precursors of an accident.

The change in Type A test frequency to once-per-fifteen years, measured as an increase to the total integrated plant risk for those accident sequences influenced by Type A testing, based on the internal events probabilistic risk analysis is 0.016 person-Roentgen Equivalent Man (rem) per year. In Section 3.2.4.6, ''Acceptance Guidelines,'' of the final safety evaluation for NEI 94–01, Revision 2, the Nuclear Regulatory Commission staff concluded that for the purposes of assessing the risk impacts of the Type A test extension in accordance with the Electric Power Research Institute Report Number 1009325, Revision 2, methodology, a small increase in population dose should be defined as an increase in population dose of less than or equal to 1.0 person-rem per year or less than or equal to 1 percent of the total population dose, whichever is less restrictive. The risk impact for the integrated leak rate test interval extension when compared to other severe accident risks is negligible.

As documented in the NRC technical support document NUREG–1493, ''Performance-Based Containment Leak-Test Program,'' dated September 1995, Type B and Type C testing can detect a very large percentage of containment leakages, and the percentage of containment leakages that can be detected only by Type A testing is very small. The DBNPS Type A test history supports this conclusion.

Based on the above paragraphs, the proposed test interval extensions do not involve a significant increase in the probability of an accident previously evaluated.

The overall containment leak rate limit is maintained with the proposed test interval extension changes. Since the proposed changes do not result in a significant increase in containment leakage, the changes do not involve a significant increase in the consequences of a previously evaluated accident.

Therefore, the proposed change does not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve any accident precursors or initiators. The proposed change does not alter the design or configuration of the plant (that is, no physical change will be made to the plant and no new or different type of equipment will be installed), nor does the proposed change alter the manner in which the plant is operated or controlled.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This amendment does not alter the way safety limits, limiting safety system set points, or limiting conditions for operation are determined. The specific requirements and conditions of the Technical Specification 5.5.15, ''Containment Leakage Rate Testing Program,'' exist to ensure that the degree of containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leak rate limit is maintained. The design, operation, testing methods and acceptance criteria for Type A and B containment leakage tests specified in applicable codes and standards would continue to be met, with the acceptance of this proposed amendment, since they are not affected by implementation of a performance-based containment testing program.

The combination of the above factors ensures that the margin of safety in the plant safety analysis is maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Rick Giannantonio, General Counsel, FirstEnergy Corporation, Mail Stop A–

GO–15, 76 South Main Street, Akron, OH 44308.

NRC Acting Branch Chief: Lisa M. Regner.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: August 16, 2019. A publicly-available version is in ADAMS under Accession No. ML19228A241.

Description of amendment request: The amendment request proposes to depart from Tier 2 information in the Updated Final Safety Analysis Report (UFSAR) (that includes plant-specific Design Control Document Tier 2 information). Specifically, the amendment request proposes changes to the UFSAR reflecting changes to the evaluation of the auxiliary building main steam safety valve vent stack openings and the auxiliary building Wall 11 openings for protection from tornado-generated missiles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, that is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not adversely affect the operation of any systems or equipment inside or outside the auxiliary building that could initiate or mitigate abnormal events, *e.g.,* accidents, anticipated operational occurrences, earthquakes, floods, tornado missiles, and turbine missiles, or their safety or design analyses, evaluated in the UFSAR. The changes do not adversely affect any design function of the auxiliary building or the systems and equipment contained therein. The ability of the affected auxiliary building MSIV [main steam isolation valve] compartments to withstand the pressurization effects from the design basis pipe rupture is not adversely affected because the alternate relief paths are available. MSIV compartment temperature following the limiting pipe rupture remain acceptably within the envelope for environmental qualification of equipment in the compartments. The credit of the turbine building and annex building structures, equipment, and components to protect Wall 11 openings from the automobile tornado missile continues to provide adequate protection of structures, systems, and components (SSCs) required to safely shut down the plant. Case-by-case evaluations for the main steam vent stacks and Wall 11 openings for tornado generated missiles demonstrate that safe shutdown is accomplished.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not change the design function of the auxiliary building or of any of the systems or equipment in the auxiliary building or elsewhere within the nuclear island structure. These proposed changes do not introduce any new equipment or components that would result in a new failure mode, malfunction or sequence of events that could affect safety-related or non-safety-related equipment. This activity will not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that would result in significant fuel cladding failures.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety of the design of the auxiliary building is maintained through continued use of the current codes and standards as stated in the UFSAR and adherence to the assumptions used in the analyses of this structure and the events associated with this structure. The auxiliary building will continue to maintain a seismic Category I rating which preserves the current structural safety margins. The 3-hour fire rating requirements for the impacted auxiliary building walls are maintained. The ability of the affected auxiliary building MSIV compartments to withstand the pressurization effects from the design basis pipe rupture is not adversely affected because the alternate relief paths are available. The credit of the turbine building and annex building structures, equipment, and components to protect Wall 11 openings from the automobile tornado missile continues to provide adequate protection of structures, systems, and components (SSCs) required to safely shut down the plant. Case-by-case evaluations for the main steam vent stacks and Wall 11 openings for tornado generated missiles demonstrate that safe shutdown is accomplished. Thus, the requested changes will not adversely affect any safety-related equipment, design code, function, design analysis, safety analysis input or result, or design/safety margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the requested change, thus no margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer L. Dixon-Herrity.

Susquehanna Nuclear, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: July 15, 2019. A publicly-available version is in ADAMS under Accession No. ML19196A270.

Description of amendment request: The amendments would revise the technical specifications to allow application of advanced Framatome methodologies for determining core operating limits in support of loading fuel type ATRIUM 11.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, along with NRC edits in square brackets:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The proposed change revises the list of NRC-approved analytical methods used to establish core operating limits, adjusts the low pressure SL [safety limit], and eliminates neutronic methods penalties on OPRM [Oscillation Power Range Monitor] amplitude setpoint, pin power distribution uncertainty, and bundle power correlation coefficient. The change does not require any physical plant modifications, physically affect any plant components, or entail changes in plant operation. Since no individual precursors of an accident are affected, the proposed amendments do not increase the probability of a previously analyzed event.

The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. The proposed change revises the list of NRC-approved analytical methods used to establish core operating limits, adjusts the low pressure SL, and eliminates neutronic methods penalties on OPRM amplitude setpoint, pin power distribution uncertainty, and bundle power correlation coefficient. The changes in methodology do not alter the assumptions of accident analyses. Based on the above, the proposed amendments do not increase the consequences of a previously analyzed accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Creation of the possibility of a new or different kind of accident requires creating one or more new accident precursors. New accident precursors may be created by modifications of plant configuration, including changes in allowable modes of operation. The proposed change revises the list of NRC-approved analytical methods used to establish core operating limits, adjusts the low pressure SL, and eliminates neutronic methods penalties on OPRM amplitude setpoint, pin power distribution uncertainty, and bundle power correlation coefficient. The proposed amendments do not involve any plant configuration modifications or changes to allowable modes of operation thereby ensuring no new accident precursors are created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the list of NRC-approved analytical methods used to establish core operating limits, adjusts the low pressure SL, and eliminates neutronic methods penalties on OPRM amplitude setpoint, pin power distribution uncertainty, and bundle power correlation coefficient. The proposed change will ensure that the current level of fuel protection is maintained by continuing to ensure that the fuel design safety criteria are met. The proposed changes will not impact the capabilities of the existing NRC-approved CPR [Critical Power Ratio] correlations and ensure valid CPR calculations including applicable uncertainties for AOOs [Anticipated Operational Occurrence] defined in the FSAR [Final Safety Analysis Report]. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Damon D. Obie, Associate General Counsel, Talen Energy Supply, LLC, 835 Hamilton St., Suite 150, Allentown, PA 18101.

NRC Branch Chief: James G. Danna.

Susquehanna Nuclear, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: July 15, 2019. A publicly-available version is in ADAMS under Accession No. ML19196A270.

Description of amendment request: The amendments would revise the technical specification definition of ''Shutdown Margin'' (SDM) to require calculation of the SDM at a reactor moderator temperature of 68 degrees Fahrenheit or a higher temperature that represents the most reactive state throughout the operating cycle. The proposed changes are based on Technical Specification Task Force (TSTF) Traveler TSTF–535, Revision 0, ''Revise Shutdown Margin Definition to Address Advanced Fuel Designs.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, along with NRC edits in square brackets:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the definition of SDM. SDM is not an initiator of any accident previously evaluated. Accordingly, the proposed change to the definition of SDM has no effect on the probability of any accident previously evaluated. SDM is an assumption in the analysis of some previously evaluated accidents and inadequate SDM could lead to an increase in the consequences for those accidents. However, the proposed change revises the SDM definition to ensure that the correct SDM is determined for all fuel types at all times during the fuel cycle. As a result, the proposed change does not adversely affect the consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the definition of SDM. The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operations. The change does not alter the assumptions made in the safety analysis regarding SDM.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the definition of SDM. The proposed change does not alter the manner in which SLs [safety limits], limiting safety system settings or limiting conditions for operation are determined. The proposed change ensures that the SDM assumed in determining SLs, limiting safety system settings, or limiting conditions for operation is correct for all BWR [Boiling Water Reactor] fuel types at all times during the fuel cycle.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Damon D. Obie, Associate General Counsel, Talen Energy Supply, LLC, 835 Hamilton St., Suite 150, Allentown, PA 18101.

NRC Branch Chief: James G. Danna.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Unit 1, Coffey County, Kansas

Date of amendment request: August 29, 2019. A publicly-available version is in ADAMS under Accession No. ML19247C062.

Description of amendment request: The amendment would revise Technical Specification (TS) 3.7.5, ''Auxiliary Feedwater (AFW) System,'' to add additional conditions to the limiting conditions for operation such that one supply of essential service water (ESW) to the turbine-driven AFW (TDAFW) pump can be inoperable for up to 72 hours while still considering the TDAFW pump train operable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change allows the TDAFW pump to remain operable for up to 72 hours with one ESW supply isolated. This is consistent with the allowed outage time for one AFW train being inoperable, and for one train of ESW being inoperable. These systems are not accident initiators (*i.e.,* their malfunction cannot initiate an accident or transient). As there are no modifications to

the plant or change in plant control systems, this change would not significantly increase accident probability. Since the change is consistent with existing allowed outage times of either one AFW train or one ESW train, the consequences of a secondary system pipe break accident are bounded by the current analyses as documented in the Updated Safety Analysis Report. As a result, the proposed change does not alter assumptions relative to the mitigation of an accident or transient event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change allows the TDAFW pump to remain operable for up to 72 hours with one ESW supply isolated. This is consistent with the allowed outage time for one AFW train being inoperable, and for one train of ESW being inoperable. With respect to any new or different kind of accident, there are no proposed design changes nor are there any changes in the method by which any safety-related plant structures, systems, or components performs their specified safety function. The proposed change will not affect the normal method of plant operation or change any operating parameters. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

The proposed change allows the TDAFW pump to remain operable for up to 72 hours with one ESW supply isolated. This is consistent with the. allowed outage time for AFW train being inoperable, and for one train of ESW being inoperable. The proposed change does not adversely affect any current plant safety margins, or the reliability of the equipment assumed in the safety analysis. Therefore, there are no changes being made to any safety analysis assumptions, safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed change.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 1200 17th Street NW, Washington, DC 20036.

NRC Branch Chief: Robert J. Pascarelli.

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: February 12, 2018, as supplemented by letters dated August 8, 2018, and August 23, 2018.

Brief description of amendments: The amendments revised the Duke Energy Physical Security Plan for Oconee Nuclear Station to include additional protective measures during a specific infrequent short-term operating state, including a modification that provides additional access restriction.

Date of issuance: September 30, 2019.

Effective date: As of the date of issuance and shall be implemented within 1 year of receipt of all external agency approvals.

Amendment Nos.: 414 (Unit 1), 416 (Unit 2), and 415 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML19056A086; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: The amendments revised the Duke Energy Physical Security Plan.

*Date of initial notice in **Federal Register:*** October 2, 2018 (83 FR 49590). The supplemental letter dated August 23, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment and public comments is contained in a Safety Evaluation dated September 30, 2019.

No significant hazards consideration comments received: Yes.

Duke Energy Progress, LLC, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: April 5, 2018, as supplemented by letters dated June 6, 2018, November 13, 2018, and May 6, 2019.

Brief description of amendment: The amendment added a new license condition to the renewed facility operating license to permit the implementation of 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors.''

Date of issuance: September 24, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 266. A publicly-available version is in ADAMS under Accession No. ML19205A289; documents related to the amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–23: The amendment revised the renewed facility operating license.

*Date of initial notice in **Federal Register:*** June 5, 2018 (83 FR 26101).

The supplemental letters dated June 6, 2018, November 13, 2018, and May 6, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 2019.

No significant hazards consideration comments received: No.

Duke Energy Progress, LLC, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: August 14, 2018, as supplemented by letters dated February 8, 2019, and May 16, 2019.

Brief description of amendments: The amendments adopted Technical Specifications Task Force (TSTF) Traveler TSTF–439, ''Eliminate Second Completion Times Limiting Time from Discovery of Failure to Meet an LCO [Limiting Condition for Operation].'' The change deleted second completion times from the affected required actions contained in the technical specifications (TSs), removed the example contained in TS Section 1.3, and added a discussion about alternating between conditions.

Date of issuance: September 23, 2019.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 293 (Unit 1) and 321 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML19233A073; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–71 and DPR–62: The amendments revised the renewed facility operating licenses and TSs.

*Date of initial notice in **Federal Register:*** October 9, 2018 (83 FR 50695). The letters dated February 8 and May 16, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 23, 2019.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: December 19, 2018, as supplemented by letter dated June 18, 2019.

Brief description of amendment: The amendment revised the Arkansas Nuclear One, Unit 1, technical specifications (TSs) to adopt Technical Specifications Task Force (TSTF) Traveler TSTF–567, Revision 1, ''Add Containment Sump TS to Address GSI [Generic Safety Issue]-191 Issues.''

Date of issuance: September 27, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 266. A publicly-available version is in ADAMS under Accession No. ML19220A938; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–51: Amendment revised the renewed facility operating license and TSs.

*Date of initial notice in **Federal Register:*** February 26, 2019 (84 FR 6179). The supplemental letter dated June 18, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 27, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: September 28, 2018.

Brief description of amendment: The amendment changed technical specifications (TSs) to be consistent with NRC-approved Industry Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–476, Revision 1. The availability of this TS improvement was announced in the **Federal Register** on May 23, 2007 (72 FR 29004).

Date of issuance: September 30, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 226. A publicly-available version is in ADAMS under Accession No. ML19238A308. Documents related to the amendment are listed in the related Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–62: The amendment revised the license and the TSs.

*Date of initial notice in **Federal Register:*** November 20, 2018 (83 FR 58611).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: October 19, 2018.

Brief description of amendments: The amendments revised the Limerick Generating Station, Units 1 and 2, technical specification (TS) requirements for inoperable isolation actuation instrumentation to allow for isolation of the flow path(s) that penetrate the primary containment boundary instead of requiring closure of specific primary containment isolation valves. The amendments also clarified the TS action for inoperable isolation actuation instrumentation for the reactor enclosure manual isolation function.

Date of issuance: October 3, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 237 (Unit 1) and 200 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML19207A006; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–39 and NPF–85: The amendments revised the renewed facility operating licenses and TSs.

*Date of initial notice in **Federal Register:*** December 18, 2018 (83 FR 64893).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 3, 2019.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: May 10, 2019.

Brief description of amendments: The amendments consist of changes to the plant-specific emergency planning (EP) Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) in Appendix C of the VEGP Units 3 and 4 combined licenses (COLs). The amendments revised COL Appendix C of the VEGP Units 3 and 4 COLs, by deleting redundant plant-specific EP ITAAC that were either bounded by other ITAAC or were redundant to document submittal regulatory requirements.

Date of issuance: September 5, 2019.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 163 (Unit 3) and 161 (Unit 4). A publicly-available version is in ADAMS under Package Accession No. ML19213A288; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Combined Licenses Nos. NPF–91 and NPF–92: The amendments revised the facility COLs.

Date of initial notice in ***Federal Register:*** July 2, 2019 (84 FR 31629).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 5, 2019.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 11th day of October, 2019.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–22720 Filed 10–21–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–39036; EA–18–123; NRC–2019–0203]

In the Matter of Solis Tek, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Order imposing civil monetary penalty; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an imposition order (Order) to Solis Tek, Inc. (Solis Tek). After consideration of Solis Tek's request for mitigation of the Civil Penalty amount proposed in the NRC Notice of Violation and Proposed Imposition of Civil Penalty (Notice) served upon Solis Tek by letter dated May 15, 2019 the NRC staff has determined that the violations occurred as previously stated in the Notice and that the $45,500 penalty proposed for the violations will be imposed. This Order is effective upon its issuance.

DATES: This order was issued on October 9, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0203 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0203. Address questions about NRC docket IDs to Jennifer Borges Roman; telephone: 301–287–9127; email: *Jennifer.BorgesRoman@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The May 15, 2019 letter is available in ADAMS under Accession No. ML19114A261. The October 9, 2019 order is available in ADAMS under Accession No. ML19200A164.
- *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.

FOR FURTHER INFORMATION CONTACT: Susanne Woods, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9446, email: *s.woods@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 17th day of October, 2019.

For the Nuclear Regulatory Commission.

George A. Wilson,

Director, Office of Enforcement.

Attachment—Order Imposing Civil Monetary Penalty

United States of America

Nuclear Regulatory Commission

In the Matter of:

Solis Tek, Incorporated, Carson, CA. Docket No. 030–39036,, License No. 29–35415–01E, EA–18–123.

Order Imposing Civil Monetary Penalty

I

Solis Tek, Incorporated (Solis Tek) was the holder of Materials License No. 29–35415–01E issued on July 20, 2017, by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 30 of Title 10 of the *Code of Federal Regulations* (10 CFR). The license authorized the distribution of bulbs containing radioactive material (krypton-85) to unlicensed persons in accordance with conditions specified therein. The Solis Tek facility is located in Carson, California.

In its letter dated June 10, 2019, Solis Tek requested termination of License Number 29–35415–01E. the NRC issued the license termination for this license on October 9, 2019 (ADAMS Accession No. ML19206A096).

II

The NRC initiated an investigation on June 20, 2017, and conducted an inspection from July 9, 2018, to August 22, 2018. The results of this investigation and inspection indicated that Solis Tek had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon Solis Tek by letter dated May 15, 2019. The Notice states the nature of the violations, the provisions of the NRC's requirements that Solis Tek violated, and the amount of the civil penalty proposed for the violations.

Solis Tek responded to the Notice in a letter dated June 10, 2019. In its response, Solis Tek did not dispute the violations or their severity, but requested mitigation of the proposed civil penalty amount, alternative dispute resolution (ADR), and termination of the license.

III

After consideration of Solis Tek's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined as set forth in the Appendix to this Order that the

violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed. The NRC also determined that ADR was not appropriate given Solis Tek's request to terminate the license.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

Solis Tek pay a civil penalty in the amount of $43,500 within 30 (thirty) days of the date of this Order. Payment is to be made in accordance with NUREG/BR–0254 ''Payment Methods'' (*http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0254/*). In addition, at the time payment is made, Solis Tek shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

In accordance with 10 CFR 2.205(d), Solis Tek and any other person adversely affected by this Order may request a hearing on this Order within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007, as amended by 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document.

The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff.

Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''Cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for

limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than Solis Tek requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 30 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission

/RA/ F.P. Peduzzi for

George A, Wilson,

Director Office of Enforcement

Dated this 9th day of October 2019

Appendix

Evaluation and Conclusion

On May 15, 2019, the U.S. Nuclear Regulatory Commission (NRC) issued a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) for violations identified during an NRC investigation and inspection. Solis Tek, Incorporated (Solis Tek or Licensee) responded to the Notice on June 10, 2019. Solis Tek did not dispute the violations or severity, however, Solis Tek requested mitigation of the proposed civil penalty amount. The NRC's evaluation and conclusion regarding Solis Tek's request is as follows:

Summary of Solis Tek's Request for Mitigation of Civil Penalty Amount

Solis Tek requested termination of the license, Alternative Dispute Resolution (ADR) mediation, and a decrease of the civil penalty amount due.

NRC Evaluation of Licensee's Request

In its letter dated June 10, 2019, Solis Tek requested termination of License Number 29–35415–01E. The NRC issued the license termination for this license on October 9, 2019 (ADAMS Accession No. ML19206A096).

The NRC's interest in the ADR process is mutually agreeable changes to a licensee's program that result in not only corrective actions to restore compliance and maintain compliance in the future, but also to make a stronger, more robust licensee program. The outcome of an ADR is an Order that amends the license. This is not compatible with termination of a license. The NRC Enforcement Policy, Section 2.4.3 states, in part, that in some circumstances, it may not be appropriate for the NRC to engage in ADR. The NRC has determined that it is not in the NRC's or the public's interest for NRC to engage in ADR given the request to terminate the license.

Section 2.5.5 of the NRC Enforcement Manual states, in part, that although Tables A and B in the Enforcement Policy are structured to take into account the gravity of a violation as a primary consideration, and a licensee's ability to pay as a secondary matter, there may be circumstances that warrant an adjustment to the base civil penalty or consideration of payment of a civil penalty over time. Section 2.5.5 also describes the information needed from a licensee to support the reduction of a civil penalty on this basis. During the exit call on June 5, 2019, Solis Tek requested information on installment payments, indicating that a lump sum payment of the civil penalty may pose a financial hardship. In an email dated June 6, 2019, the NRC provided Solis Tek with information regarding requesting payments over time or a reduction in penalty. The email indicated that such requests can be considered and summarized the information that is typically required to make a request on the basis of financial hardship. The email also reminded Solis Tek that there was an email address and phone number in the ''Payment Methods'' brochure that was enclosed with the final action letter for questions regarding payments. In this case, Solis Tek did not subsequently submit the information required to support a reduction in penalty or payments over time on this basis.

Conclusion

Based on its evaluation, the NRC has concluded that these violations occurred as stated, that engaging in ADR is not in the NRC's or the public's interest, and that Solis Tek did not provide an adequate basis for mitigation of the proposed civil penalty. Therefore, the NRC will impose a civil penalty in the amount of $43,500.

[FR Doc. 2019–23112 Filed 10–21–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281; NRC–2018–0280]

Virginia Electric and Power Company; Dominion Energy Virginia: Surry Power Station, Unit Nos. 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft supplemental environmental impact statement; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft plant-specific Supplement 6, Second Renewal, to the Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants, NUREG–1437, regarding the subsequent renewal of Facility Operating License Nos. DPR–32 and DPR–37 for an additional 20 years of operation for Surry Power Station, Unit Nos. 1 and 2 (Surry). The Surry facility is located in Surry County, Virginia. Possible alternatives to the proposed action (subsequent license renewal) include no action and reasonable replacement power alternatives.

DATES: The staff will hold a webinar on the draft Environmental Impact Statement in November, including a presentation on the preliminary findings and a transcribed public comment session. The webinar details will be announced in the near future. Submit either electronic or written comments by December 10, 2019. Comments received after this date will be considered, if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2018–0280. Address questions about NRC docket IDs to Anne Frost; telephone: 301–287–9232; email: *Anne.Frost@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, ATTN: Program Management, Announcements and Editing Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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: Tam Tran, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3617; email: *Tam.Tran@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0280 when contacting the NRC about

the availability of information regarding this document. You may obtain publicly-available information related to this document by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2018–0280.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that the document is referenced here. Draft plant-specific Supplement 6, Second Renewal, to the GEIS for License Renewal of Nuclear Plants, NUREG–1437, is available in ADAMS under Accession No. ML19274C676.

• *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.

• *Library:* A copy of draft plant-specific Supplement 6, Second Renewal, to the GEIS for License Renewal of Nuclear Plants, NUREG–1437, is available at the following location: Williamsburg Regional Library, 515 Scotland St., Williamsburg, VA 23185.

B. Submitting Comments

Please include Docket ID NRC–2018–0280 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. The NRC will post all comment submissions at *https://www.regulations.gov/* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, 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 is issuing for public comment draft plant-specific Supplement 6, Second Renewal, to the GEIS for License Renewal of Nuclear Plants, NUREG–1437, regarding the subsequent renewal of Facility Operating License Nos. DPR–32 and DPR–37 for an additional 20 years of operation for Surry, Unit Nos. 1 and 2. Draft plant-specific Supplement 6, Second Renewal, to the GEIS includes the preliminary analysis that evaluates the environmental impacts of the proposed action and alternatives to the proposed action. The NRC's preliminary recommendation is that the adverse environmental impacts of subsequent license renewal for Surry are not so great that preserving the option of subsequent license renewal for energy-planning decisionmakers would be unreasonable.

Dated at Rockville, Maryland, this 17th day of October 2019.

For the Nuclear Regulatory Commission.

John Tappert,

Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–23010 Filed 10–21–19; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIME AND DATE: October 14, 2019, at 3:00 p.m.

PLACE: Washington, DC.

STATUS: Closed.

ITEMS CONSIDERED:

1. Administrative Items.
2. Strategic Matters.
3. Personnel Matter.
4. Financial Matters.

On October 14, 2019, a majority of the members of the Board of Governors of the United States Postal Service voted unanimously to hold and to close to public observation a special meeting in Washington, DC, via teleconference. The Board determined that no earlier public notice was practicable.

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Acting Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Acting Secretary.

[FR Doc. 2019–23070 Filed 10–18–19; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87314; File No. SR–NYSENAT–2019–23]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the Certificate of Incorporation of Intercontinental Exchange, Inc.

October 16, 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 October 3, 2019, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the certificate of incorporation of Intercontinental Exchange, Inc. (''ICE'') to make a technical change updating the registered office and registered agent in the State of Delaware and make non-substantive and conforming changes. The proposed 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,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 the certificate of incorporation of ICE to make a technical change updating the registered office and registered agent in the State of Delaware and make non-substantive and conforming changes.

The proposed amendments to the certificate of incorporation were approved by the Board of Directors of ICE on September 19, 2019. The Exchange proposes that the amendments would be effective upon filing with the Secretary of State of the State of Delaware.

Change in Registered Office and Registered Agent

ICE is a corporation organized under the laws of the State of Delaware. As such, ICE is required to have and maintain a registered office and registered agent in the State of Delaware.[4] The Exchange proposes to change the address of ICE's registered office and the name of ICE's registered agent, which would make them consistent with the governing documents of the Exchange and its intermediate holding companies.[5]

In order to implement the change, ICE intends to file with the Secretary of State of the State of Delaware a Certificate of Change of Registered Agent and/or Registered Office (''Certificate of Change''),[6] which will change the address of its registered office and the name of its registered agent set forth in the Fourth Amended and Restated Certificate of Incorporation of ICE (''Fourth Certificate''). Immediately thereafter, ICE intends to file with the Secretary of State of the State of Delaware the Fifth Amended and Restated Certificate of Incorporation of ICE (the ''Fifth Certificate''), which will integrate the changes made by the Certificate of Change.

With respect to the change in the registered agent and registered office, in the Fifth Certificate, Article II would identify United Agent Group Inc. as the registered agent and provide that the address of the registered office in the State of Delaware, County of New Castle, is 3411 Silverside Road, Tatnall Building No. 104, Wilmington, Delaware 19810. Currently, Article II of the Fourth Certificate identifies 1209 Orange Street, Wilmington, Delaware 19801 as the address of the registered office in the State of Delaware, County of New Castle, and provides that the name of its registered agent at such address is The Corporation Trust Company.

Conforming Changes

The Exchange proposes to make technical conforming changes to the Fifth Certificate.

The General Corporation Law of the State of Delaware (''DGCL'') provides that the board of directors of a corporation may adopt a restated certificate of incorporation that integrates a certificate of incorporation and any prior amendments to such certificate of incorporation, such as the Certificate of Change.[7] Accordingly, the proposed second introductory paragraph would state that the Fifth Certificate restates and integrates, and does not further amend, the provisions of the Fourth Certificate, as amended by the Certificate of Change, and there is no discrepancy between them. Similarly, the fourth introductory paragraph would state that the Fourth Certificate was thereby restated and integrated to read as set forth in the Fifth Certificate. The proposed changes would delete a reference in the Fourth Certificate to the amendment of the Third Amended and Restated Certificate.

Pursuant to Section 245(b) of the DGCL, stockholder approval is not required for a restated certificate of incorporation that, like the proposed Fifth Certificate, restates and integrates but does not further amend the existing certificate of incorporation.[8] Accordingly, the proposed third and fourth introductory paragraphs would delete the references to Section 242 of the DGCL, as it refers to stockholder approval, which would not be required.[9]

References to the ''Third Amended and Restated Certificate of Incorporation'' and the ''Fourth Amended and Restated Certificate of Incorporation'' in the titles, introductory paragraphs, and signature lines would be changed to refer to the ''Fourth Amended and Restated Certificate of Incorporation'' and ''Fifth Amended and Restated Certificate of Incorporation,'' respectively.

Finally, the time and date of effectiveness and execution in the introductory certifications and signature line would be updated.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act[10] in general, and with Section 6(b)(1)[11] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed rule change is a non-substantive administrative change that does not impact the governance or ownership of the Exchange. The Exchange believes that the proposed rule change would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because ensuring that the Fifth Certificate identifies the name of ICE's registered agent and address of ICE's registered office in the State of Delaware would contribute to the orderly operation of the Exchange by adding clarity and transparency to its rules. The proposed change would ensure that ICE continues to comply with Delaware requirements for corporations to have a registered agent and registered office in the State of Delaware. In addition, the proposed changes to the introductory paragraphs would ensure that the Fifth Certificate correctly describes the proposed restatement and integration of the existing certificate of incorporation, as amended by the Certificate of Change, and references the correct provisions of the DGCL in accordance with the requirements of Delaware law, ensuring clarity and transparency.

[4] *See* Del. Code tit 8, §§ 131 and 132.

[5] *See* Securities Exchange Release Nos. 82635 (February 6, 2018), 83 FR 6057 (February 12, 2018) (notice of filing and immediate effectiveness of proposed change to amend certain of the governing documents of its intermediate parent companies) (SR–NYSENAT–2018–03); and 82925 (March 22, 2018), 83 FR 13165 (March 27, 2018) (SR–NYSENAT–2018–04) (notice of filing and immediate effectiveness of proposed rule change to amend the amended and restated certificate of incorporation).

[6] *See* Del. Code tit 8, § 133.

[7] *See* Del. Code tit 8, § 245(a).

[8] *See* Del. Code tit 8, § 245(b).

[9] *See* Del. Code tit 8, § 242.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(1).

For similar reasons, the Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] in that 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 proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can more easily navigate, understand and comply with its rules. The Exchange believes that, by ensuring that such rules accurately identify the name of ICE's registered agent and the address of ICE's registered office in the State of Delaware, the proposed rule change would reduce potential investor or market participant confusion. In addition, the proposed changes to the introductory paragraphs and the proposed conforming changes would ensure that the Fifth Certificate correctly describes the proposed restatement and integration of the existing certificate of incorporation, as amended by the Certificate of Change, and references the correct provisions of the DGCL in accordance with the requirements of Delaware law, reducing potential confusion that may result from having an incorrect description or reference in the Fifth Certificate.

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 Exchange Act. The proposed rule change is not designed to address any competitive issue but rather is concerned solely with making a technical change updating the registered office and registered agent of ICE and conforming changes.

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.

[12] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(3) [14] thereunder in that the proposed rule change is concerned solely with the administration of the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may 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) [15] 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–NYSENAT–2019–23 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–NYSENAT–2019–23. 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 offices 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–NYSENAT–2019–23, and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22943 Filed 10–21–19; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(3).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87322; File No. SR–NYSE–2019–55]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the Certificate of Incorporation of Intercontinental Exchange, Inc.

October 16, 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 October 3, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the certificate of incorporation of Intercontinental Exchange, Inc. (''ICE'') to make a technical change updating the registered office and registered agent in the State of Delaware and make non-substantive and conforming changes. 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 the certificate of incorporation of ICE to make a technical change updating the registered office and registered agent in the State of Delaware and make non-substantive and conforming changes.

The proposed amendments to the certificate of incorporation were approved by the Board of Directors of ICE on September 19, 2019. The Exchange proposes that the amendments would be effective upon filing with the Secretary of State of the State of Delaware.

Change in Registered Office and Registered Agent

ICE is a corporation organized under the laws of the State of Delaware. As such, ICE is required to have and maintain a registered office and registered agent in the State of Delaware.[4] The Exchange proposes to change the address of ICE's registered office and the name of ICE's registered agent, which would make them consistent with the governing documents of the Exchange and its intermediate holding companies.[5]

In order to implement the change, ICE intends to file with the Secretary of State of the State of Delaware a Certificate of Change of Registered Agent and/or Registered Office (''Certificate of Change''),[6] which will change the address of its registered office and the name of its registered agent set forth in the Fourth Amended and Restated Certificate of Incorporation of ICE (''Fourth Certificate''). Immediately thereafter, ICE intends to file with the Secretary of State of the State of Delaware the Fifth Amended and Restated Certificate of Incorporation of ICE (the ''Fifth Certificate''), which will integrate the changes made by the Certificate of Change.

With respect to the change in the registered agent and registered office, in the Fifth Certificate, Article II would identify United Agent Group Inc. as the registered agent and provide that the address of the registered office in the State of Delaware, County of New Castle, is 3411 Silverside Road, Tatnall Building No. 104, Wilmington, Delaware 19810. Currently, Article II of the Fourth Certificate identifies 1209 Orange Street, Wilmington, Delaware 19801 as the address of the registered office in the State of Delaware, County of New Castle, and provides that the name of its registered agent at such address is The Corporation Trust Company.

Conforming Changes

The Exchange proposes to make technical conforming changes to the Fifth Certificate.

The General Corporation Law of the State of Delaware (''DGCL'') provides that the board of directors of a corporation may adopt a restated certificate of incorporation that integrates a certificate of incorporation and any prior amendments to such certificate of incorporation, such as the Certificate of Change.[7] Accordingly, the proposed second introductory paragraph would state that the Fifth Certificate restates and integrates, and does not further amend, the provisions of the Fourth Certificate, as amended by the Certificate of Change, and there is no discrepancy between them. Similarly, the fourth introductory paragraph would state that the Fourth Certificate was thereby restated and integrated to read as set forth in the Fifth Certificate. The proposed changes would delete a reference in the Fourth Certificate to the amendment of the Third Amended and Restated Certificate.

Pursuant to Section 245(b) of the DGCL, stockholder approval is not required for a restated certificate of incorporation that, like the proposed Fifth Certificate, restates and integrates but does not further amend the existing certificate of incorporation.[8] Accordingly, the proposed third and fourth introductory paragraphs would delete the references to Section 242 of the DGCL, as it refers to stockholder approval, which would not be required.[9]

References to the ''Third Amended and Restated Certificate of Incorporation'' and the ''Fourth Amended and Restated Certificate of Incorporation'' in the titles, introductory paragraphs, and signature lines would be changed to refer to the ''Fourth Amended and Restated Certificate of Incorporation'' and ''Fifth Amended and Restated Certificate of Incorporation,'' respectively.

Finally, the time and date of effectiveness and execution in the introductory certifications and signature line would be updated.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act[10] in general, and with Section 6(b)(1)[11] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed rule change is a non-substantive administrative change that does not impact the governance or ownership of the Exchange. The Exchange believes that the proposed rule change would enable the Exchange to continue to be so organized as to have

[4] *See* Del. Code tit 8, §§ 131 and 132.

[5] *See* Securities Exchange Release Nos. 82640 (February 6, 2018), 83 FR 6076 (February 12, 2018) (notice of filing and immediate effectiveness of proposed change to amend certain of the governing documents of its intermediate parent companies) (SR–NYSE–2018–07). As a limited liability company organized under the laws of the State of New York, the New York Stock Exchange LLC has a registered agent and registered office in New York. *See* Securities Exchange Release No. 82922 (March 22, 2018), 83 FR 13156 (March 27, 2018) (SR–NYSE–2018–09) (notice of filing and immediate effectiveness of proposed change to amend the Eleventh Amended and Restated Operating Agreement).

[6] *See* Del. Code tit 8, § 133.

[7] *See* Del. Code tit 8, § 245(a).

[8] *See* Del. Code tit 8, § 245(b).

[9] *See* Del. Code tit 8, § 242.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(1).

the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because ensuring that the Fifth Certificate identifies the name of ICE's registered agent and address of ICE's registered office in the State of Delaware would contribute to the orderly operation of the Exchange by adding clarity and transparency to its rules. The proposed change would ensure that ICE continues to comply with Delaware requirements for corporations to have a registered agent and registered office in the State of Delaware. In addition, the proposed changes to the introductory paragraphs would ensure that the Fifth Certificate correctly describes the proposed restatement and integration of the existing certificate of incorporation, as amended by the Certificate of Change, and references the correct provisions of the DGCL in accordance with the requirements of Delaware law, ensuring clarity and transparency.

For similar reasons, the Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] in that 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 proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can more easily navigate, understand and comply with its rules. The Exchange believes that, by ensuring that such rules accurately identify the name of ICE's registered agent and the address of ICE's registered office in the State of Delaware, the proposed rule change would reduce potential investor or market participant confusion. In addition, the proposed changes to the introductory paragraphs and the proposed conforming changes would ensure that the Fifth Certificate correctly describes the proposed restatement and integration of the existing certificate of incorporation, as amended by the Certificate of Change, and references the correct provisions of the DGCL in accordance with the requirements of Delaware law, reducing potential confusion that may result from having an incorrect description or reference in the Fifth Certificate.

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 Exchange Act. The proposed rule change is not designed to address any competitive issue but rather is concerned solely with making a technical change updating the registered office and registered agent of ICE and conforming changes.

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(3) [14] thereunder in that the proposed rule change is concerned solely with the administration of the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may 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) [15] 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–2019–55 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–2019–55. 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 offices 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–2019–55, and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22937 Filed 10–21–19; 8:45 am]

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[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(3).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87316; File No. SR–NYSEArca–2019–58]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To Modify Rules 6.60–O and 6.65A–O Regarding the Treatment of Orders Subject to Trade Collar Protection

October 16, 2019.

I. Introduction

On August 21, 2019, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] a proposed rule change to modify Exchange Rules 6.60–O and 6.65A–O regarding the treatment of orders subject to Trade Collar Protection. The proposed rule change was published for comment in the **Federal Register** on September 4, 2019.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange states that it proposes to modify Rule 6.60–O(a) to clarify existing functionality and to adopt enhancements to the operation of the Trading Collars.[5] The Exchange applies Trade Collar Protection to incoming orders. As described more fully in the Notice, the Exchange states that Trading Collars [6] mitigate the risks associated with orders sweeping through multiple price points (including during extreme market volatility) and resulting in executions at prices that are potentially erroneous.[7] According to the Exchange, by applying Trading Collars to incoming orders, the Exchange provides an opportunity to attract additional liquidity at tighter spreads and it ''collars'' affected orders at successive price points until the bid and offer are equal to the bid-ask differential guideline for that option (*i.e.,* equal to the Trading Collar).[8] Similarly, by applying Trading Collars to partially executed orders, the Exchange states that it prevents the balance of such orders from executing away from the prevailing market after exhausting interest at or near the top of book on arrival.[9]

Current Rule 6.60–O(a)(1)(i) states that Trade Collar Protection prevents the ''immediate execution'' of incoming market orders when the difference between the National Best Offer (''NBO'') and the National Best Bid (''NBB'') is greater than one Trading Collar. Rule 6.60–O(a) currently states that Trade Collar Protection would apply to any unexecuted portion of a marketable limit order. The Exchange proposes to modify Rule 6.60–O(a) to make clear that Trade Collar Protection may also be applied to marketable limit orders on arrival. The Exchange asserts that this proposed change would clarify how Trade Collar Protection currently operates, and that the Exchange would continue to apply Trade Collar Protection to the balance of Marketable Orders [10] consistent with the current rule.[11]

The Exchange also proposes to modify the current Rule 6.60–O(a)(3), which currently states that order types that have contingencies, namely, IOC, NOW, AON, and FOK orders, would receive an ''immediate execution.'' The proposed modifications would clarify that such incoming orders would ''receive an execution, depending upon the availability of an execution pursuant to the terms of those orders.'' [12]

In addition, the Exchange proposes to modify current Rule 6.60–O(a)(4) to make clear that when Marketable (as opposed to just market) Orders are subject to Trade Collar Protection, the Exchange will limit the ''execution and/or routing'' of such orders.[13] The Exchange also proposes to make clear that this provision relates to ''incoming'' Marketable Orders as opposed to the balance thereof.[14]

Proposed Rule 6.60–O(a)(4)(A) would provide that ''[a] Market Order to buy (sell) received when there is already a collared order to buy (sell) will join that collared order and be processed consistent with paragraphs (a)(4)(C)–(a)(6),'' which the Exchange states reflects current functionality.[15] The Exchange also proposes Rule 6.60–O(a)(4)(B) to specify that collared orders will be assigned a ''collar execution price,'' which price depends upon the order type (market or limit) and whether (when the order arrives) the Exchange is already in receipt of another order being collared.[16] Current Rule 6.60–O(a)(4)(A) covers collared market orders to buy (sell), which would not immediately execute or route, but would be ''displayed at a price equal to the NBB (NBO) plus (minus) one Trading Collar.'' The Exchange proposes to replace ''displayed'' as used in the current rule with ''assigned a collar execution price'' because, according to the Exchange, once collared, the order would be eligible to immediately execute against available interest before its price is displayed.[17]

In addition, the Exchange proposes an exception to the processing of incoming market orders to buy (sell) that arrive when the NBB (NBO) is zero (''Zero NBBO Collar Exception''). Specifically, as proposed, a market order to buy entered when the NBB is $0.00 would be assigned a collar execution price equal to the NBB (*i.e.,* $0.00) plus one Trading Collar to ensure it is collared to avoid executing at an erroneous price; whereas, a market order to sell entered when the NBO is $0.00 would be rejected as there would be no market for the incoming order.[18]

In addition, because Rule 6.60–O(a)(1)(A) has been updated to clarify that incoming marketable limit orders may be collared, the Exchange proposes to further update Rule 6.60–O(a) to address how such orders would be collared, depending upon whether the Exchange is already in receipt of a

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Release No. 86788 (August 28, 2019), 84 FR 46593 (September 4, 2019) (''Notice'').

[5] *See* Notice, *supra* note 4, at 46594.

[6] ''Trading Collars'' are determined by the Exchange on a class-by-class basis and, unless announced otherwise via Trader Update, are the same value as the bid-ask differential guidelines established pursuant to Rule 6.37–O(b)(4). *See* Rule 6.60(a)(2).

[7] *See* Notice, *supra* note 4, at 46594.

[8] *See id.*

[9] *See id.*

[10] ''Marketable Orders'' are defined as incoming market orders and marketable limit orders under the proposed rule. *See* proposed Rule 6.60–O(a)(1)(A).

[11] *See* Notice, *supra* note 4, at 46594.

[12] *See* proposed Rule 6.60–O(a)(3). The Exchange believes that removing the word ''immediate'' would more accurately reflect the Exchange's current functionality in regards to the processing of these contingent order types, insofar as such orders will only ''immediately'' execute if the contingency is satisfied. *See* Notice, *supra* note 4, at 46594.

[13] The current rule states that when a market order is subject to Trade Collar Protection, the Exchange does not ''immediately execute or route such orders.''

[14] *See* proposed Rule 6.60–O(a)(4). *See also* proposed Rule 6.60–O(a)(1)(A) (making clear that incoming marketable limit orders are subject to Trade Collar Protection).

[15] *See* Notice, *supra* note 4, at 46595.

[16] *See* proposed Rule 6.60–O(a)(4).

[17] *See* Notice, *supra* note 4, at 46595. The Exchange states that this is consistent with its current functionality. *See id.*

[18] *See* proposed Rule 6.60–O(a)(4)(B)(i), (ii). The Exchange believes the Zero NBBO Collar Exception would improve the operation of Trading Collars when the prevailing market is zero (indicating market dislocation) at the time an incoming market order arrives. *See* Notice, *supra* note 4, at 46595.

collared order.[19] Specifically, as proposed, modified Rule 6.60–O(a)(4)(C) would state that when the incoming collared order is a marketable limit order to buy (sell) and there is no other order already being collared, the order would be ''assigned a collar execution price equal to the NBO (NBB).'' If, however, a marketable limit order arrives when there is already an order being collared, it would join that collared order and be processed consistent with proposed Rule 6.60–O(a)(6)(B).[20] The Exchange states that this is consistent with current functionality.[21]

The Exchange also proposes to modify the rule regarding executions of collared orders. The Exchange proposes to clarify that a collared order to buy (sell) would ''trade against any contra-side interest priced equal to its collar execution price or at prices within one Trading Collar above (below) the collar execution price (''Collar Range'').'' [22] Consistent with proposed Rule 6.60–O(a)(4)(B),(C), the Exchange proposes to refer to the ''collar execution price'' (as opposed to a display price). In addition, the Exchange believes that clarifying that the collared order would execute with contra-side interest priced within a Collar Range (*i.e.,* equal to, and up to one Trading Collar above (below) the collar execution price), provides more specificity than the current language, which states only that such order would execute against interest ''within one Trading Collar'' of its price.[23]

In addition, the Exchange proposes to add new paragraph (a)(4)(E) to Rule 6.60–O to codify existing functionality and make clear that the Exchange would cancel a market order, or the balance thereof, that has been collared pursuant to proposed Rule 6.60–O(a)(1)(A) or (B) if, after exhausting trading opportunities within the Collar Range, the Exchange determines there are no quotes on the Exchange and/or no interest on another market (''Available Interest'').[24]

The Exchange also proposes to modify the rule language describing the treatment of the balance of a Marketable Order that is subject to Trade Collar Protection. Pursuant to new Rule 6.60–O(a)(5), a market order that does not trade on arrival will be displayed at its collar execution price whereas the display price of the balance of a partially executed Marketable Order collared pursuant to proposed Rule 6.60–O(a)(1)(B), depends upon eligible contra-side interest.[25] Specifically, proposed Rule 6.60–O(a)(5)(A) would provide that if the collared order has traded against all contra-side interest within the Collar Range, the order would be displayed at the most recent execution price. If, however, there is contra-side interest priced within one Trading Collar of the most recent execution price, proposed Rule 6.60–O(a)(5)(B) would provide that the order to buy (sell) would be displayed at the higher (lower) of its assigned collar execution price or the best execution price of the order that is both within the Collar Range and at least one Trading Collar away from the best priced contra-side trading interest (*i.e.,* lowest sell interest for collared buy orders/highest buy interest for collared sell orders).[26]

In addition, the Exchange also proposes to add rule text to Rule 6.60–O(a)(5) to state that collared orders would be displayed at the Minimum Price Variation (''MPV'') for the option, pursuant to Rule 6.72–O (Trading Differentials) which rule sets forth the minimum quoting increments for options traded on the Exchange.[27]

Current Rule 6.60–O(a)(4)(C) sets forth scenarios that would trigger the ''redisplay'' of a collared order. The Exchange proposes to state that the Exchange would ''assign a new collar execution price'' to (as opposed to redisplay) the collared order under each of the listed scenarios, as well as make other changes that conform the rule text with the changes described above.[28] In addition, the Exchange proposes to state in Rule 6.60–O(a)(6)(C) that ''if the collared order is a Market Order to sell that has reached $0.00, it will not reprice but will be posted in the Consolidated Book at its MPV (*e.g.,* $0.01 or $0.05),'' because an order may never be posted for lower than its MPV, and the alternative to holding the order at the MPV would be to cancel it.[29]

The Exchange also proposes to clarify current Rule 6.60–O(a)(6). The Exchange states that because the current rule text does not make clear that collared orders, like non-collared orders, will be processed at each price in time priority, the Exchange proposes to clarify that such orders would be ''processed in accordance with Rule 6.76–O.Order Ranking and Display—OX.'' [30]

The proposed rule change would also make several non-substantive technical and organizational changes to proposed Rule 6.60–O(a), such as changes to conform the numbering and lettering of the rule, as well as to update cross-references and terminology in connection with the changes described above.

Finally, the Exchange proposes to modify Rule 6.65A–O (''Limit-Up and Limit-Down During Extraordinary Market Volatility''), related to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (''LULD'' or the ''LULD Rule''). The Exchange proposes to add rule text to state that the Exchange, under existing functionality, ''will cancel any Market Order that is a collared order pursuant to Rule 6.60–O(a)'' if the underlying NMS stock enters an LULD State and ''will notify OTP Holders of the reason for such cancellation.'' [31]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[32] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[33] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the Exchange believes that the proposed changes that codify existing functionality, including how incoming marketable limit orders are collared and the cancellation of collared market orders in the absence of Available Interest or if an NMS stock enters an LULD state would add clarity, transparency and internal consistency to

[19] *See id.*

[20] *See* proposed Rule 6.60–O(a)(4)(C).

[21] *See* Notice, *supra* note 4, at 46595.

[22] *See* proposed Rule 6.60–O(a)(4)(D).

[23] *See* Notice, *supra* note 4, at 46595. The Exchange believes these proposed changes, which describe current functionality, would add clarity, transparency, and internal consistency to Exchange rules. *See id.*

[24] *See id.* According to the Exchange, the absence of Available Interest, such as a market maker quote in the series, means that the Exchange would have no reliable price framework within which to evaluate the market order. *See id.*

[25] *See* proposed Rule 6.60–O(a)(5).

[26] The Exchange believes adding this information to the rule would add transparency, clarity and internal consistency to Exchange rules. *See* Notice, *supra* note 4, at 46596.

[27] *See* proposed Rule 6.60–O(a)(5).

[28] *See* proposed Rule 6.60–O(a)(6).

[29] *See* Notice, *supra* note 4, at 46597.

[30] *See* proposed Rule 6.60–O(a)(8).

[31] *See* proposed Rule 6.65A–O(a)(1).

[32] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[33] 15 U.S.C. 78f(b)(5).

Exchange rules regarding the handling of orders accepted by the Exchange and make such rules easier for market participants to navigate and comprehend.[34]

In addition, the Exchange believes that the proposal to codify that the Exchange would cancel a market order or the balance thereof that has been collared once it has exhausted trading opportunities within its collar execution price plus/minus one Trading Collar if there is no Available Interest would protect investors from potentially erroneous executions.[35] Further, the Exchange believes that the proposal to codify current functionality regarding a collared order that is a market order to sell that has reached $0.00 such that the Exchange will post the order at its MPV (*e.g.,* $0.01 or $0.05) would promote just and equitable principles of trade and assist with the maintenance of fair and orderly markets because an order may never be posted for lower than its MPV and the alternative to holding the order at the MPV would be to cancel it.[36] The Exchange believes the proposed clarification of how such orders are handled provides the collared order an opportunity for an execution (rather than being cancelled) and adds transparency and internal consistency to Exchange rules.[37]

The Commission notes that the Exchange believes that the Zero NBBO Collar Exception would improve the operation of the Trading Collar when the prevailing market is zero (which the Exchange states indicates market dislocation) at the time an incoming market order arrives.[38] The Exchange states that absent the proposed Zero NBBO Collar Exception, a market order to buy (sell) that arrives when the NBB (NBO) is zero would trade based on the last sale price, if any.[39] The Exchange notes that if there is no last sale price, the order would trade at the contra-side NBBO which may result in a bad execution price.[40] In regards to the proposal to reject (as opposed to collar) incoming sell orders when the NBO is zero, the Exchange believes this change in functionality is necessary because any attempt to collar such an order would result in a negative number. In addition, the Exchange states that it has observed that it is extremely uncommon to have a no (zero) offer situation and believes it could be indicative of unstable market conditions.[41] To avoid such orders receiving bad executions in times of market dislocation, the Exchange believes it would be appropriate to reject such orders.[42]

The Exchange also believes that it is appropriate that the Exchange cancel a market order that is collared when an NMS stock enters an LULD state because when the underlying NMS stock enters an LULD state, there may not be a reliable underlying reference price, there may be a wide bid/ask quotation differential in the option, and there may be less liquidity in the options markets.[43] According to the Exchange, allowing a collared Market Order to execute (as opposed to cancel) in such circumstances could lead to executions at unintended prices (*i.e.,* inferior to the NBBO), and could add to volatility in the options markets during times of extraordinary market volatility.[44] The Exchange believes that this current treatment of collared market orders provides certainty to the treatment of Market Orders during these times, and the proposal to explicitly state this treatment in the rule text adds clarity and transparency to Exchange rules, thus promoting just and equitable principles of trade and removing impediments to, and perfecting the mechanism of, a free and open market and a national market system.[45] The Exchange states that the proposed cancellation of an options order if the underlying NMS security is in an LULD state is not new or novel and is available on other options exchanges that offer similar collar functionality.[46] The Exchange believes that the proposed rule changes would add transparency and specificity to Exchange rules.[47]

The Commission believes that the operation of the Trade Collar Protection mechanism set forth in the proposal is consistent with the Act. In addition, the Commission believes that the revised description of this mechanism should increase transparency with respect to how the mechanism operates and enhance investors' understanding of how the mechanism may affect their orders in certain market conditions. Accordingly, the Commission believes that the proposal is reasonably designed to help prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[48] that the proposed rule change (SR–NYSEArca–2019–58) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22931 Filed 10–21–19; 8:45 am]

BILLING CODE 8011–01–P

[34] *See* Notice, *supra* note 4, at 46599.

[35] *See id.*

[36] *See id.*

[37] *See id.*

[38] *See id.*

[39] *See id.*

[40] *See id.*

[41] *See id.*

[42] *See id.*

[43] *See id.*

[44] *See id.*

[45] *See id.*

[46] The Exchange cites CBOE Rule 6.3A(b)(1) (LULD rule citing Rule 6.2 regarding order handling); CBOE Rule 6.2, Interpretations and Policies .07 and NASDAQ Options Market Ch. V, Sec. 3(d). However, the Exchange notes that it believes that the rules of these other exchanges do not specifically contemplate the underlying security entering an LULD state while a market order is resting on the book, because such orders typically execute on arrival. *See* Notice, *supra* note 4, at 46599.

[47] *See id.*

[48] 15 U.S.C. 78s(b)(2).

[49] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87319; File No. SR–CBOE–2019–087]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Move Certain Rules in Chapter XXIII of the Currently Effective Rulebook to Proposed Section G of Chapter 4 of the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform

October 16, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to move certain Rules in Chapter XXIII of the currently effective Rulebook (''current Rulebook''), which governs interest rate options, to proposed Section G of Chapter 4 of the shell structure for the Exchange's Rulebook that will become effective upon the migration of the Exchange's trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) (''shell Rulebook''). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences, between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

The Exchange proposes to relocate certain rules in Chapter XXIII, which govern interest rate options, to proposed Section G of Chapter 4 in the shell Rulebook. The Exchange notes that in addition to relocating certain rules regarding interest rate options to proposed Section G of Chapter 4 in the shell Rulebook, the proposed rule change deletes the rules from the current Rulebook. The proposed rule change relocates the rules as follows:

Proposed rule	Current rule
Introductory paragraph under Section G heading	Introduction.
4.60 Definitions	23.1 Definitions.
4.61 Terms of Interest Rate Options Contracts	23.5 Terms of Interest Rate Option Contracts.
4.62 Wire Connections	23.2 Wire Connections.

The proposed changes are of a non-substantive nature and will not amend the relocated rules other than to update their rule numbers, conform paragraph structure [3] and number/lettering format to that of the shell Rulebook, and make cross-reference changes to shell rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As stated, the proposed rule change makes no substantive changes to the rules. The proposed rule change is merely intended to relocate the Exchange's rules to the shell Rulebook and update their numbers, paragraph structure, including number and lettering format, and cross-references to conform to the shell Rulebook as a whole in anticipation of the technology migration on October 7, 2019. As such, the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by improving the way the Exchange's Rulebook is organized, making it easier to read, and, particularly, helping market participants better understand the rules of the Exchange, which will also result in less burdensome and more efficient regulatory compliance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended as a competitive change, but rather, seeks to make non-substantive rule changes in relocating the rules and updating cross-references to shell rules in anticipation

[3] The Exchange notes that the paragraph structure for definitions listed under rules in the shell Rulebook is in alphabetized format. Therefore, the same structure is used under proposed Rule 4.60.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

of the October 7, 2019 technology migration. The Exchange also does not believe that the proposed rule change will impose any undue burden on competition because the relocated rule text is exactly the same as the Exchange's current rules, all of which have all been previously filed with the Commission.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] 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 for 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 [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) [11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange notes that the proposed rule change is merely relocating certain rules to its shell rulebook—which includes corresponding updates to rule numbers, cross-references, and other references—in order to conform these rules to the shell rulebook upon the technology migration explained above. The Exchange believes that the proposed rule change will make its rules easier to read and understand for all investors. The Exchange also asserts that the relocation of the rules explained above will not impose any significant burden on competition as the substance of the rules remains unchanged. The Commission agrees that allowing this proposed rule change to become operative upon filing in order to facilitate the Exchange's technology migration—without changing the substance of these Exchange Rules—is consistent with the protection of investors and the public interest. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–087 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–087. 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 offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–087, and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22934 Filed 10–21–19; 8:45 am]

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[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 Commission has waived that requirement in this case.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87315; File No. SR–NYSEAMER–2019–30]

Self-Regulatory Organizations; NYSE American LLC; Order Approving a Proposed Rule Change To Modify Rules 967NY and 953.1NY Regarding the Treatment of Orders Subject To Trade Collar Protection

October 16, 2019.

I. Introduction

On August 21, 2019, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section

19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to modify Exchange Rules 967NY and 953.1NY regarding the treatment of orders subject to Trade Collar Protection. The proposed rule change was published for comment in the **Federal Register** on September 3, 2019.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange states that it proposes to modify Rule 967NY to clarify existing functionality and to adopt enhancements to the operation of the Trading Collars.[5] The Exchange applies Trade Collar Protection to incoming orders. As described more fully in the Notice, the Exchange states that Trading Collars[6] mitigate the risks associated with orders sweeping through multiple price points (including during extreme market volatility) and resulting in executions at prices that are potentially erroneous.[7] According to the Exchange, by applying Trading Collars to incoming orders, the Exchange provides an opportunity to attract additional liquidity at tighter spreads and it ''collars'' affected orders at successive price points until the bid and offer are equal to the bid-ask differential guideline for that option (*i.e.,* equal to the Trading Collar).[8] Similarly, by applying Trading Collars to partially executed orders, the Exchange states that it prevents the balance of such orders from executing away from the prevailing market after exhausting interest at or near the top of book on arrival.[9]

Current Rule 967NY(a)(1)(i) states that Trade Collar Protection prevents the ''immediate execution'' of incoming market orders when the difference between the National Best Offer (''NBO'') and the National Best Bid (''NBB'') is greater than one Trading Collar. Rule 967NY(a)(1)(i) currently states that Trade Collar Protection would apply to any unexecuted portion of a marketable limit order. The Exchange proposes to modify Rule 967NY(a) to make clear that Trade Collar Protection may also be applied to marketable limit orders on arrival. The Exchange asserts that this proposed change would clarify how Trade Collar Protection currently operates, and that the Exchange would continue to apply Trade Collar Protection to the balance of Marketable Orders[10] consistent with the current rule.[11]

The Exchange also proposes to modify the current Rule 967NY(a)(3), which currently states that order types that have contingencies, namely, IOC, NOW, AON, and FOK orders, would receive an ''immediate execution.'' The proposed modifications would clarify that such incoming orders would ''receive an execution, depending upon the availability of an execution pursuant to the terms of those orders.''[12]

In addition, the Exchange proposes to modify current Rule 967NY(a)(4) to make clear that when Marketable (as opposed to just market) Orders are subject to Trade Collar Protection, the Exchange will limit the ''execution and/or routing'' of such orders.[13] The Exchange also proposes to make clear that this provision relates to ''incoming'' Marketable Orders as opposed to the balance thereof.[14]

Proposed Rule 967NY(a)(4)(A) would provide that ''[a] Market Order to buy (sell) received when there is already a collared order to buy (sell) will join that collared order and be processed consistent with paragraphs (a)(4)(C)—(a)(6),'' which the Exchange states reflects current functionality.[15] The Exchange also proposes Rule 967NY(a)(4)(B) to specify that collared orders will be assigned a ''collar execution price,'' which price depends upon the order type (market or limit) and whether (when the order arrives) the Exchange is already in receipt of another order being collared.[16] Current Rule 967NY(a)(4)(A) covers collared market orders to buy (sell), which would not immediately execute or route, but would be ''displayed at a price equal to the NBB (NBO) plus (minus) one Trading Collar.'' The Exchange proposes to replace ''displayed'' as used in the current rule with ''assigned a collar execution price'' because, according to the Exchange, once collared, the order would be eligible to immediately execute against available interest before its price is displayed.[17]

In addition, the Exchange proposes an exception to the processing of incoming market orders to buy (sell) that arrive when the NBB (NBO) is zero (''Zero NBBO Collar Exception''). Specifically, as proposed, a market order to buy entered when the NBB is $0.00 would be assigned a collar execution price equal to the NBB (*i.e.,* $0.00) plus one Trading Collar to ensure it is collared to avoid executing at an erroneous price; whereas, a market order to sell entered when the NBO is $0.00 would be rejected as there would be no market for the incoming order.[18]

In addition, because Rule 967NY(a)(1)(A) has been updated to clarify that incoming marketable limit orders may be collared, the Exchange proposes to further update Rule 967NY(a) to address how such orders would be collared, depending upon whether the Exchange is already in receipt of a collared order.[19] Specifically, as proposed, modified Rule 967NY(a)(4)(C) would state that when the incoming collared order is a marketable limit order to buy (sell) and there is no other order already being collared, the order would be ''assigned a collar execution price equal to the NBO (NBB).'' If, however, a marketable limit order arrives when there is already an order being collared, it would join that collared order and be processed consistent with proposed Rule 967NY(a)(6)(B).[20] The Exchange states that this is consistent with current functionality.[21]

The Exchange also proposes to modify the rule regarding executions of collared orders. The Exchange proposes to clarify that a collared order to buy (sell) would ''trade against any contra-side interest

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Release No. 86789 (August 28, 2019), 84 FR 46062 (September 3, 2019) (''Notice'').

[5] *See* Notice, *supra* note 4, at 46062.

[6] ''Trading Collars'' are determined by the Exchange on a class-by-class basis and, unless announced otherwise via Trader Update, are the same value as the bid-ask differential guidelines established pursuant to Rule 925NY(b)(4). *See* Rule 967NY(a)(2).

[7] *See* Notice, *supra* note 4, at 46062.

[8] *See id.*

[9] *See id.*

[10] ''Marketable Orders'' are defined as incoming market orders and marketable limit orders under the proposed rule. *See* proposed Rule 967NY(a)(1)(A).

[11] *See* Notice, *supra* note 4, at 46063.

[12] *See* proposed Rule 967NY(a)(3). The Exchange believes that removing the word ''immediate'' would more accurately reflect the Exchange's current functionality in regards to the processing of these contingent order types, insofar as such orders will only ''immediately'' execute if the contingency is satisfied. *See* Notice, *supra* note 4, at 46063.

[13] The current rule states that when a market order is subject to Trade Collar Protection, the Exchange does not ''immediately execute or route such orders.''

[14] *See* proposed Rule 967NY(a)(4). *See also* proposed Rule 967NY(a)(1)(A) (making clear that incoming marketable limit orders are subject to Trade Collar Protection).

[15] *See* Notice, *supra* note 4, at 46063.

[16] *See* proposed Rule 967NY(a)(4).

[17] *See* Notice, *supra* note 4, at 46063. The Exchange states that this is consistent with its current functionality. *See id.*

[18] *See* proposed Rule 967NY(a)(4)(B)(i), (ii). The Exchange believes the Zero NBBO Collar Exception would improve the operation of Trading Collars when the prevailing market is zero (indicating market dislocation) at the time an incoming market order arrives. *See* Notice, *supra* note 4, at 46063.

[19] *See id.*

[20] *See* proposed Rule 967NY(a)(4)(C).

[21] *See* Notice, *supra* note 4, at 46063.

priced equal to its collar execution price or at prices within one Trading Collar above (below) the collar execution price (''Collar Range'').'' [22] Consistent with proposed Rule 967NY(a)(4)(B),(C), the Exchange proposes to refer to the ''collar execution price'' (as opposed to a display price). In addition, the Exchange believes that clarifying that the collared order would execute with contra-side interest priced within a Collar Range (*i.e.,* equal to, and up to one Trading Collar above (below) the collar execution price), provides more specificity than the current language, which states only that such order would execute against interest ''within one Trading Collar'' of its price.[23]

In addition, the Exchange proposes to add new paragraph (a)(4)(E) to Rule 967NY to codify existing functionality and make clear that the Exchange would cancel a market order, or the balance thereof, that has been collared pursuant to proposed Rule 967NY(a)(1)(A) or (B) if, after exhausting trading opportunities within the Collar Range, the Exchange determines there are no quotes on the Exchange and/or no interest on another market (''Available Interest'').[24]

The Exchange also proposes to modify the rule language describing the treatment of the balance of a Marketable Order that is subject to Trade Collar Protection. Pursuant to new Rule 967NY(a)(5), a market order that does not trade on arrival will be displayed at its collar execution price whereas the display price of the balance of a partially executed Marketable Order collared pursuant to proposed Rule 967NY(a)(1)(B), depends upon eligible contra-side interest.[25] Specifically, proposed Rule 967NY(a)(5)(A) would provide that if the collared order has traded against all contra-side interest within the Collar Range, the order would be displayed at the most recent execution price. If, however, there is contra-side interest priced within one Trading Collar of the most recent execution price, proposed Rule 967NY(a)(5)(B) would provide that the order to buy (sell) would be displayed at the higher (lower) of its assigned collar execution price or the best execution price of the order that is both within the Collar Range and at least one Trading Collar away from the best priced contra-side trading interest (*i.e.,* lowest sell interest for collared buy orders/highest buy interest for collared sell orders).[26]

In addition, the Exchange also proposes to add rule text to Rule 967NY(a)(5) to state that collared orders would be displayed at the Minimum Price Variation (''MPV'') for the option, pursuant to Rule 960NY (Trading Differentials) which rule sets forth the minimum quoting increments for options traded on the Exchange.[27]

Current Rule 967NY(a)(4)(C) sets forth scenarios that would trigger the ''redisplay'' of a collared order. The Exchange proposes to state that the Exchange would ''assign a new collar execution price'' to (as opposed to redisplay) the collared order under each of the listed scenarios, as well as make other changes that conform the rule text with the changes described above.[28] In addition, the Exchange proposes to state in Rule 967NY(a)(6)(C) that ''if the collared order is a Market Order to sell that has reached $0.00, it will not reprice but will be posted in the Consolidated Book at its MPV (*e.g.,* $0.01 or $0.05),'' because an order may never be posted for lower than its MPV, and the alternative to holding the order at the MPV would be to cancel it.[29]

The Exchange also proposes to clarify current Rule 967NY(a)(6). The Exchange states that because the current rule text does not make clear that collared orders, like non-collared orders, will be processed at each price in time priority, the Exchange proposes to clarify that such orders would be ''processed in accordance with Rule 964NY, Display, Priority and Order Allocation—Trading Systems.'' [30]

The proposed rule change would also make several non-substantive technical and organizational changes to proposed Rule 967NY(a), such as changes to conform the numbering and lettering of the rule, as well as to update cross-references and terminology in connection with the changes described above.

Finally, the Exchange proposes to modify Rule 953.1NY (''Limit-Up and Limit-Down During Extraordinary Market Volatility''), related to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (''LULD'' or the ''LULD Rule''). The Exchange proposes to add rule text to state that the Exchange, under existing functionality, ''will cancel any Market Order that is a collared order pursuant to Rule 967NY(a)'' if the underlying NMS stock enters an LULD State and ''will notify ATP Holders of the reason for such cancellation.'' [31]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[32] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[33] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the Exchange believes that the proposed changes that codify existing functionality, including how incoming marketable limit orders are collared and the cancellation of collared market orders in the absence of Available Interest or if an NMS stock enters an LULD state would add clarity, transparency and internal consistency to Exchange rules regarding the handling of orders accepted by the Exchange and make such rules easier for market participants to navigate and comprehend.[34]

In addition, the Exchange believes that the proposal to codify that the Exchange would cancel a market order or the balance thereof that has been collared once it has exhausted trading opportunities within its collar execution price plus/minus one Trading Collar if there is no Available Interest would protect investors from potentially erroneous executions.[35] Further, the Exchange believes that the proposal to codify current functionality regarding a collared order that is a market order to sell that has reached $0.00 such that the Exchange will post the order at its MPV

[22] *See* proposed Rule 967NY(a)(4)(D).

[23] *See* Notice, *supra* note 4, at 46064. The Exchange believes these proposed changes, which describe current functionality, would add clarity, transparency, and internal consistency to Exchange rules. *See id.*

[24] *See id.* According to the Exchange, the absence of Available Interest, such as a market maker quote in the series, means that the Exchange would have no reliable price framework within which to evaluate the market order. *See id.*

[25] *See* proposed Rule 967NY(a)(5).

[26] The Exchange believes adding this information to the rule would add transparency, clarity and internal consistency to Exchange rules. *See* Notice, *supra* note 4, at 46064.

[27] *See* proposed Rule 967NY(a)(5).

[28] *See* proposed Rule 967NY(a)(6).

[29] *See* Notice, *supra* note 4, at 46067.

[30] *See* proposed Rule 967NY(a)(8).

[31] *See* proposed Rule 953.1NY(a)(1).

[32] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[33] 15 U.S.C. 78f(b)(5).

[34] *See* Notice, *supra* note 4, at 46067.

[35] *See id.*

(*e.g.,* $0.01 or $0.05) would promote just and equitable principles of trade and assist with the maintenance of fair and orderly markets because an order may never be posted for lower than its MPV and the alternative to holding the order at the MPV would be to cancel it.[36] The Exchange believes the proposed clarification of how such orders are handled provides the collared order an opportunity for an execution (rather than being cancelled) and adds transparency and internal consistency to Exchange rules.[37]

The Commission notes that the Exchange believes that the Zero NBBO Collar Exception would improve the operation of the Trading Collar when the prevailing market is zero (which the Exchange states indicates market dislocation) at the time an incoming market order arrives.[38] The Exchange states that absent the proposed Zero NBBO Collar Exception, a market order to buy (sell) that arrives when the NBB (NBO) is zero would trade based on the last sale price, if any.[39] The Exchange notes that if there is no last sale price, the order would trade at the contra-side NBBO which may result in a bad execution price.[40] In regards to the proposal to reject (as opposed to collar) incoming sell orders when the NBO is zero, the Exchange believes this change in functionality is necessary because any attempt to collar such an order would result in a negative number. In addition, the Exchange states that it has observed that it is extremely uncommon to have a no (zero) offer situation and believes it could be indicative of unstable market conditions.[41] To avoid such orders receiving bad executions in times of market dislocation, the Exchange believes it would be appropriate to reject such orders.[42]

The Exchange also believes that it is appropriate that the Exchange cancel a market order that is collared when an NMS stock enters an LULD state because when the underlying NMS stock enters an LULD state, there may not be a reliable underlying reference price, there may be a wide bid/ask quotation differential in the option, and there may be less liquidity in the options markets.[43] According to the Exchange, allowing a collared Market Order to execute (as opposed to cancel) in such circumstances could lead to executions at unintended prices (*i.e.,* inferior to the NBBO), and could add to volatility in the options markets during times of extraordinary market volatility.[44] The Exchange believes that this current treatment of collared market orders provides certainty to the treatment of Market Orders during these times, and the proposal to explicitly state this treatment in the rule text adds clarity and transparency to Exchange rules, thus promoting just and equitable principles of trade and removing impediments to, and perfecting the mechanism of, a free and open market and a national market system.[45] The Exchange states that the proposed cancellation of an options order if the underlying NMS security is in an LULD state is not new or novel and is available on other options exchanges that offer similar collar functionality.[46] The Exchange believes that the proposed rule changes would add transparency and specificity to Exchange rules.[47]

The Commission believes that the operation of the Trade Collar Protection mechanism set forth in the proposal is consistent with the Act. In addition, the Commission believes that the revised description of this mechanism should increase transparency with respect to how the mechanism operates and enhance investors' understanding of how the mechanism may affect their orders in certain market conditions. Accordingly, the Commission believes that the proposal is reasonably designed to help prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[48] that the proposed rule change (SR–NYSEAMER–2019–30) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22944 Filed 10–21–19; 8:45 am]

BILLING CODE 8011–01–P

[36] *See id.*

[37] *See id.*

[38] *See id.*

[39] *See id.*

[40] *See id.*

[41] *See id.*

[42] *See id.*

[43] *See id.* at 46067–8.

[44] *See id.* at 46068.

[45] *See id.*

[46] The Exchange cites CBOE Rule 6.3A(b)(1) (LULD rule citing Rule 6.2 regarding order handling); CBOE Rule 6.2, Interpretations and Policies .07 and NASDAQ Options Market Ch. V, Sec. 3(d). However, the Exchange notes that it believes that the rules of these other exchanges do not specifically contemplate the underlying security entering an LULD state while a market order is resting on the book, because such orders typically execute on arrival. *See* Notice, *supra* note 4, at 46068.

[47] *See id.*

[48] 15 U.S.C. 78s(b)(2).

[49] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87320; File No. SR–CBOE–2019–095]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Relocate Various Exchange Rules From the Currently Effective to the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform

October 16, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 4, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to relocate various Exchange Rules from the currently effective Rulebook (''current Rulebook'') to the shell structure for the Exchange's Rulebook that will become effective upon the migration of the Exchange's trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) (''shell Rulebook''). The proposed rule change also deletes certain Exchange Rules from the currently effective Rulebook that will no longer be applicable following the migration. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

CBOELegalRegulatoryHome.aspx), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences, between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

The Exchange proposes to relocate certain rules currently in the currently effective Rulebook into the shell Rulebook. The Exchange notes that in addition to moving these various rules, the proposed rule change deletes the rules from the current Rulebook. It also proposes to delete certain current rules that, as a result of the rules already in the shell Rulebook, are either redundant or are no longer applicable to trading on the Exchange. The proposed rule change moves and, where applicable, removes the rules as follows:

Shell rule	Current rule
5.3 Bids and Offers (introductory paragraph)	6.43 Manner of Bidding and Offering.
5.5(d) System Access and Connectivity (*Mandatory Testing*)	6.23A(f) Trading Permit Holder Connectivity (*Mandatory Systems Testing*).[3]
5.6(a) Order Types, Order Instructions, and Times-in-Force (*Availability*).	6.11 Origins Eligible for Book Entry.
6.7 Off-Floor Transfers of Positions	6.49A Off-Floor Transfers of Positions.
6.8 Off-Floor RWA Transfers	6.49B Off-Floor RWA Transfers.
To be deleted	6.51A Fines for Failure to Perform Certain Reporting Duties.
To be deleted	6.53A Types order Formats.
To be deleted	24.13 Trading Rotations.
To be deleted	24A.11 FLEX Index Appointed Market-Maker Account Equity.
To be deleted	24A.12 FLEX Appointed Market-Maker Financial Requirements.

The proposed changes are of a non-substantive nature and will not amend the relocated rules other than to update their rule numbers, conform paragraph structure and number/lettering format to that of the shell Rulebook, and make cross-reference changes to shell rules.

The Exchange notes that the proposed change to incorporate the language under current Rule 6.11 into shell Rule 5.6(a) does not substantively change the current provision but updates it to streamline and simplify the language and the reflect shell rule text. Current Rule 6.11 states that after a class opens for trading, the System accepts for entry into the Book quotes of Market-Makers (including DPMs and LMMs) and orders of any origin in Hybrid classes. The proposed provision that relocates Rule 6.11 under shell Rule 5.6(a) states that after a class opens for trading pursuant to Rule 5.31 (the shell rule which will govern the opening auction process upon migration), the System accepts for entry into the Book orders and quotes with any Capacity. In other words, orders and quotes of any Capacity will be eligible to enter the Book. The Exchange notes that this is substantively the same provision as the current provision because all classes currently trade on the System, and, pursuant to shell Rule 1.1, upon migration, the term ''Capacity'' will be used to reference what is referred to as ''origin'' in the currently effective rules.[4] Therefore, the proposed language merely simplifies and streamlines the current provision and updates terms to reflect terms in the shell Rulebook.

The proposed change also adds current Rule 6.23A(f), which governs mandatory systems testing for Trading Permit Holders, to shell Rule 5.5(d). The Exchange notes that SR–CBOE–2019–033[5] removed current Rule 6.23A, but did not incorporate it into the shell Rulebook in anticipation of migration. While that filing indicated that Rule 5.24 in the shell Rulebook covered the same provision as current Rule 6.23A(f), current Rule 6.23A(f) is broader than the required testing in shell Rule 5.24, which relates only to disaster recovery testing. Under current Rule 6.23A(f), the Exchange currently may require other types of testing, and therefore believes

[3] The Exchange notes that this provision was removed from the currently effective Rulebook in filing SR–CBOE–2019–033. However, that filing inadvertently did not maintain this language in the shell Rulebook. *See* Securities Exchange Act Release No. 86374 (July 15, 2019), 84 FR 34963 (July 19, 2019) (SR–CBOE–2019–033) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to System Connectivity and Order Entry and Allocation Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges).

[4] *See* shell Rule 1.1, which defines ''quote'' or ''quotations'' as a firm bid or offer a Market-Maker (a) submits electronically in an order or bulk message (including to update any bid or offer submitted in a previous order or bulk message) or (b) represents in open outcry on the trading floor.

[5] *See* Securities and Exchange Act Release No. 86374 (July 15, 2019), 84 FR 34963 (July 19, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to System Connectivity and Order Entry and Allocation Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges) (SR–CBOE–2019–033).

it is appropriate to maintain this provision in the shell Rulebook. The Exchange notes that proposed 5.5(d) will merely continue to govern mandatory system testing upon the October 7, 2019 migration in the same manner in which Rule 6.23A(f) currently governs mandatory systems testing, and therefore will not substantively alter nor have any impact on trading on the Exchange or on TPHs.

The proposed changes to remove certain rules are of a non-substantive nature because they delete rules that are redundant or not applicable as a result of other rules already in the shell Rulebook. The proposed rule change removes current Rule 6.53A, which covers order formats, as these formats relate solely to the Exchange's current system, and therefore will not be applicable on the new system following the technology migration and information regarding order formats is already available in technical specifications on the Exchange's website.[6] The proposed change removes current Rule 24.13, which describes trading rotations for index options because it is redundant of the opening process in shell Rule 5.31 (current Rule 6.2) which governs the opening auction process for both equity options and index options. Pursuant to current Rule 24.13, the Exchange may provide for the opening rotation to be conducted using the procedures described in current Rule 24.13 or current Rule 6.2 (shell Rule 5.31). The Exchange has provided for the opening rotation to be conducted using the procedures described in current Rule 6.2 (shell Rule 5.31). Additionally, the Exchange pursuant to current Rule 6.2 (proposed Rule 5.31) has authority to deviate from the opening rotation procedures, while Designated Primary Market-Makers (''DPMs'') and Lead Market-Makers (''LMMs'') do not. Therefore, deletion of current Rule 24.13 will have no impact on the opening of index options. Index options will continue to open for trading pursuant to the same process as other options as set forth in current Rule 6.2 (shell Rule 5.31).[7]

The proposed rule change removes Rule 6.51A because this Rule was deleted in 1992 and merely refers to current Rule 17.50 (shell Rule 13.15).[8] Finally, the proposed rule change deletes current Rule 24A.11, in connection with FLEX Index appointed Market-Maker account equity, and Rule 24A.12, in connection with FLEX Index appointed Market-Maker financial requirements, because the Exchange does not currently have any FLEX Appointed Market-Makers, and does not intend to have any following migration. In other rule filings, the Exchange previously deleted various current Rules related to FLEX Appointed Market-Makers, and inadvertently did not omit current Rules 24A.11 and 24A.22 in those rule filings.[9]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As stated, the proposed rule change makes no substantive changes to the rules. The proposed rule change is merely intended to relocate the Exchange's rules to the shell Rulebook and update their numbers, paragraph structure, including number and lettering format, cross-references, and terms found in the shell Rules, as well as removing rules that are either redundant or no longer applicable to the Exchange, in order to conform to the shell Rulebook as a whole in anticipation of the technology migration on October 7, 2019. As such, the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by improving the way the Exchange's Rulebook is organized, making it easier to read, and, particularly, helping market participants better understand the rules of the Exchange, which will also result in less burdensome and more efficient regulatory compliance.

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 reiterates that the proposed rule change is being proposed in the context of a technology migration of the Exchange's system to the same technology platform as that used by the Cboe Affiliated Exchanges and a related reorganization of the Rulebook, and not as a competitive filing. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because it deletes rules that are redundant or no longer applicable in light of the rules already in the shell Rulebook, will allow the provision that currently governs mandatory systems testing to continue to govern mandatory systems testing upon migration, and makes non-substantive changes to the rules by relocating the rules and updating their paragraph structure and cross-references, to conform to the shell Rulebook that will be in place come October 7, 2019. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition because the proposed rules are substantially the same as the Exchange's current rules, all of which have all been previously filed with the Commission.

[6] *See* Cboe US Options FIX Specifications (October 3, 2019), available at *http://cdn.cboe.com/resources/membership/US_Options_FIX_Specification.pdf*; and Cboe US Options BOE Specifications (October 3, 2019), available at *http://cdn.cboe.com/resources/membership/US_Options_BOE_Specification.pdf*.

[7] The Commission previously approved certain changes to the Exchange's opening trading process for.

[8] Rule 13.15(g) of the shell Rulebook describes fines that may be imposed for failure to perform certain reporting duties. *See, e.g.,* Rule 13.15(g)(4) (failure to submit trade information on time and failure to submit trade information to the price reporter).

[9] *See* Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR–CBOE–2019–059) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Certain Rules Relating To Market-Makers Upon Migration to the Trading System Used by Cboe Affiliated Exchanges); and SR–CBOE–2019–084 (filed October 2, 2019).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] 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 for 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 [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange notes that the proposed rule change is merely relocating certain rules to its shell rulebook—which includes corresponding updates to rule numbers, cross-references, and other references—in order to conform these rules to the shell rulebook upon the technology migration explained above. The Exchange believes that the proposed rule change will make its rules easier to read and understand for all investors. The Exchange also asserts that the relocation of the rules explained above will not impose any significant burden on competition as the substance of the rules remains unchanged. The Commission agrees that allowing this proposed rule change to become operative upon filing in order to facilitate the Exchange's technology migration—without changing the substance of these Exchange Rules—is consistent with the protection of investors and the public interest. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–095 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–095. 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 offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–095, and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

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[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 Commission has waived that requirement in this case.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87313; File No. SR–NYSEArca–2019–72]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Certificate of Incorporation of Intercontinental Exchange, Inc.

October 16, 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 October 3, 2019, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 the certificate of incorporation of Intercontinental Exchange, Inc. (''ICE'') to make a technical change updating the registered office and registered agent in the State of Delaware and make non-substantive and conforming changes. 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 the certificate of incorporation of ICE to make a technical change updating the registered office and registered agent in the State of Delaware and make non-substantive and conforming changes.

The proposed amendments to the certificate of incorporation were approved by the Board of Directors of ICE on September 19, 2019. The Exchange proposes that the amendments would be effective upon filing with the Secretary of State of the State of Delaware.

Change in Registered Office and Registered Agent

ICE is a corporation organized under the laws of the State of Delaware. As such, ICE is required to have and maintain a registered office and registered agent in the State of Delaware.[4] The Exchange proposes to change the address of ICE's registered office and the name of ICE's registered agent, which would make them consistent with the governing documents of the Exchange and its intermediate holding companies.[5]

In order to implement the change, ICE intends to file with the Secretary of State of the State of Delaware a Certificate of Change of Registered Agent and/or Registered Office (''Certificate of Change''),[6] which will change the address of its registered office and the name of its registered agent set forth in the Fourth Amended and Restated Certificate of Incorporation of ICE (''Fourth Certificate''). Immediately thereafter, ICE intends to file with the Secretary of State of the State of Delaware the Fifth Amended and Restated Certificate of Incorporation of ICE (the ''Fifth Certificate''), which will integrate the changes made by the Certificate of Change.

With respect to the change in the registered agent and registered office, in the Fifth Certificate, Article II would identify United Agent Group Inc. as the registered agent and provide that the address of the registered office in the State of Delaware, County of New Castle, is 3411 Silverside Road, Tatnall Building No. 104, Wilmington, Delaware 19810. Currently, Article II of the Fourth Certificate identifies 1209 Orange Street, Wilmington, Delaware 19801 as the address of the registered office in the State of Delaware, County of New Castle, and provides that the name of its registered agent at such address is The Corporation Trust Company.

Conforming Changes

The Exchange proposes to make technical conforming changes to the Fifth Certificate.

The General Corporation Law of the State of Delaware (''DGCL'') provides that the board of directors of a corporation may adopt a restated certificate of incorporation that integrates a certificate of incorporation and any prior amendments to such certificate of incorporation, such as the Certificate of Change.[7] Accordingly, the proposed second introductory paragraph would state that the Fifth Certificate restates and integrates, and does not further amend, the provisions of the Fourth Certificate, as amended by the Certificate of Change, and there is no discrepancy between them. Similarly, the fourth introductory paragraph would state that the Fourth Certificate was thereby restated and integrated to read as set forth in the Fifth Certificate. The proposed changes would delete a reference in the Fourth Certificate to the amendment of the Third Amended and Restated Certificate.

Pursuant to Section 245(b) of the DGCL, stockholder approval is not required for a restated certificate of incorporation that, like the proposed Fifth Certificate, restates and integrates but does not further amend the existing certificate of incorporation.[8] Accordingly, the proposed third and fourth introductory paragraphs would delete the references to Section 242 of the DGCL, as it refers to stockholder approval, which would not be required.[9]

References to the ''Third Amended and Restated Certificate of Incorporation'' and the ''Fourth Amended and Restated Certificate of Incorporation'' in the titles, introductory paragraphs, and signature lines would be changed to refer to the ''Fourth Amended and Restated Certificate of Incorporation'' and ''Fifth Amended and Restated Certificate of Incorporation,'' respectively.

Finally, the time and date of effectiveness and execution in the introductory certifications and signature line would be updated.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act [10] in general, and with Section 6(b)(1) [11] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed rule change is a non-substantive administrative change that does not impact the governance or ownership of the Exchange. The Exchange believes that the proposed rule change would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions

[4] *See* Del. Code tit 8, §§ 131 and 132.

[5] *See* Securities Exchange Release Nos. 82638 (February 6, 2018), 83 FR 6072 (February 12, 2018) (notice of filing and immediate effectiveness of proposed change to amend certain of the governing documents of its intermediate parent companies) (SR–NYSEArca–2018–09); and 82924 (March 22, 2018), 83 FR 13163 (March 27, 2018) (SR–NYSEArca–2018–18) (notice of filing and immediate effectiveness of proposed rule change to amend the certificate of incorporation).

[6] *See* Del. Code tit 8, § 133.

[7] *See* Del. Code tit 8, § 245(a).

[8] *See* Del. Code tit 8, § 245(b).

[9] *See* Del. Code tit 8, § 242.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(1).

of the Exchange Act by its members and persons associated with its members, because ensuring that the Fifth Certificate identifies the name of ICE's registered agent and address of ICE's registered office in the State of Delaware would contribute to the orderly operation of the Exchange by adding clarity and transparency to its rules. The proposed change would ensure that ICE continues to comply with Delaware requirements for corporations to have a registered agent and registered office in the State of Delaware. In addition, the proposed changes to the introductory paragraphs would ensure that the Fifth Certificate correctly describes the proposed restatement and integration of the existing certificate of incorporation, as amended by the Certificate of Change, and references the correct provisions of the DGCL in accordance with the requirements of Delaware law, ensuring clarity and transparency.

For similar reasons, the Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] in that 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 proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can more easily navigate, understand and comply with its rules. The Exchange believes that, by ensuring that such rules accurately identify the name of ICE's registered agent and the address of ICE's registered office in the State of Delaware, the proposed rule change would reduce potential investor or market participant confusion. In addition, the proposed changes to the introductory paragraphs and the proposed conforming changes would ensure that the Fifth Certificate correctly describes the proposed restatement and integration of the existing certificate of incorporation, as amended by the Certificate of Change, and references the correct provisions of the DGCL in accordance with the requirements of Delaware law, reducing potential confusion that may result from having an incorrect description or reference in the Fifth Certificate.

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 Exchange Act. The proposed rule change is not designed to address any competitive issue but rather is concerned solely with making a technical change updating the registered office and registered agent of ICE and conforming changes.

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(3) [14] thereunder in that the proposed rule change is concerned solely with the administration of the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may 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) [15] 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–NYSEArca–2019–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–72. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's 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 offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–72, and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22942 Filed 10–21–19; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(3).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87317; File No. SR–NYSEAMER–2019–42]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the Certificate of Incorporation of Intercontinental Exchange, Inc.

October 16, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2019, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the certificate of incorporation of Intercontinental Exchange, Inc. (''ICE'') to make a technical change updating the registered office and registered agent in the State of Delaware and make non-substantive and conforming changes. The proposed 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the certificate of incorporation of ICE to make a technical change updating the registered office and registered agent in the State of Delaware and make non-substantive and conforming changes.

The proposed amendments to the certificate of incorporation were approved by the Board of Directors of ICE on September 19, 2019. The Exchange proposes that the amendments would be effective upon filing with the Secretary of State of the State of Delaware.

Change in Registered Office and Registered Agent

ICE is a corporation organized under the laws of the State of Delaware. As such, ICE is required to have and maintain a registered office and registered agent in the State of Delaware.[3] The Exchange proposes to change the address of ICE's registered office and the name of ICE's registered agent, which would make them consistent with the governing documents of the Exchange and its intermediate holding companies.[4]

In order to implement the change, ICE intends to file with the Secretary of State of the State of Delaware a Certificate of Change of Registered Agent and/or Registered Office (''Certificate of Change''),[5] which will change the address of its registered office and the name of its registered agent set forth in the Fourth Amended and Restated Certificate of Incorporation of ICE (''Fourth Certificate''). Immediately thereafter, ICE intends to file with the Secretary of State of the State of Delaware the Fifth Amended and Restated Certificate of Incorporation of ICE (the ''Fifth Certificate''), which will integrate the changes made by the Certificate of Change.

With respect to the change in the registered agent and registered office, in the Fifth Certificate, Article II would identify United Agent Group Inc. as the registered agent and provide that the address of the registered office in the State of Delaware, County of New Castle, is 3411 Silverside Road, Tatnall Building No. 104, Wilmington, Delaware 19810. Currently, Article II of the Fourth Certificate identifies 1209 Orange Street, Wilmington, Delaware 19801 as the address of the registered office in the State of Delaware, County of New Castle, and provides that the name of its registered agent at such address is The Corporation Trust Company.

Conforming Changes

The Exchange proposes to make technical conforming changes to the Fifth Certificate.

The General Corporation Law of the State of Delaware (''DGCL'') provides that the board of directors of a corporation may adopt a restated certificate of incorporation that integrates a certificate of incorporation and any prior amendments to such certificate of incorporation, such as the Certificate of Change.[6] Accordingly, the proposed second introductory paragraph would state that the Fifth Certificate restates and integrates, and does not further amend, the provisions of the Fourth Certificate, as amended by the Certificate of Change, and there is no discrepancy between them. Similarly, the fourth introductory paragraph would state that the Fourth Certificate was thereby restated and integrated to read as set forth in the Fifth Certificate. The proposed changes would delete a reference in the Fourth Certificate to the amendment of the Third Amended and Restated Certificate.

Pursuant to Section 245(b) of the DGCL, stockholder approval is not required for a restated certificate of incorporation that, like the proposed Fifth Certificate, restates and integrates but does not further amend the existing certificate of incorporation.[7] Accordingly, the proposed third and fourth introductory paragraphs would delete the references to Section 242 of the DGCL, as it refers to stockholder approval, which would not be required.[8]

References to the ''Third Amended and Restated Certificate of Incorporation'' and the ''Fourth Amended and Restated Certificate of Incorporation'' in the titles, introductory paragraphs, and signature lines would be changed to refer to the ''Fourth Amended and Restated Certificate of Incorporation'' and ''Fifth Amended and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Del. Code tit 8, §§ 131 and 132.

[4] *See* Securities Exchange Release Nos. 82637 (February 6, 2018), 83 FR 6055 (February 12, 2018) (notice of filing and immediate effectiveness of proposed change to amend certain of the governing documents of its intermediate parent companies) (SR–NYSEAmer–2018–003); and 82923 (March 22, 2018), 83 FR 13161 (March 27, 2018) (SR–NYSEAmer–2018–10) (notice of filing and immediate effectiveness of proposed change amending certain governing documents of the Exchange and NYSE Market, Inc.).

[5] *See* Del. Code tit 8, § 133.

[6] *See* Del. Code tit 8, § 245(a).

[7] *See* Del. Code tit 8, § 245(b).

[8] *See* Del. Code tit 8, § 242.

Restated Certificate of Incorporation,'' respectively.

Finally, the time and date of effectiveness and execution in the introductory certifications and signature line would be updated.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act [9] in general, and with Section 6(b)(1) [10] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed rule change is a non-substantive administrative change that does not impact the governance or ownership of the Exchange. The Exchange believes that the proposed rule change would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because ensuring that the Fifth Certificate identifies the name of ICE's registered agent and address of ICE's registered office in the State of Delaware would contribute to the orderly operation of the Exchange by adding clarity and transparency to its rules. The proposed change would ensure that ICE continues to comply with Delaware requirements for corporations to have a registered agent and registered office in the State of Delaware. In addition, the proposed changes to the introductory paragraphs would ensure that the Fifth Certificate correctly describes the proposed restatement and integration of the existing certificate of incorporation, as amended by the Certificate of Change, and references the correct provisions of the DGCL in accordance with the requirements of Delaware law, ensuring clarity and transparency.

For similar reasons, the Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] in that 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 proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can more easily navigate, understand and comply with its rules. The Exchange believes that, by ensuring that such rules accurately identify the name of ICE's registered agent and the address of ICE's registered office in the State of Delaware, the proposed rule change would reduce potential investor or market participant confusion. In addition, the proposed changes to the introductory paragraphs and the proposed conforming changes would ensure that the Fifth Certificate correctly describes the proposed restatement and integration of the existing certificate of incorporation, as amended by the Certificate of Change, and references the correct provisions of the DGCL in accordance with the requirements of Delaware law, reducing potential confusion that may result from having an incorrect description or reference in the Fifth Certificate.

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 Exchange Act. The proposed rule change is not designed to address any competitive issue but rather is concerned solely with making a technical change updating the registered office and registered agent of ICE and conforming changes.

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(3) [13] thereunder in that the proposed rule change is concerned solely with the administration of the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may 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) [14] 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–NYSEAMER–2019–42 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–NYSEAMER–2019–42. 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

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(1).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(3).

[14] 15 U.S.C. 78s(b)(2)(B).

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–NYSEAMER–2019–42, and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22932 Filed 10–21–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87321; File No. SR–CBOE–2019–089]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Move Certain Rules in Chapter XXIX of the Currently Effective Rulebook to Proposed Section E of Chapter 4 of the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform

October 16, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to move certain Rules in Chapter XXIX, which governs Credit Option contracts, of the currently effective Rulebook (''current Rulebook'') to proposed Section E of Chapter 4 of the shell structure for the Exchange's Rulebook that will become effective upon the migration of the Exchange's trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) (''shell Rulebook''). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences, between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

The Exchange proposes to relocate rules under current Chapter XXIX which governs Credit Option contracts, to proposed Section E of Chapter 4 in the shell Rulebook. The Exchange notes that in addition to relocating these current rules to proposed shell Section E of Chapter 4, the proposed rule change deletes the rules from the current Rulebook. The proposed rule change relocates the rules as follows:

Proposed rule	Current rule
Introductory paragraph under Section E heading	Introduction.
4.40 Credit Default Definitions	29.1 Definitions.
4.41 Designation of Credit Default Option Contracts	29.2 Designation of Credit Default Option Contracts.
4.42 Designation and Terms of Credit Default Basket Option Contracts.	29.2A Designation and Terms of Credit Default Basket Option Contracts.
4.43 Withdrawal of Approval of Underlying Reference Entity	29.3 Withdrawal.
4.44 Adjustments	29.4 Adjustments.
4.45 FLEX Trading	29.18. FLEX Trading.
4.46 Trading Rotations	29.12 Trading Rotations.

The proposed changes are of a non-substantive nature and will not amend the relocated rules other than to update their numbers, conform paragraph structure[3] and number/lettering format to that of the shell Rulebook, and make

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that the paragraph structure for definitions listed under rules in the shell Rulebook is in alphabetized format. Therefore, the same structure is used under proposed Rule 4.40.

cross-reference changes to shell rules. As indicated above, the proposed rule change relocates current Rule 29.12 to proposed Rule 4.46. Current Rule 29.12, however, currently contains rule language that is no longer applicable to the Exchange. It currently states that in accordance with Rule 6.2 (Rule 5.31 in the shell Rulebook), at a randomly selected time within a number of seconds after 8:30 a.m. (CT), unless unusual circumstances exist, the System will initiate the opening procedure and send a Rotation Notice. The Exchange notes that this language referenced in current Rule 29.12 regarding the opening process in Rule 6.2 (shell Rule 5.31) had prior been amended,[4] and Rule 29.12 was inadvertently not updated to reflect the amended opening process. Therefore, the proposed rule change updates current 29.12 (proposed Rule 4.46) to simply reflect the existing opening process language in shell Rule 5.31 (current Rule 6.2) by stating that in accordance with Rule 5.31(d), at an Exchange-determined number of seconds following 9:30 a.m., the System will initiate the opening rotation.[5] The proposed rule change also removes current Rule 29.14(d) which states that the rules of priority and order allocation procedures set forth in (current) Rule 6.45 (shell Rules 5.32 and 5.85) apply to Credit Options, as this is redundant of the shell Rules 5.32 and 5.85 themselves because they already govern the priority and order allocation of all options trading on the Exchange, both electronically (shell Rule 5.32) and in open outcry (shell Rule 5.85). Also, the proposed change removes the remainder of the rule text under current Rule 29.14, which states that Rule 29.14 supplements (current) Rules 6.41, 6.42, 6.44 and 6.45, because all provisions under current Rule 29.14 have already been relocated to other rules in the shell Rulebook in anticipation of migration and would apply to Credit Options[6] and, therefore, current Rule 29.14 as a whole will no longer exist upon migration.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As stated, the proposed rule change makes no substantive changes to the rules. The proposed rule change is merely intended to relocate the Exchange's rules to the shell Rulebook and update their numbers, paragraph structure, including number and lettering format, and cross-references (including updating certain rule text to accurately reiterate rule language to which a cross-reference refers), and remove a redundant provision already specifically covered under other shell rules, to conform to the shell Rulebook as a whole in anticipation of the technology migration on October 7, 2019. As such, the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by improving the way the Exchange's Rulebook is organized, making it easier to read, and, particularly, helping market participants better understand the rules of the Exchange, which will also result in less burdensome and more efficient regulatory compliance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended as a competitive change, but rather, seeks to make non-substantive rule changes in relocating the rules, updating cross-references (and cross-referenced rule text) to shell rules, and removing a redundant provision already specifically covered under other rules, in anticipation of the October 7, 2019 technology migration. The Exchange also does not believe that the proposed rule change will impose any undue burden on competition because the relocated rule text is exactly the same as the Exchange's current rules, all of which have all been previously filed with the Commission.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] 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 for 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[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after

[4] *See* Securities Exchange Act Release No. 79520 (December 9, 2016), 81 FR 90896 (December 15, 2019) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating To Opening and Closing Rotations Under the HOSS System) (SR–CBOE–2016–071).

[5] The Exchange notes it does not currently list any Credit Options for trading, so this change will have no impact on any current trading.

[6] *See* Securities and Exchange Act Release No. 86772 (August 27, 2019), 84 FR 46069 (September 3, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules Related to How the System Handles Incoming Orders and Open Outcry Trading in Connection With the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges) (SR–CBOE–2019–042).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 Commission has waived that requirement in this case.

[14] 17 CFR 240.19b–4(f)(6).

the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange notes that the proposed rule change is merely relocating certain rules to its shell rulebook—which includes corresponding updates to rule numbers, cross-references, and other references—in order to conform these rules to the shell rulebook upon the technology migration explained above. The Exchange believes that the proposed rule change will make its rules easier to read and understand for all investors. The Exchange also asserts that the relocation of the rules explained above will not impose any significant burden on competition as the substance of the rules remains unchanged. The Commission agrees that allowing this proposed rule change to become operative upon filing in order to facilitate the Exchange's technology migration—without changing the substance of these Exchange Rules—is consistent with the protection of investors and the public interest. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–089 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–089. 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 offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–089, and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22936 Filed 10–21–19; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87318; File No. SR–NYSECHX–2019–11]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Certificate of Incorporation of Intercontinental Exchange, Inc.

October 16, 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 October 3, 2019, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the certificate of incorporation of Intercontinental Exchange, Inc. (''ICE'') to make a technical change updating the registered office and registered agent in the State of Delaware and make non-substantive and conforming changes. 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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the certificate of incorporation of ICE to make a technical change updating the registered office and registered agent in the State of Delaware and make non-substantive and conforming changes.

The proposed amendments to the certificate of incorporation were approved by the Board of Directors of ICE on September 19, 2019. The Exchange proposes that the amendments would be effective upon filing with the Secretary of State of the State of Delaware.

Change in Registered Office and Registered Agent

ICE is a corporation organized under the laws of the State of Delaware. As such, ICE is required to have and maintain a registered office and registered agent in the State of Delaware.[4] The Exchange proposes to change the address of ICE's registered office and the name of ICE's registered agent, which would make them consistent with the governing documents of the Exchange and its intermediate holding companies.[5]

In order to implement the change, ICE intends to file with the Secretary of State of the State of Delaware a Certificate of Change of Registered Agent and/or Registered Office (''Certificate of Change''),[6] which will change the address of its registered office and the name of its registered agent set forth in the Fourth Amended and Restated Certificate of Incorporation of ICE (''Fourth Certificate''). Immediately thereafter, ICE intends to file with the Secretary of State of the State of Delaware the Fifth Amended and Restated Certificate of Incorporation of ICE (the ''Fifth Certificate''), which will integrate the changes made by the Certificate of Change.

With respect to the change in the registered agent and registered office, in the Fifth Certificate, Article II would identify United Agent Group Inc. as the registered agent and provide that the address of the registered office in the State of Delaware, County of New Castle, is 3411 Silverside Road, Tatnall Building No. 104, Wilmington, Delaware 19810. Currently, Article II of the Fourth Certificate identifies 1209 Orange Street, Wilmington, Delaware 19801 as the address of the registered office in the State of Delaware, County of New Castle, and provides that the name of its registered agent at such address is The Corporation Trust Company.

Conforming Changes

The Exchange proposes to make technical conforming changes to the Fifth Certificate.

The General Corporation Law of the State of Delaware (''DGCL'') provides that the board of directors of a corporation may adopt a restated certificate of incorporation that integrates a certificate of incorporation and any prior amendments to such certificate of incorporation, such as the Certificate of Change.[7] Accordingly, the proposed second introductory paragraph would state that the Fifth Certificate restates and integrates, and does not further amend, the provisions of the Fourth Certificate, as amended by the Certificate of Change, and there is no discrepancy between them. Similarly, the fourth introductory paragraph would state that the Fourth Certificate was thereby restated and integrated to read as set forth in the Fifth Certificate. The proposed changes would delete a reference in the Fourth Certificate to the amendment of the Third Amended and Restated Certificate.

Pursuant to Section 245(b) of the DGCL, stockholder approval is not required for a restated certificate of incorporation that, like the proposed Fifth Certificate, restates and integrates but does not further amend the existing certificate of incorporation.[8] Accordingly, the proposed third and fourth introductory paragraphs would delete the references to Section 242 of the DGCL, as it refers to stockholder approval, which would not be required.[9]

References to the ''Third Amended and Restated Certificate of Incorporation'' and the ''Fourth Amended and Restated Certificate of Incorporation'' in the titles, introductory paragraphs, and signature lines would be changed to refer to the ''Fourth Amended and Restated Certificate of Incorporation'' and ''Fifth Amended and Restated Certificate of Incorporation,'' respectively.

Finally, the time and date of effectiveness and execution in the introductory certifications and signature line would be updated.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act[10] in general, and with Section 6(b)(1)[11] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed rule change is a non-substantive administrative change that does not impact the governance or ownership of the Exchange. The Exchange believes that the proposed rule change would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because ensuring that the Fifth Certificate identifies the name of ICE's registered agent and address of ICE's registered office in the State of Delaware would contribute to the orderly operation of the Exchange by adding clarity and transparency to its rules. The proposed change would ensure that ICE continues to comply with Delaware requirements for corporations to have a registered agent and registered office in the State of Delaware. In addition, the proposed changes to the introductory paragraphs would ensure that the Fifth Certificate correctly describes the proposed restatement and integration of the existing certificate of incorporation, as amended by the Certificate of Change, and references the correct provisions of the DGCL in accordance with the requirements of Delaware law, ensuring clarity and transparency.

For similar reasons, the Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] in that 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

[4] *See* Del. Code tit 8, §§ 131 and 132.

[5] *See* Securities Exchange Release No. 83635 (July 13, 2018), 83 FR 34182 (July 19, 2018) (granting accelerated approval of a proposed rule change, as modified by Amendments nos. 1, 2, and 3 thereto, in connection with a proposed transaction involving CHX Holdings, Inc. and the Intercontinental Exchange, Inc.) (SR–CHX–2018–004).

[6] *See* Del. Code tit 8, § 133.

[7] *See* Del. Code tit 8, § 245(a).

[8] *See* Del. Code tit 8, § 245(b).

[9] *See* Del. Code tit 8, § 242.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(1).

[12] 15 U.S.C. 78f(b)(5).

market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can more easily navigate, understand and comply with its rules. The Exchange believes that, by ensuring that such rules accurately identify the name of ICE's registered agent and the address of ICE's registered office in the State of Delaware, the proposed rule change would reduce potential investor or market participant confusion. In addition, the proposed changes to the introductory paragraphs and the proposed conforming changes would ensure that the Fifth Certificate correctly describes the proposed restatement and integration of the existing certificate of incorporation, as amended by the Certificate of Change, and references the correct provisions of the DGCL in accordance with the requirements of Delaware law, reducing potential confusion that may result from having an incorrect description or reference in the Fifth Certificate.

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 Exchange Act. The proposed rule change is not designed to address any competitive issue but rather is concerned solely with making a technical change updating the registered office and registered agent of ICE and conforming changes.

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(3) [14] thereunder in that the proposed rule change is concerned solely with the administration of the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may 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)[15] 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–NYSECHX–2019–11 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–NYSECHX–2019–11. 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 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–NYSECHX–2019–11, and should be submitted on or before November 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22933 Filed 10–21–19; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(3).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60 Day Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before December 23, 2019.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Louis Cupp, New Markets Policy Analyst, Office of Investment and Innovation, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Louis Cupp, New Markets Policy Analyst, 202–619–0511 *louis.cupp@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

SBA Forms 2181, 2182 and 2183 provide SBA with the necessary information to make decisions regarding the approval or denial of an applicant for a small business investment company (SBIC) license. SBA uses this information to assess an applicant's ability to successfully operate an SBIC within the scope of the Small Business Investment Act of 1958, as amended.

Solicitation of Public Comments:

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Title: ''SBIC Management Assessment Questionnaire & License Application; Exhibits to SBIC License Application/ Management Assessment Questionnaire''.

Frequency: On Occasion.

SBA Form Numbers: 2181, 2182, 2182EXD, 2182Excel Supplement, 2182Exhibit E1 and 2183.

Description of Respondents: Small business investment company (SBIC).

Responses: 375.

Annual Burden: 24,625.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–22926 Filed 10–21–19; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60 Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before December 23, 2019.

ADDRESSES: Send all comments to Louis Cupp, New Markets Policy Analyst, Office of Investment and Innovation, Small Business Administration, 409 3rd Street SW, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Louis Cupp, New Markets Policy Analyst, 202–619–0511, *louis.cupp@sba.gov;* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The information collected on SBA Form 480, ''Size Status Declaration'' is a certification of small business size status. This information collection is used to determine whether SBIC financial assistance is provided only to small business concerns as defined in the Small Business Investment Act and SBA size regulations. Without this certification, businesses that exceed SBA's size standards could benefit from program resources meant for small businesses.

Title: ''Size Status Declaration''.

Description of Respondents: Small business Investment Companies.

Form Number: 480.

Annual Responses: 1,705.

Annual Burden: 233.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–22893 Filed 10–21–19; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before December 23, 2019.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Sharon Gurley, Director Program Review, Office of Government Contracting, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sharon Gurley, Director Program Review, 202–205–7084, *sharon.gurley@sba.gov,* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The Small Business Administration needs to collect this information to determine an applicant's eligibility for admission into the 8(a) Business Development (BD) Program and for continued eligibility to participate in the Program. SBA also uses some of the information for an annual report to Congress on the 8(a) BD Program.

Respondents can be individuals and firms making applications to the 8(a) BD Program, or respondents can be individuals and Participant firms revising information related to the 8(a) BD Program Annual Review.

Summary of Information Collection:

Title: 8(A) SBD Paper and Electronic Application''.

Description of Respondents:

Form Number's: 1010–NHO, 1010–Business, 1010–CDC, 1010–AIT, 1010–ANC, 1010–IND, 1010—individual.

Annual Responses: 60,070.

Annual Burden: 15,248.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–22927 Filed 10–21–19; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before December 23, 2019.

ADDRESSES: Send all comments to Sharon Gurley, Director Program Review, Office of Business Development, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sharon Gurley, Director Program Review, Business Development, *sharon.gurley@sba.gov,* 202–205–7084, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 13 of the Code of Federal Regulations, Section 124.403, each 8(a) participant must annually review its business plan with the assigned Business Opportunity Specialist (BOS) and modify the plan, as appropriate, within 30 days after the

close of each program year. The Participant must also submit a statement describing its current contract performance capabilities as part of its update business plan. SBA uses the information collected to assess the participant's financial condition and continued eligibility.

Summary of Information Collection:

Title: 8(a) Annual Update.

Description of Respondents: 8(a) Program Participants.

Form Number: SBA Form 1450.

Total Estimated Annual Responses: 5,399.

Total Estimated Annual Hour Burden: 8,096.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–22928 Filed 10–21–19; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2019–0038]

Cost-of-Living Increase and Other Determinations for 2020

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: Under title II of the Social Security Act (Act), there will be a 1.6 percent cost-of-living increase in Social Security benefits effective December 2019. In addition, the national average wage index for 2018 is $52,145.80. The cost-of-living increase and national average wage index affect other program parameters as described below.

FOR FURTHER INFORMATION CONTACT: Kathleen K. Sutton, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3000. Information relating to this announcement is available on our internet site at *www.socialsecurity.gov/oact/cola/index.html.* For information on eligibility or claiming benefits, call 1–800–772–1213 (TTY 1–800–325–0778), or visit our internet site at *www.socialsecurity.gov* online.

SUPPLEMENTARY INFORMATION: Because of the 1.6 percent cost-of-living increase, the following items will increase for 2020:

(1) The maximum Federal Supplemental Security Income (SSI) monthly payment amounts for 2020 under title XVI of the Act will be $783 for an eligible individual, $1,175 for an eligible individual with an eligible spouse, and $392 for an essential person;

(2) The special benefit amount under title VIII of the Act for certain World War II veterans will be $587.25 for 2020;

(3) The student earned income exclusion under title XVI of the Act will be $1,900 per month in 2020, but not more than $7,670 for all of 2020;

(4) The dollar fee limit for services performed as a representative payee will be $44 per month ($83 per month in the case of a beneficiary who is disabled and has an alcoholism or drug addiction condition that leaves him or her incapable of managing benefits) in 2020; and

(5) The dollar limit on the administrative-cost fee assessment charged to an appointed representative such as an attorney, agent, or other person who represents claimants will be $97 beginning in December 2019.

The national average wage index for 2018 is $52,145.80. This index affects the following amounts:

(1) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base will be $137,700 for remuneration paid in 2020 and self-employment income earned in taxable years beginning in 2020;

(2) The monthly exempt amounts under the OASDI retirement earnings test for taxable years ending in calendar year 2020 will be $1,520 for beneficiaries who will attain their Normal Retirement Age (NRA) (defined in the *Retirement Earnings Test Exempt Amounts* section below) after 2020 and $4,050 for those who attain NRA in 2020;

(3) The dollar amounts (bend points) used in the primary insurance amount (PIA) formula for workers who become eligible for benefits, or who die before becoming eligible, in 2020 will be $960 and $5,785;

(4) The bend points used in the formula for computing maximum family benefits for workers who become eligible for retirement benefits, or who die before becoming eligible, in 2020 will be $1,226, $1,770, and $2,309;

(5) The taxable earnings a person must have to be credited with a quarter of coverage in 2020 will be $1,410;

(6) The ''old-law'' contribution and benefit base under title II of the Act will be $102,300 for 2020;

(7) The monthly amount deemed to constitute substantial gainful activity (SGA) for statutorily blind persons in 2020 will be $2,110. The corresponding amount for non-blind disabled persons will be $1,260;

(8) The earnings threshold establishing a month as a part of a trial work period will be $910 for 2020; and

(9) Coverage thresholds for 2020 will be $2,200 for domestic workers and $1,900 for election officials and election workers.

According to section 215(i)(2)(D) of the Act, we must publish the benefit increase percentage and the revised table of ''special minimum'' benefits within 45 days after the close of the third calendar quarter of 2019. We must also publish the following by November 1: The national average wage index for 2018 (215(a)(1)(D)), the OASDI fund ratio for 2019 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 2020 (section 230(a)), the earnings required to be credited with a quarter of coverage in 2020 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 2020 (section 203(f)(8)(A)), the formula for computing a PIA for workers who first become eligible for benefits or die in 2020 (section 215(a)(1)(D)), and the formula for computing the maximum benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2020 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

The cost-of-living increase is 1.6 percent for monthly benefits under title II and for monthly payments under title XVI of the Act. Under title II, OASDI monthly benefits will increase by 1.6 percent for individuals eligible for December 2019 benefits, payable in January 2020. We base this increase on the authority contained in section 215(i) of the Act.

Pursuant to section 1617 of the Act, Federal SSI benefit rates will also increase by 1.6 percent effective for payments made for January 2020 but paid on December 31, 2019.

Computation

Computation of the cost-of-living increase is based on an increase in a Consumer Price Index produced by the Bureau of Labor Statistics. At the time the Act was amended to provide cost-of-living increases, only one Consumer Price Index existed, namely the Consumer Price Index for Urban Wage Earners and Clerical Workers. Although the Bureau of Labor Statistics has since developed other consumer price indices, we follow precedent by continuing to use the Consumer Price Index for Urban Wage Earners and Clerical Workers. We refer to this index in the following paragraphs as the CPI.

Section 215(i)(1)(B) of the Act defines a ''computation quarter'' to be a third calendar quarter in which the average CPI exceeded the average CPI in the previous computation quarter. The last

cost-of-living increase, effective for those eligible to receive title II benefits for December 2018, was based on the CPI increase from the third quarter of 2017 to the third quarter of 2018. Therefore, the last computation quarter is the third quarter of 2018. The law states that a cost-of-living increase for benefits is determined based on the percentage increase, if any, in the CPI from the last computation quarter to the third quarter of the current year. Therefore, we compute the increase in the CPI from the third quarter of 2018 to the third quarter of 2019.

Section 215(i)(1) of the Act states that the CPI for a cost-of-living computation quarter is the arithmetic mean of this index for the 3 months in that quarter. In accordance with 20 CFR 404.275, we round the arithmetic mean, if necessary, to the nearest 0.001. The CPI for each month in the quarter ending September 30, 2018, the last computation quarter, is: For July 2018, 246.155; for August 2018, 246.336; and for September 2018, 246.565. The arithmetic mean for the calendar quarter ending September 30, 2018 is 246.352. The CPI for each month in the quarter ending September 30, 2019, is: For July 2019, 250.236; for August 2019, 250.112; and for September 2019, 250.251. The arithmetic mean for the calendar quarter ending September 30, 2019 is 250.200. The CPI for the calendar quarter ending September 30, 2019, exceeds that for the calendar quarter ending September 30, 2018 by 1.6 percent (rounded to the nearest 0.1). Therefore, beginning December 2019 a cost-of-living benefit increase of 1.6 percent is effective for benefits under title II of the Act.

Section 215(i) also specifies that a benefit increase under title II, effective for December of any year, will be limited to the increase in the national average wage index for the prior year if the OASDI fund ratio for that year is below 20.0 percent. The OASDI fund ratio for a year is the ratio of the combined assets of the OASDI Trust Funds at the beginning of that year to the combined expenditures of these funds during that year. For 2019, the OASDI fund ratio is assets of $2,894,929 million divided by estimated expenditures of $1059913 million, or 273.1 percent. Because the 273.1 percent OASDI fund ratio exceeds 20.0 percent, the benefit increase for December 2019 is not limited to the increase in the national average wage index.

Program Amounts That Change Based on the Cost-of-Living Increase

The following program amounts change based on the cost-of-living increase: (1) Title II benefits; (2) title XVI payments; (3) title VIII benefits; (4) the student earned income exclusion; (5) the fee for services performed by a representative payee; and (6) the appointed representative fee assessment.

Title II Benefit Amounts

In accordance with section 215(i) of the Act, for workers and family members for whom eligibility for benefits (that is, the worker's attainment of age 62, or disability or death before age 62) occurred before 2020, benefits will increase by 1.6 percent beginning with benefits for December 2019, which are payable in January 2020. For those first eligible after 2019, the 1.6 percent increase will not apply.

For eligibility after 1978, we determine benefits using a formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, we determine benefits by using a benefit table. The table is available on the internet at *www.socialsecurity.gov/oact/ProgData/tableForm.html* or by writing to: Social Security Administration, Office of Public Inquiries, Windsor Park Building, 6401 Security Boulevard, Baltimore, MD 21235.

Section 215(i)(2)(D) of the Act requires that, when we determine an increase in Social Security benefits, we will publish in the **Federal Register** a revision of the range of the PIAs and maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). We refer to these benefits as ''special minimum'' benefits. These benefits are payable to certain individuals with long periods of low earnings. To qualify for these benefits, an individual must have at least 11 years of coverage. To earn a year of coverage for purposes of the special minimum benefit, a person must earn at least a certain proportion of the old-law contribution and benefit base (described later in this notice). For years before 1991, the proportion is 25 percent; for years after 1990, it is 15 percent. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of PIAs and maximum family benefit amounts after the 1.6 percent benefit increase.

SPECIAL MINIMUM PIAS AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DECEMBER 2019

Number of years of coverage	PIA	Maximum family benefit
11	$42.50	$64.80
12	86.90	131.60
13	131.40	198.50
14	175.70	264.80
15	219.70	331.10
16	264.40	398.00
17	308.80	465.10
18	353.20	531.30
19	397.60	598.10
20	442.20	664.20
21	486.60	731.50
22	530.70	797.80
23	575.90	865.60
24	620.20	931.50
25	664.20	997.70
26	709.40	1,065.30
27	753.20	1,131.80
28	797.60	1,198.10
29	842.10	1,265.30
30	886.40	1,331.10

Title XVI Payment Amounts

In accordance with section 1617 of the Act, the Federal benefit rates used in computing Federal SSI payments for the aged, blind, and disabled will increase by 1.6 percent effective January 2020. For 2019, we derived the monthly payment amounts for an eligible individual, an eligible individual with an eligible spouse, and for an essential person—$771, $1,157, and $386, respectively—from yearly, unrounded Federal SSI payment amounts of $9,259.67, $13,887.97, and $4,640.45. For 2020, these yearly unrounded amounts respectively increase by 1.6 percent to $9,407.82, $14,110.18, and $4,714.70. We must round each of these resulting amounts, when not a multiple of $12, to the next lower multiple of $12. Therefore, the annual amounts, effective for 2020, are $9,396, $14,100, and $4,704. Dividing the yearly amounts by 12 gives the respective monthly amounts for 2020—$783, $1,175, and $392. For an eligible individual with an eligible spouse, we equally divide the amount payable between the two spouses.

Title VIII Benefit Amount

Title VIII of the Act provides for special benefits to certain World War II veterans who reside outside the United States. Section 805 of the Act provides that ''[t]he benefit under this title payable to a qualified individual for any month shall be in an amount equal to 75 percent of the Federal benefit rate [the maximum amount for an eligible individual] under title XVI for the month, reduced by the amount of the

qualified individual's benefit income for the month.'' Therefore, the monthly benefit for 2020 under this provision is 75 percent of $783, or $587.25.

Student Earned Income Exclusion

A blind or disabled child who is a student regularly attending school, college, university, or a course of vocational or technical training can have limited earnings that do not count against his or her SSI payments. The maximum amount of such income that we may exclude in 2019 is $1,870 per month, but not more than $7,550 in all of 2019. These amounts increase based on a formula set forth in regulation 20 CFR 416.1112.

To compute each of the monthly and yearly maximum amounts for 2020, we increase the unrounded amount for 2019 by the latest cost-of-living increase. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10. The unrounded monthly amount for 2019 is $1,873.47. We increase this amount by 1.6 percent to $1,903.45, which we then round to $1,900. Similarly, we increase the unrounded yearly amount for 2019, $7,551.92, by 1.6 percent to $7,672.75 and round this to $7,670. Therefore, the maximum amount of the income exclusion applicable to a student in 2020 is $1,900 per month but not more than $7,670 in all of 2020.

Fee for Services Performed as a Representative Payee

Sections 205(j)(4)(A)(i) and 1631(a)(2)(D)(i) of the Act permit a qualified organization to collect a monthly fee from a beneficiary for expenses incurred in providing services as the beneficiary's representative payee. In 2019, the fee is limited to the lesser of: (1) 10 percent of the monthly benefit involved; or (2) $43 each month ($82 each month when the beneficiary is entitled to disability benefits and has an alcoholism or drug addiction condition that makes the individual incapable of managing such benefits). The dollar fee limits are subject to increase by the cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. Therefore, we increase the current amounts by 1.6 percent to $44 and $83 for 2020.

Appointed Representative Fee Assessment

Under sections 206(d) and 1631(d) of the Act, whenever we pay a fee to a representative such as an attorney, agent, or other person who represents claimants, we must impose on the representative an assessment to cover administrative costs. The assessment is no more than 6.3 percent of the representative's authorized fee or, if lower, a dollar amount that is subject to increase by the cost-of-living increase. We derive the dollar limit for December 2019 by increasing the unrounded limit for December 2018, $95.91, by 1.6 percent, which is $97.44. We then round $97.44 to the next lower multiple of $1. The dollar limit effective for December 2019 is, therefore, $97.

National Average Wage Index for 2018

Computation

We determined the national average wage index for calendar year 2018 based on the 2017 national average wage index of $50,321.89, published in the **Federal Register** on October 24, 2018 (83 FR 53702), and the percentage increase in average wages from 2017 to 2018, as measured by annual wage data. We tabulate the annual wage data, including contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated from these data were $48,251.57 for 2017 and $50,000.44 for 2018. To determine the national average wage index for 2018 at a level consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiply the 2017 national average wage index of $50,321.89 by the percentage increase in average wages from 2017 to 2018 (based on SSA-tabulated wage data) as follows. We round the result to the nearest cent.

National Average Wage Index Amount

Multiplying the national average wage index for 2017 ($50,321.89) by the ratio of the average wage for 2018 ($50,000.44) to that for 2017 ($48,251.57) produces the 2018 index, $52,145.80. The national average wage index for calendar year 2018 is about 3.62 percent higher than the 2017 index.

Program Amounts That Change Based on the National Average Wage Index

Under the Act, the following amounts change with annual changes in the national average wage index: (1) The OASDI contribution and benefit base; (2) the exempt amounts under the retirement earnings test; (3) the dollar amounts, or bend points, in the PIA formula; (4) the bend points in the maximum family benefit formula; (5) the earnings required to credit a worker with a quarter of coverage; (6) the old-law contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments); (7) the substantial gainful activity (SGA) amount applicable to statutorily blind individuals; and (8) the coverage threshold for election officials and election workers. Additionally, under section 3121(x) of the Internal Revenue Code, the domestic employee coverage threshold is based on changes in the national average wage index.

Two amounts also increase under regulatory requirements—the SGA amount applicable to non-blind disabled persons, and the monthly earnings threshold that establishes a month as part of a trial work period for disabled beneficiaries.

OASDI Contribution and Benefit Base

General

The OASDI contribution and benefit base is $137,700 for remuneration paid in 2020 and self-employment income earned in taxable years beginning in 2020. The OASDI contribution and benefit base serves as the maximum annual earnings on which OASDI taxes are paid. It is also the maximum annual earnings used in determining a person's OASDI benefits.

Computation

Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 2020 is the larger of: (1) The 1994 base of $60,600 multiplied by the ratio of the national average wage index for 2018 to that for 1992; or (2) the current base ($132,900). If the resulting amount is not a multiple of $300, we round it to the nearest multiple of $300.

OASDI Contribution and Benefit Base Amount

Multiplying the 1994 OASDI contribution and benefit base ($60,600) by the ratio of the national average wage index for 2018 ($52,145.80 as determined above) to that for 1992 ($22,935.42) produces $137,779.71. We round this amount to $137,700. Because $137,700 exceeds the current base amount of $132,900, the OASDI contribution and benefit base is $137,700 for 2020.

Retirement Earnings Test Exempt Amounts

General

We withhold Social Security benefits when a beneficiary under the NRA has earnings over the applicable retirement earnings test exempt amount. The NRA is the age when retirement benefits (before rounding) are equal to the PIA. The NRA is age 66 for those born in 1943–54, and it gradually increases to age 67 for those born in 1960 or later.

A higher exempt amount applies in the year in which a person attains NRA, but only for earnings in months before such attainment. A lower exempt amount applies at all other ages below NRA. Section 203(f)(8)(B) of the Act provides formulas for determining the monthly exempt amounts. The annual exempt amounts are exactly 12 times the monthly amounts.

For beneficiaries who attain NRA in the year, we withhold $1 in benefits for every $3 of earnings over the annual exempt amount for months before NRA. For all other beneficiaries under NRA, we withhold $1 in benefits for every $2 of earnings over the annual exempt amount.

Computation

Under the formula that applies to beneficiaries attaining NRA after 2020, the lower monthly exempt amount for 2020 is the larger of: (1) The 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 2018 to that for 1992; or (2) the 2019 monthly exempt amount ($1,470). If the resulting amount is not a multiple of $10, we round it to the nearest multiple of $10.

Under the formula that applies to beneficiaries attaining NRA in 2020, the higher monthly exempt amount for 2020 is the larger of: (1) The 2002 monthly exempt amount multiplied by the ratio of the national average wage index for 2018 to that for 2000; or (2) the 2019 monthly exempt amount ($3,910). If the resulting amount is not a multiple of $10, we round it to the nearest multiple of $10.

Lower Exempt Amount

Multiplying the 1994 retirement earnings test monthly exempt amount of $670 by the ratio of the national average wage index for 2018 ($52,145.80) to that for 1992 ($22,935.42) produces $1,523.31. We round this to $1,520. Because $1,520 exceeds the current exempt amount of $1,470, the lower retirement earnings test monthly exempt amount is $1,520 for 2020. The lower annual exempt amount is $18,240 under the retirement earnings test.

Higher Exempt Amount

Multiplying the 2002 retirement earnings test monthly exempt amount of $2,500 by the ratio of the national average wage index for 2018 ($52,145.80) to that for 2000 ($32,154.82) produces $4,054.28. We round this to $4,050. Because $4,050 exceeds the current exempt amount of $3,910, the higher retirement earnings test monthly exempt amount is $4,050 for 2020. The higher annual exempt amount is $48,600 under the retirement earnings test.

Primary Insurance Amount Formula

General

The Social Security Amendments of 1977 provided a method for computing benefits that generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's average indexed monthly earnings (AIME) to compute the PIA. We adjust the formula each year to reflect changes in general wage levels, as measured by the national average wage index.

We also adjust, or index, a worker's earnings to reflect the change in the general wage levels that occurred during the worker's years of employment. Such indexing ensures that a worker's future benefit level will reflect the general rise in the standard of living that will occur during his or her working lifetime. To compute the AIME, we first determine the required number of years of earnings. We then select the number of years with the highest indexed earnings, add the indexed earnings for those years, and divide the total amount by the total number of months in those years. We then round the resulting average amount down to the next lower dollar amount. The result is the AIME.

Computing the PIA

The PIA is the sum of three separate percentages of portions of the AIME. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. We call the dollar amounts in the formula governing the portions of the AIME the bend points of the formula. Therefore, the bend points for 1979 were $180 and $1,085.

To obtain the bend points for 2020, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2018 to that average for 1977. We then round these results to the nearest dollar. Multiplying the 1979 amounts of $180 and $1,085 by the ratio of the national average wage index for 2018 ($52,145.80) to that for 1977 ($9,779.44) produces the amounts of $959.79 and $5,785.42. We round these to $960 and $5,785. Therefore, the portions of the AIME to be used in 2020 are the first $960, the amount between $960 and $5,785, and the amount over $5,785.

Therefore, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2020, or who die in 2020 before becoming eligible for benefits, their PIA will be the sum of:

(a) 90 percent of the first $960 of their AIME, plus

(b) 32 percent of their AIME over $960 and through $5,785, plus

(c) 15 percent of their AIME over $5,785.

We round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment are stated in section 215(a) of the Act.

Maximum Benefits Payable to a Family

General

The 1977 amendments continued the policy of limiting the total monthly benefits that a worker's family may receive based on the worker's PIA. Those amendments also continued the relationship between maximum family benefits and PIAs but changed the method of computing the maximum benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula applies to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980 or whose disability began before 1979, we compute the family maximum payable the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the PIA. It involves computing the sum of four separate percentages of portions of the worker's PIA. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. We refer to such dollar amounts in the formula as the bend points of the family-maximum formula.

To obtain the bend points for 2020, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2018 to that average for 1977. Then we round this amount to the nearest dollar. Multiplying the amounts of $230, $332, and $433 by the ratio of the national average wage index for 2018 ($52,145.80) to that for 1977 ($9,779.44) produces the amounts of $1,226.40, $1,770.29, and $2,308.84. We round

these amounts to $1,226, $1,770, and $2,309. Therefore, the portions of the PIAs to be used in 2020 are the first $1,226, the amount between $1,226 and $1,770, the amount between $1,770 and $2,309, and the amount over $2,309.

Thus, for the family of a worker who becomes age 62 or dies in 2020 before age 62, we will compute the total benefits payable to them so that it does not exceed:

(a) 150 percent of the first $1,226 of the worker's PIA, plus

(b) 272 percent of the worker's PIA over $1,226 through $1,770, plus

(c) 134 percent of the worker's PIA over $1,770 through $2,309, plus

(d) 175 percent of the worker's PIA over $2,309.

We then round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment are stated in section 203(a) of the Act.

Quarter of Coverage Amount

General

The earnings required for a quarter of coverage in 2020 is $1,410. A quarter of coverage is the basic unit for determining if a worker is insured under the Social Security program. For years before 1978, we generally credited an individual with a quarter of coverage for each quarter in which wages of $50 or more were paid, or with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, employers generally report wages yearly instead of quarterly. With the change to yearly reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978, up to a maximum of 4 quarters of coverage for the year. The amendment also provided a formula for years after 1978.

Computation

Under the prescribed formula, the quarter of coverage amount for 2020 is the larger of: (1) The 1978 amount of $250 multiplied by the ratio of the national average wage index for 2018 to that for 1976; or (2) the current amount of $1,360. Section 213(d) provides that if the resulting amount is not a multiple of $10, we round it to the nearest multiple of $10.

Quarter of Coverage Amount

Multiplying the 1978 quarter of coverage amount ($250) by the ratio of the national average wage index for 2018 ($52,145.80) to that for 1976 ($9,226.48) produces $1,412.94. We then round this amount to $1,410. Because $1,410 exceeds the current amount of $1,360, the quarter of coverage amount is $1,410 for 2020.

Old-Law Contribution and Benefit Base

General

The old-law contribution and benefit base for 2020 is $102,300. This base would have been effective under the Act without the enactment of the 1977 amendments.

The old-law contribution and benefit base is used by:

(a) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments that correspond to basic Social Security benefits,

(b) the Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (section 230(d) of the Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the old-law base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The old-law contribution and benefit base is the larger of: (1) The 1994 old-law base ($45,000) multiplied by the ratio of the national average wage index for 2018 to that for 1992; or (2) the current old-law base ($98,700). If the resulting amount is not a multiple of $300, we round it to the nearest multiple of $300.

Old-Law Contribution and Benefit Base Amount

Multiplying the 1994 old-law contribution and benefit base ($45,000) by the ratio of the national average wage index for 2018 ($52,145.80) to that for 1992 ($22,935.42) produces $102,311.66. We round this amount to $102,300. Because $102,300 exceeds the current amount of $98,700, the old-law contribution and benefit base is $102,300 for 2020.

Substantial Gainful Activity Amounts

General

A finding of disability under titles II and XVI of the Act requires that a person, except for a title XVI disabled child, be unable to engage in SGA. A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly earnings considered as SGA depends on the nature of a person's disability. Section 223(d)(4)(A) of the Act specifies the SGA amount for statutorily blind individuals under title II while our regulations (20 CFR 404.1574 and 416.974) specify the SGA amount for non-blind individuals.

Computation

The monthly SGA amount for statutorily blind individuals under title II for 2020 is the larger of: (1) The amount for 1994 multiplied by the ratio of the national average wage index for 2018 to that for 1992; or (2) the amount for 2019. The monthly SGA amount for non-blind disabled individuals for 2020 is the larger of: (1) The amount for 2000 multiplied by the ratio of the national average wage index for 2018 to that for 1998; or (2) the amount for 2019. In either case, if the resulting amount is not a multiple of $10, we round it to the nearest multiple of $10.

SGA Amount for Statutorily Blind Individuals

Multiplying the 1994 monthly SGA amount for statutorily blind individuals ($930) by the ratio of the national average wage index for 2018 ($52,145.80) to that for 1992 ($22,935.42) produces $2,114.44. We then round this amount to $2,110. Because $2,110 exceeds the current amount of $2,040, the monthly SGA amount for statutorily blind individuals is $2,110 for 2020.

SGA Amount for Non-Blind Disabled Individuals

Multiplying the 2000 monthly SGA amount for non-blind individuals ($700) by the ratio of the national average wage index for 2018 ($52,145.80) to that for 1998 ($28,861.44) produces $1,264.73. We then round this amount to $1,260. Because $1,260 exceeds the current amount of $1,220, the monthly SGA amount for non-blind disabled individuals is $1,260 for 2020.

Trial Work Period Earnings Threshold

General

During a trial work period of 9 months in a rolling 60-month period, a beneficiary receiving Social Security disability benefits may test his or her

ability to work and still receive monthly benefit payments. To be considered a trial work period month, earnings must be over a certain level. In 2020, any month in which earnings exceed $910 is considered a month of services for an individual's trial work period.

Computation

The method used to determine the new amount is set forth in our regulations at 20 CFR 404.1592(b). Monthly earnings in 2020, used to determine whether a month is part of a trial work period, is the larger of: (1) The amount for 2001 ($530) multiplied by the ratio of the national average wage index for 2018 to that for 1999; or (2) the amount for 2019. If the resulting amount is not a multiple of $10, we round it to the nearest multiple of $10.

Trial Work Period Earnings Threshold Amount

Multiplying the 2001 monthly earnings threshold ($530) by the ratio of the national average wage index for 2018 ($52,145.80) to that for 1999 ($30,469.84) produces $907.04. We then round this amount to $910. Because $910 exceeds the current amount of $880, the monthly earnings threshold is $910 for 2020.

Domestic Employee Coverage Threshold

General

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2020, this threshold is $2,200. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

Computation

Under the formula, the domestic employee coverage threshold for 2020 is equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 2018 to that for 1993. If the resulting amount is not a multiple of $100, we round it to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount

Multiplying the 1995 domestic employee coverage threshold ($1,000) by the ratio of the national average wage index for 2018 ($52,145.80) to that for 1993 ($23,132.67) produces $2,254.21. We then round this amount to $2,200. Therefore, the domestic employee coverage threshold amount is $2,200 for 2020.

Election Official and Election Worker Coverage Threshold

General

The minimum amount an election official and election worker must earn so the earnings are covered under Social Security or Medicare is the election official and election worker coverage threshold. For 2020, this threshold is $1,900. Section 218(c)(8)(B) of the Act provides the formula for increasing the threshold.

Computation

Under the formula, the election official and election worker coverage threshold for 2020 is equal to the 1999 amount of $1,000 multiplied by the ratio of the national average wage index for 2018 to that for 1997. If the amount we determine is not a multiple of $100, it we round it to the nearest multiple of $100.

Election Official and Election Worker Coverage Threshold Amount

Multiplying the 1999 coverage threshold amount ($1,000) by the ratio of the national average wage index for 2018 ($52,145.80) to that for 1997 ($27,426.00) produces $1,901.33. We then round this amount to $1,900. Therefore, the election official and election worker coverage threshold amount is $1,900 for 2020.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006 Supplemental Security Income)

Andrew Saul,

Commissioner of Social Security.

[FR Doc. 2019–22921 Filed 10–21–19; 8:45 am]

BILLING CODE P

SURFACE TRANSPORTATION BOARD

Senior Executive Service Performance Review Board (PRB) and Executive Resources Board (ERB) Membership

AGENCY: Surface Transportation Board.

ACTION: Notice of Senior Executive Service Performance Review Board (PRB) and Executive Resources Board (ERB) Membership.

SUMMARY: Effective immediately, the membership of the PRB and ERB is as follows:

Performance Review Board

Lucille Marvin, Chairman
Rachel D. Campbell, Member
Craig M. Keats, Member
William Brennan, Alternate Member

Executive Resources Board

Rachel D. Campbell, Chairman
Lucille Marvin, Member
Craig M. Keats, Member
Allison Davis, Alternate Member

FOR FURTHER INFORMATION CONTACT: If you have any questions, please contact Teresa Schlee at *teresa.schlee@stb.gov* or 202–245–0340.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–22995 Filed 10–21–19; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0836]

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: Airman Knowledge Test Registration Collection

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 of a new collection. The collection involves the voluntary submission of information for registration of an Airman Knowledge Test as part of the FAA Airman Certification Process. The information collected is necessary to ensure compliance and proper registration of an individual for the necessary knowledge test for the certification or rating pursued by the individual.

DATES: Written comments should be submitted by December 23, 2019.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Ryan C. Smith, Airman Testing Standards (AFS–630) 6500 S MacArthur Blvd., Oklahoma City, OK 73169.

By fax: n/a.

FOR FURTHER INFORMATION CONTACT: Ryan C. Smith by email at: *Ryan.C.Smith@faa.gov*; *Phone:* 405–954–6742.

SUPPLEMENTARY INFORMATION:

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.

OMB Control Number: 2120–XXXX.

Title: Airman Knowledge Test Registration Collection.

Form Numbers: There are no forms associated with this collection.

Type of Review: New information collection.

Background: Individuals pursuing an FAA certificate or rating to operate in the National Airspace System (NAS) must meet the standards established in the FAA regulations specific to the certificate sought by the individual. FAA certification requires that an individual must successfully pass an Airman Knowledge Test as part of the requirements to obtain an FAA certificate or rating. The FAA develops and administers 90 different knowledge tests in many different areas that are required as part of the overall airman certification process.

Airman Knowledge Tests are administered at approved Knowledge Testing Centers by an approved test proctor who is required to administer the appropriate Airman Knowledge Test to the individual pursuing FAA certification. Individuals taking an FAA Airman Knowledge Test must provide the following information to be collected in order to complete the registration process before the administration of the Airman Knowledge Test: Name, FAA Tracking Number (FTN), physical address, Date of Birth, email address, photo identification, phone number, test authorization (credentials of the individual such as an instructor endorsement), and previous number of test attempts.

The information provided by the individual is collected and stored electronically in the application used for test registration and delivery. This information is used to determine the identify and eligibility of the individual for compliance of FAA certification requirements.

Respondents: 150,000 annually.

Frequency: n/a.

Estimated Average Burden per Response: 2 minutes.

Estimated Total Annual Burden: 5,000 hours annually; 150,000 respondents × 2 minutes each = 300,000 minutes; 300,000 minutes/60 minutes in an hour = 5,000 hours annually.

Issued in Oklahoma City, OK, on October 17, 2019.

Ryan C. Smith,

Airman Knowledge Testing Program Manager, Airman Testing Standards Branch (AFS–630).

[FR Doc. 2019–22979 Filed 10–21–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. DOT–OST–2019–0137]

Privacy Act of 1974; Department of Transportation, Federal Motor Carrier Safety Administration; DOT/FMCSA 010 Drug and Alcohol Clearinghouse

AGENCY: Federal Motor Carrier Safety Administration, Department of Transportation.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA) proposes a new system of records titled ''Drug and Alcohol Clearinghouse (Clearinghouse)''. This system of records allows FMCSA to collect and maintain records on commercial driver's license (CDL) and commercial learner's permit (CLP) holders who have received verified positive DOT drug or alcohol test results, refuse such testing, or otherwise violate FMCSA's drug and alcohol use prohibitions. The Clearinghouse will collect and maintain records on the completion of substance abuse programs as part of the return-to-duty process and will collect and maintain drivers' consent to the release of information. In addition, the Clearinghouse will collect and maintain records of queries of the system conducted by employers or service agents acting on their behalf, and State Driver Licensing Agencies (SDLAs). The information in this system will be used to enhance compliance with drug and alcohol use testing regulations by identifying CDL or CLP holders who have committed drug and alcohol violations that render them ineligible to operate a commercial motor vehicle (CMV). This new system will be included in the DOT inventory of record systems.

DATES: Written comments must be submitted on or before November 21, 2019. The system will be effective November 21, 2019. Routine Uses will be effective at that time.

ADDRESSES: You may submit comments, identified by docket number DOT–OST–2019–0137 by one of the following methods:

Federal e-Rulemaking Portal: https://www.regulations.gov.

Fax: (202) 366–XXXX.

Mail: Department of Transportation Docket Management, Room W12–140, 1200 New Jersey Ave. SE, Washington, DC 20590.

Instructions: All submissions received must include the agency name and docket number DOT–OST–2019–0137. All comments received will be posted without change to *https://www.regulations.gov,* and may include any personal information provided. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* Follow the online instructions for accessing.

FOR FURTHER INFORMATION CONTACT: For system-related questions please contact Chief, Compliance Division, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, Email: *clearinghouse@dot.gov,* Tel. (202) 366–1812. For privacy questions, please contact: Claire W. Barrett, Departmental Chief Privacy Officer, Department of Transportation, S–81, Washington, DC 20590, Email: *privacy@dot.gov,* Tel. (202) 366–8135.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Privacy Act of 1974, FMCSA is proposing a new system of records titled ''Drug and Alcohol Clearinghouse''. This system will collect information related to violations of the Agency's drug and alcohol testing program regulations committed by holders of commercial driver's licenses (CDL) or commercial learner's permits (CLP).

On December 5, 2016, FMCSA published a final rule titled, ''Commercial Driver's License Drug and Alcohol Clearinghouse'' (81 FR 87686). The rule amended the Federal Motor Carrier Safety Regulations (FMCSRs) to

establish requirements for the CDL Drug and Alcohol Clearinghouse (Clearinghouse), a database under the Agency's administration that will contain information about violations of FMCSA's drug and alcohol testing program for CDL or CLP holders. This rule was mandated by the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405, codified at 49 U.S.C. 31306a). The Clearinghouse will enhance compliance with drug and alcohol use and testing regulations by identifying CDL or CLP holders who have committed drug and alcohol violations that render them ineligible to operate a commercial motor vehicle (CMV).

The Clearinghouse is a tool that FMCSA, employers, and prospective employers will use to identify drivers who are prohibited from operating a CMV, based on DOT drug and alcohol program violations, and ensure that such drivers receive the required substance abuse evaluation and treatment before operating a CMV on public roads. Specifically, the drug and alcohol program violation information maintained in the Clearinghouse will enable employers to identify drivers who commit a drug or alcohol program violation while working for another employer, but who subsequently fail to inform a potential or new employer, as is required by current regulations.

Employers, or their designated service agents (Consortia/Third-Party Administrator (C/TPA)) are required to query the Clearinghouse using the name of the driver to search for any drug and alcohol program violations before hiring a prospective driver, and at least annually for all currently employed drivers. Queries of the Clearinghouse fall into one of two categories: Limited or full. Both limited and full queries require a driver's consent before any information can be released about that driver. A limited query of the Clearinghouse will inform the employer or C/TPA whether or not any violation related information about the driver exists; however, a limited query does not result in the release of any detailed violation information. To view detailed violation information contained in the Clearinghouse, the employer or C/TPA must perform a full query. Once a driver's specific consent is obtained, a full query will return the following information about the driver:

- Driver details, including name, date of birth, contact information, CLP/CLD information, and eligibility status
- Information about the driver's employer who ordered the test or reported a violation to the Clearinghouse
- Test details, including the type of test, violation details, and test result
- Information about who entered the test result
- Return-to-duty (RTD) activity information

When an employer queries the driver as a pre-employment check, a full query must be conducted. In accordance with 382.701(c), if additional information is entered on the driver within 30 days of the pre-employment query, the Clearinghouse will send an electronic notification to the employer or C/TPA indicating additional information has been added to a previously queried record. The employer must login to the Clearinghouse and obtain specific consent from the driver before the details of this newly reported information will be disclosed. An annual query may be conducted as either a limited query or a full query.

A limited query requires a driver's general consent, which may be effective for an indefinite period (*e.g.,* the duration of employment) and for an unlimited number of queries. The scope of general consent is decided between the employer and the driver; employers must retain general consent documentation for three years. Once the employer obtains general consent, the employer will log into the Clearinghouse, select limited query, enter the driver's information, and submit the query. The Clearinghouse will return a message to the employer indicating whether the Clearinghouse contains drug or alcohol violation-related information on the queried driver. If the limited query indicates that the Clearinghouse contains information on the driver, the employer or C/TPA must conduct a full query.

When conducting a full query, the employer or C/TPA must obtain specific consent from the driver by logging into the Clearinghouse and requesting that the driver provide consent to release full query results. When an employer requests a full query, the driver will receive notification of the request for specific consent via the preferred contact method indicated in their Clearinghouse account, such as email or U.S. mail. To grant or decline specific consent, the driver must register in the Clearinghouse to establish an account. Once logged in, the driver will be able to either grant or decline consent to the requesting employer. If the driver provides consent, the employer will receive notification of the consent via email. The employer will log into their account to view the detailed information for the queried driver.

In accordance with the Clearinghouse final rule, if an employer is unable to obtain either general consent from a driver for a limited query, or specific consent for a full query, the employer must remove the driver from performing safety-sensitive functions, as described above.

In addition to the general routine uses applicable to all DOT systems of records, FMCSA is proposing three new system-specific Routine Uses to support enforcement of drug and alcohol use and testing regulations and to implement statutory requirements pertaining to States and the National Transportation Safety Board.

The first proposed Routine Use would allow the sharing of driver eligibility and compliance data with Motor Carrier Safety Assistance Program (MCSAP) partner agencies, for use during investigations, roadside inspections and compliance reviews of motor carriers. The MCSAP is a Federal grant program providing financial assistance to States to reduce the number and severity of crashes involving CMVs. MCSAP personnel act on the Agency's behalf to enforce the FMCSRs. This routine use will strengthen the enforcement of the current prohibition against operating a CMV, or performing other safety-sensitive functions, due to drug and alcohol program violations, as well as other drug and alcohol program requirements. The second proposed Routine Use would allow the sharing of a driver's CMV operating status (prohibited or not prohibited) in response to mandatory queries conducted by a State Driver's Licensing Agency (SDLA) anytime a CDL is issued, renewed, transferred or upgraded. This routine use will allow SDLAs to verify a driver's eligibility to operate a CMV prior to completing licensing transactions (as mandated by 49 U.S.C. 31311(a)(24); 31306a(h)(2)). The third proposed Routine Use would allow the National Transportation Safety Board (NTSB), upon request, to receive information on a driver who is involved in a crash under investigation by the NTSB (as mandated by 49 U.S.C. 31306a(i)). These proposed Routine Uses allow MCSAP partners, SDLAs, and NTSB to identify CDL or CLP holders who have committed drug and alcohol violations that render them ineligible to operate a commercial motor vehicle (CMV). They are compatible with the purpose for which the information was collected, directly furthering the goals of 49 U.S.C. 31306a, to improve roadway safety and enhance

compliance with drug and alcohol use testing regulations.

FMCSA has also included DOT General Routine Uses, to the extent they are compatible with the purposes of this System. As recognized by the Office of Management and Budget (OMB) in its Privacy Act Implementation Guidance and Responsibilities (65 FR 19746, July 9, 1975), the routine uses include proper and necessary uses of information in the system, even if such uses occur infrequently. FMCSA has included in this notice routine uses for disclosures to law enforcement when the record, on its face, indicates a violation of law, to DOJ for litigation purposes, or when necessary in investigating or responding to a breach of this system or other agencies' systems. DOT may disclose to Federal, State, local, or foreign agency information relevant to law enforcement, litigation, and proceedings before any court or adjudicative or administrative body. OMB has long recognized that these types of routine uses are ''proper and necessary'' uses of information and qualify as compatible with agency systems. 65 FR 19476. In addition, by OMB Memorandum M–17–12, OMB directed agencies to include routine uses that will permit sharing of information when needed to investigate, respond to, and mitigate a breach of a Federal information system. DOT also has included routine uses that permit sharing with the National Archives and Records Administration when necessary for an inspection, to any Federal government agency engaged in audit or oversight related to this system, or when DOT determines that the disclosure will detect, prevent, or mitigate terrorism activity. These types of disclosures are necessary and proper uses of information in this system because they further DOT's obligation to fulfil its records management and program management responsibilities by facilitating accountability to agencies charged with oversight in these areas, and DOT's obligation under Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–456, and Executive Order 13388 (Oct. 25, 2005) to share information necessary and relevant to detect, prevent, disrupt, preempt, or mitigate the effects of terrorist activities against the territory, people, and interests of the United States.

Privacy Act

The Privacy Act governs the means by which the Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act extends rights and protections to individuals who are U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides a covered person with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the Clearinghouse System of Records. In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the OMB and to Congress.

SYSTEM NAME AND NUMBER

DOT/FMCSA 010—Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The Clearinghouse is developed by a third-party contractor on behalf of FMCSA. Records are maintained in a third-party cloud environment at the U.S. DOT at 1200 New Jersey Avenue SE, Washington, DC 20590.

SYSTEM MANAGER(S):

Chief, Compliance Division, Office of Enforcement and Compliance, FMCSA, U.S. DOT, 1200 New Jersey Avenue SE, Washington, DC 20590; *Clearinghouse@dot.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Moving Ahead for Progress in the 21st Century Act (MAP–21), (49 U.S.C. 31306a(a)(1)).

PURPOSE(S) OF THE SYSTEM:

The purpose of the Clearinghouse is to: (1) Improve compliance with the DOT's controlled substances and alcohol testing program applicable to Commercial Driver's License (CDL) and Commercial Learner's Permit (CLP) holders; and (2) enhance the safety of U.S. roadways by reducing crashes and injuries involving drivers violating alcohol or controlled substances regulations (49 U.S.C. 31306a(a)(2)). FMCSA and motor carrier employers will use information in the Clearinghouse records to identify drivers who are prohibited from operating a Commercial Motor Vehicle (CMV) and must receive the required evaluation and treatment before resuming safety-sensitive functions. Safety-sensitive functions are defined in 49 CFR 382.107 as the time from when a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions include driving a CMV on public roads.

In addition, the Clearinghouse will allow prospective employers to confirm a driver did not commit a drug or alcohol violation while working for another employer that would prohibit the individual from operating a CMV or performing other safety-sensitive functions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals within this system include: CDL and CLP holders. Information about Medical Review Officers (MRO), Substance Abuse Professionals (SAP), employers, and Consortia/Third-Party Administrators (C/TPA) may be included in CDL and CLP holders' records.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system include:

The following information about CDL and CLP holders:

- Name
- Contact Information including physical address, phone number(s) and email address
- Date of birth
- Current and previous CLP or CDL license number, state of issuance, and expiration date
- Drug or alcohol test results and violation information including employer name, address, and USDOT#, as applicable
- CMV driving eligibility status
- Driver Substance Abuse Professional (SAP) selection including SAP name, address and phone number, as applicable
- Actual Knowledge Report Information, including violation details, documentation to support the allegation and certificate of service to the employee, as applicable
- Failure to appear and refusal to test detail information, including documentation regarding notification of test requirement, documentation of termination or resignation and certificate of service to the employee, as applicable
- Return to duty (RTD) eligibility date and negative test result. A negative RTD test result allows the driver to resume operation of a CMV and other safety-sensitive functions

• Follow-up testing plan completion information

• Query information including who requested the query and when the query was conducted

• Query consent information including the driver's approval or refusal

Information about MROs and SAPs as specified in § 382.711(c) to include:

• Contact information including name, email address, phone number(s), office location addresses and applicable qualifications as per 49 CFR part 40.

Information about employers, designated agents and C/TPAs as specified in § 382.711(b) and § 382.711(d) to include:

• Contact information including name, email address, phone number(s), office location addresses

• USDOT #, as applicable

RECORD SOURCE CATEGORIES:

Records are obtained from MROs for CLP or CDL holders who have confirmed positive tests or test refusals. Motor carrier employers will report actual knowledge of use, alcohol confirmation test results, or test refusals. Records regarding completion of required RTD processes are obtained from SAPs and employers. Records are obtained from employers who request full query consent of drivers and the approval or rejection of the consent from the drivers. Registration information records are obtained from CLP and CDL holders, MROs, SAPs, employers, and their designated agents when an authorized user registers for the Clearinghouse and creates a new account or when updating previous account information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

System Specific Routine Uses

1. To Motor Carrier Safety Assistance Program (MCSAP) partner agencies, for use during investigations, roadside inspections and safety audits of motor carriers. This routine use will enable the MCSAP agencies to enforce the current prohibition against operating a CMV, or performing other safety-sensitive functions, due to drug and alcohol program violations.

2. To State Driver's Licensing Agency (SDLA), for the purposes of verifying a driver's qualification to operate a CMV prior to completing any licensing transactions, including issuance, renewal, transfer, or upgrade of any a CLP or CDL (as mandated by 49 U.S.C. 31311(a)(24); 31306a(h)(2)).

3. To the National Transportation Safety Board (NTSB), upon request, when a driver is involved in a crash under investigation by the NTSB (as mandated by 49 U.S.C. 31306a(i)).

Department General Routine Uses

4. One or more records from a system of records may be disclosed routinely to the National Archives and Records Administration (NARA) in records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

5. DOT may make available to another agency or instrumentality of any government jurisdiction, including State and local governments, listings of names from any system of records in DOT for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims, regardless of the stated purpose for the collection of the information in the system of records. These enforcement activities are generally referred to as matching programs because two lists of names are checked for match using automated assistance. This routine use is advisory in nature and does not offer unrestricted access to systems of records for such law enforcement and related antifraud activities. Each request will be considered on the basis of its purpose, merits, cost effectiveness and alternatives using Instructions on reporting computer matching programs to the Office of Management and Budget, OMB, Congress, and the public, published by the Director, OMB, dated September 20, 1989.

6. DOT may disclose records from this system, as a routine use, to the Office of Government Information Services for the purpose of (a) resolving disputes between FOIA requesters and Federal agencies and (b) reviewing agencies' policies, procedures, and compliance in order to recommend policy changes to Congress and the President.

7. DOT may disclose records from the system, as a routine use, to contractors and their agents, experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records.

8. DOT may disclose records from this system, as a routine use, to an agency, organization, or individual for the purpose of performing audit or oversight operations related to this system of records, but only such records as are necessary and relevant to the audit or oversight activity. This routine use does not apply to intra-agency sharing authorized under Section (b)(1) of the Privacy Act.

9. DOT may disclose from this system, as a routine use, records consisting of, or relating to, terrorism information (6 U.S.C. 485(a)(5)), homeland security information (6 U.S.C. 482(f)(1)), or Law enforcement information (Guideline 2 Report attached to White House Memorandum, ''Information Sharing Environment'', November 22, 2006) to a Federal, State, local, tribal, territorial, foreign government and/or multinational agency, either in response to its request or upon the initiative of the Component, for purposes of sharing such information as is necessary and relevant for the agencies to detect, prevent, disrupt, preempt, and mitigate the effects of terrorist activities against the territory, people, and interests of the United States of America, as contemplated by the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458) and Executive Order 13388 (October 25, 2005).

10. In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

11. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DOT decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

12. A record from this system of records may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other

benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

13. Routine Use for Agency Disclosure in Other Proceedings. It shall be a routine use of records in this system to disclose them in proceedings before any court or adjudicative or administrative body before which DOT or any agency thereof, appears, when— (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof in his/her official capacity, or (c) Any employee of DOT or any agency thereof in his/her individual capacity where DOT has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that the proceeding is likely to affect the United States, is a party to the proceeding or has an interest in such proceeding, and DOT determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, DOT determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

14a. DOT may disclose records from the system, as a routine use to appropriate agencies, entities, and persons when (1) DOT suspects or has confirmed that there has been a breach of the system of records, (2) DOT has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOT (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

14b. DOT may disclose records from the system, as a routine use to another Federal agency or Federal entity, when DOT determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

15. Routine Use for Disclosure for Use in Litigation. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when— (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof, in his/her official capacity, or (c) Any employee of DOT or any agency thereof, in his/her individual capacity where the Department of Justice has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that litigation is likely to affect the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or other Federal agency conducting the litigation is deemed by DOT to be relevant and necessary in the litigation, provided, however, that in each case, DOT determines that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

16. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. In such cases, however, the Congressional office does not have greater rights to records than the individual. Thus, the disclosure may be withheld from delivery to the individual where the file contains investigative or actual information or other materials which are being used, or are expected to be used, to support prosecution or fines against the individual for violations of a statute, or of regulations of the Department based on statutory authority. No such limitations apply to records requested for Congressional oversight or legislative purposes; release is authorized under 49 CFR 10.35(9).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored electronically on a contractor-maintained cloud storage service.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by the following data elements: CDL holder's name, date of birth, license number, and state of issuance.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records will be retained and disposed of in accordance with the records control schedule titled, ''Commercial Driver's License Drug and Alcohol Clearinghouse'' approved by the NARA on July 23, 2019. The record schedule requires retention for 5 years if the violation is resolved and RTD is completed, after 5 years the records will be transferred to a separate location for archiving for 6 years and then the records will be destroyed. For records that have not had the RTD process successfully completed will remain active in the Clearinghouse for 70 years.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DOT automated systems security and access policies. Appropriate controls have been imposed to minimize the risk of compromising the information that is being stored, and ensuring confidentiality of communications using tools such as encryption, authentication of sending parties, and compartmentalizing databases; and employing auditing software. Clearinghouse data is encrypted at rest. In addition, the connection between the database and the server is encrypted. Access to records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. All personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request to the System Manager in writing in writing to the address provided under ''System Manager and Address.'' Individuals may also search the public docket at *www.regulations.gov* by their name.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 49 CFR part 10. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;

• Provide any other information that will help the FOIA staff determine which DOT component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records. Without this bulleted information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest the content of any record pertaining to him or her in the system may contact the System Manager following the Privacy Act procedures in 49 CFR part 10, subpart E, Correction of Records.

Drivers may request corrections in the accuracy of information in their Clearinghouse record using procedures set forth in 49 CFR 382.717. Under these procedures, request for correction are limited to inaccurately reported information, not the accuracy of test results or refusals. Drivers may also request that the following information be removed from their Clearinghouse record: An employer's report of actual knowledge of use, based on a traffic citation for driving a CMV under the influence of controlled substances or alcohol, if the citation did not result in the driver's conviction; an employer's report of actual knowledge of use, if the employer's report does not comply with applicable documentation and notice requirements; or an employer's report of a failure to appear test refusal, if the employer's report does not comply with applicable documentation and notice requirements. Drivers may submit their request for correction or removal electronically through the Clearinghouse or in writing to FMCSA.

Written requests for correction must conform with the Privacy Act regulations set forth in 49 CFR part 10. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Freedom of Information Officer, *http://www.dot.gov/foia* or 202.366.4542.

NOTIFICATION PROCEDURES:

Individuals seeking to contest the content of any record pertaining to him or her in the system may contact the System Manager following the procedures described in ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Issued in Washington, DC.

Claire W. Barrett,

Departmental Chief Privacy Officer.

[FR Doc. 2019–22915 Filed 10–21–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Funding Opportunity for Railroad Trespassing Enforcement Grant Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Funding Opportunity (notice or NOFO).

SUMMARY: This notice details the application requirements and procedures to obtain grant funding for eligible projects under the Railroad Trespassing Enforcement Grant Program. Funding for this program totaling $150,000 is provided by the Consolidated Appropriations Act, 2019. The opportunities described in this notice are available under Catalog of Federal Domestic Assistance number 20.301, ''Rail Safety Grants.''

DATES: Applications for funding under this solicitation are due no later than 5:00 p.m. Eastern Time (ET), on December 23, 2019. Applications for funding received after 5:00 p.m. ET on December 23, 2019 will not be considered for funding. See Section D of this notice for additional information on the application process.

ADDRESSES: Applications must be submitted via *www.Grants.gov*. Only applicants who comply with all submission requirements described in this notice and submit applications through *Grants.gov* will be eligible for award. For any supporting application materials that an applicant is unable to submit via *Grants.gov*, an applicant may submit an original and two (2) copies to Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are advised to use other means of conveyance (such as courier service) to assure timely receipt of materials.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice, please contact Michail Grizkewitsch, Office of Railroad Safety, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W33–446, Washington, DC 20590; email: *Michail.grizkewitsch@dot.gov;* phone: (202) 493–1370. Grant application submission and processing questions should be addressed to Ms. Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590; email: *amy.houser@dot.gov;* phone: (202) 493–0303.

SUPPLEMENTARY INFORMATION:

Notice to applicants: FRA recommends that applicants read this notice in its entirety prior to preparing application materials. Definitions of key terms used throughout the NOFO are provided in Section A(2) below. These key terms are capitalized throughout the NOFO. There are several administrative prerequisites and eligibility requirements described herein that applicants must comply with to submit an application. Additionally, applicants should note that the required Project Narrative component of the application package may not exceed 25 pages in length.

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A. Program Description

1. Overview

Trespassing on a railroad's private property and along railroad rights-of-way is the leading cause of rail-related fatalities in America. Since 1997, more people have been fatally injured each year by trespassing than in motor vehicle collisions with trains at highway-rail grade crossings. Nationally, approximately 500 trespassing deaths occur each year.

Trespassers are those who are on railroad property without permission. They are most often people who walk across or along railroad tracks as a shortcut to another destination. They also may be engaged in another activity such as loitering, hunting, bicycling, snowmobiling, or all-terrain vehicle riding.

From August 4 to August 6, 2015, FRA sponsored the 2015 Right-of-Way (ROW) Fatality and Trespass Prevention Workshop in Charlotte, North Carolina (*https://www.fra.dot.gov/conference/row/index.shtml*). One of the main objectives of the workshop was to present best practices and solicit new ideas about new or expanded initiatives, strategies, and programs for trespass prevention. The workshop provided a variety of presentations which covered key topic areas such as community outreach, enforcement, hazard management, infrastructure design and technology, pedestrian issues, and intentional deaths/acts.

The enforcement session of the workshop covered effective safety and security initiatives to identify, apprehend, prosecute, and track trespassers along railroad ROWs. One of the top recommended actions from the enforcement session was to ''establish a federally funded grant program designed specifically for the enforcement of state, county, or municipal laws relating to railroad trespass violations. In response to that recommendation, FRA initiated the Fiscal Year 2018 Law Enforcement Strategies for Reducing Railroad Trespassing Pilot Grant Program (Pilot Program).

Additionally, in its report accompanying the Fiscal Year 2018 Department of Transportation (DOT) appropriation (Consolidated Appropriations Act, 2018, Pub. L. 115–141), the U.S. House of Representatives Committee on Appropriations directed FRA ''to identify and study the causal factors that lead to trespassing incidents on railroad property . . . .'' [1] In that same report, the Committee also directed FRA to develop a national strategy that included milestones, timelines, and metrics to define success in preventing trespasser incidents and submit it to the House and Senate Committees on Appropriations. Further, the legislative history accompanying the 2019 DOT Appropriation (Consolidated Appropriations Act, 2019, Pub. L. 116–6) (2019 Appropriation), allocated $500,000 for FRA to build on its trespasser prevention strategy including ''by developing a risk model that includes . . . enforcement mitigation efforts to reduce trespasser incidents.'' [2]

In FRA's National Strategy to Prevent Trespassing on Railroad Property Report to Congress (October 2018),[3] FRA identified four strategic areas: (1) Data gathering and analysis; (2) community site visits; (3) funding; and (4) partnerships with stakeholders. Under the Strategic Area 3—Funding, FRA stated it will work through the Federal budget cycles to identify funding to strengthen grant programs for trespasser mitigation, with the intent to implement strategies such as engineering solutions, law enforcement overtime, school resource officers, and outreach. As a result, under the Railroad Trespassing Enforcement Grant Program, FRA will provide grants [4] for law enforcement wages in communities at risk for rail trespassing related incidents and fatalities.

The objective of this program is to reduce trespassing along the rail ROWs thereby reducing trespassing safety related incidents. FRA intends to award funds to projects most likely to achieve maximum benefits possible, thereby meeting, in part, several milestones, in its National Strategy to Prevent Trespassing on Railroad Property Report to Congress:

- Milestone 11: Work through the Federal budget cycles and reauthorization process to identify funds to strengthen grant programs that provide funding for trespasser mitigation, such as engineering solutions, law enforcement overtime, school resource officers, and outreach.
- Milestone 14: Provide information on availability and process for applying for FRA grants and other funding (*e.g.,* law enforcement and Consolidated Rail Infrastructure and Safety Improvements grants) during focused surveys and outreach.
- Milestone 17: Partner with law enforcement and other organizations (*e.g.,* International Association of Chiefs of Police, National Organization of Youth Safety) to collaborate on effective trespass prevention and mitigation measures (*e.g.,* enforcement of trespass laws, methods to raise awareness and more effectively reach younger population to prevent trespassing).

The funded agencies will perform rail trespassing enforcement activities and report those activities and associated benefits to FRA. The activities performed in this Grant Program and their benefits will not only reduce the number of trespasser incidents but will also help FRA to target and determine the effectiveness of various rail trespass prevention activities, consistent with FRA's Strategy to Prevent Trespassing on Railroad Property.

Funding for the Railroad Trespassing Enforcement Grant Program is made available by the 2019 Appropriation, and grants under this NOFO are authorized in 49 U.S.C. 103(i).

2. Definitions of Key Terms

a. ''Hot Spots'' for the purposes of this NOFO, means locations along the railroad right-of-way where the risk of trespassing or collision as a result of trespassing is high.

b. ''Enforcement Activities'' means investigating compliance with, and enforcing, rail trespass-related laws.

B. Federal Award Information

1. Available Award Amount

The total funding available for awards under this NOFO is $150,000. Should additional funds become available after the release of this NOFO, FRA may elect to award such additional funds to applications received under this NOFO.

2. Award Size

There are no predetermined amounts for awards for each applicant, and FRA may choose to select one or more eligible projects for funding. FRA may not be able to award grants for all eligible applications, nor even to all applications that meet or exceed the stated evaluation criteria (see Section E, Application Review Information).

3. Award Type

FRA will make awards for projects selected under this notice through grant agreements and/or cooperative agreements. Grant agreements are used when FRA does not expect to have substantial Federal involvement in carrying out the funded activity. Cooperative agreements allow for substantial Federal involvement in carrying out the agreed upon investment, including technical assistance, review of interim work products, and increased program oversight. The funding provided under this NOFO will be made available to grantees on a reimbursable basis. Applicants must certify that their expenditures are allowable, allocable, reasonable, and necessary to the approved project before seeking reimbursement from FRA. See an example of standard terms and conditions for FRA grant awards at: *https://www.fra.dot.gov/eLib/Details/L19057.*

C. Eligibility Information

This section of the notice explains the requirements for submitting an eligible grant application. Applications that do not meet the requirements in this section will be considered ineligible for

[1] H.R. Rep. No. 115–237, at 51 (2017).

[2] H.R. Rep. No. 116–9, at 909 (2019) (Conf. Rep.); H.R. Rep. No. 115–750 at 49 (2019).

[3] *https://www.fra.dot.gov/eLib/Details/L19817.*

[4] The term ''grant'' is used throughout this document and is intended to reference funding awarded through a grant agreement, as well as funding awarded through a cooperative agreement.

funding. Instructions for conveying eligibility information to FRA are detailed in Section D of this NOFO.

1. Eligible Applicants

State, county, municipal, local, and regional law enforcement agencies are the eligible applicants under this notice. At least 1 mile of FRA-regulated railroad track must be within the boundaries of the applying agency's jurisdiction. In an effort to target the benefits of this grant towards communities at high risk of rail trespass related incidents and casualties, FRA will give preference to law enforcement agencies from one of the 10 states with the highest incidence of rail trespass related casualties (as reported in the Rail Accident Incident Reporting System at *https://www.fra.dot.gov/Page/P0037*) from 2013 to 2018. Those states are:

i. California
ii. Texas
iii. Illinois
iv. Florida
v. New York
vi. Pennsylvania
vii. Ohio
viii. New Jersey
ix. North Carolina
x. Georgia

See Section C.3, ''Other—Project Eligibility'' for information regarding the eligibility of projects.

2. Cost Sharing or Matching

Neither cost sharing nor matching is a requirement for this Grant Program. The funds provided under this NOFO are available only for eligible project costs of eligible Railroad Trespassing Enforcement Grant Program projects. The estimated total cost of a project must be based on the best available information.

3. Other—Project Eligibility

Funding under this NOFO is limited to hourly wages for law enforcement officials to undertake Enforcement Activities at Hot Spots within their respective jurisdictions or at areas that demonstrate a rail trespassing problem in their community on FRA-regulated track. Enforcement Activities may include investigating incidents or reports of trespassing, as well as providing warnings and citations to the trespassers for violating rail-related trespass laws.

The hourly rate for law enforcement officers performing Enforcement Activities should be limited to the officer's regular and overtime wage rate (*e.g.,* 1.5 times the base rate). Administrative costs are capped at 1% of the total grant award. Projects must be completed within the six-month period of performance under the grant.

Court costs and equipment are not eligible under this grant. Further, funding under this NOFO may not be used for costs that are included in, or used to meet cost sharing or matching requirements of, any other Federally-financed award or program. If the applicant is seeking additional funding for a project that has already received Federal financial assistance such as the Pilot Program, costs associated with the scope of work for the existing Federal award are not eligible for funding under this NOFO. Only new scope (*e.g.,* hourly wages incurred during the project performance period for a grant awarded under this NOFO) is eligible for funding under this NOFO.

D. Application and Submission Information

Required documents for the application are outlined in the following paragraphs. Applicants must complete and submit all components of the application. See Section D(2) for the application checklist. FRA welcomes the submission of additional relevant supporting documentation, such as letters of support from partnering organizations that will not count against the Project Narrative 25-page limit.

1. Address To Request Application Package

Applicants must submit all application materials through *http://www.Grants.gov* no later than 5:00 p.m. ET, on December 23, 2019. Applicants are strongly encouraged to apply early to ensure that all materials are received before the application deadline. General information for submitting applications through *Grants.gov* can be found at: *https://www.fra.dot.gov/Page/P0270*.

For any supporting application materials that an applicant cannot submit via *Grants.gov*, an applicant may submit an original and two (2) copies to Ms. Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, FRA advises applicants to use other means of conveyance (such as courier service) to assure timely receipt of materials before the application deadline. Additionally, if documents can be obtained online, providing instructions to FRA on how to access files on a referenced website may also be sufficient.

2. Content and Form of Application Submission

FRA strongly advises applicants to read this section carefully. Applicants must submit all required information and components of the application package to be considered for funding. Required documents for an application package are outlined in the checklist below.

- Project Narrative (see D.2.a)
- SF424—Application for Federal Assistance
- 424A—Budget Information for Non-Construction projects
- SF 424B—Assurances for Non-Construction projects
- FRA's Additional Assurances and Certifications
- SF LLL—Disclosure of Lobbying Activities

a. Project Narrative

This section describes the minimum content required in the Project Narrative of the grant application. The Project Narrative must follow the basic outline below to address the program requirements and assist evaluators in locating relevant information.

I. Cover Page	See D.2.a.i
II. Project Summary	See D.2.a.ii
III. Applicant Eligibility Criteria	See D.2.a.iii
IV. Project Eligibility Criteria	See D.2.a.iv
V. Detailed Project Description	See D.2.a.v
VI. Evaluation and Selection Criteria.	See D.2.a.vi

The above content must be provided in a narrative statement submitted by the applicant. The Project Narrative may not exceed 25 pages in length (excluding cover pages, table of contents, and supporting documentation). FRA will not review or consider Project Narratives beyond the 25-page limitation. If possible, applicants should submit supporting documents via website links rather than hard copies. If supporting documents are submitted, applicants must clearly identify the page number of the relevant portion of the supporting documentation in the Project Narrative. The Project Narrative must adhere to the following outline.

i. *Cover Page:* Include a cover page that lists the following elements in either a table or formatted list:

Project Title
Applicant
Amount of Federal funding requested
City(ies), State(s) where the project is located
Congressional district(s) where the project is located

ii. *Project Summary:* Provide a 4–6 sentence summary of the proposed project. Include challenges the proposed

project aims to address, and summarize the intended outcomes and anticipated benefits that will result from the proposed project.

iii. *Applicant Eligibility Criteria:* Explain how the applicant meets the applicant eligibility criteria outlined in Section C(1) of this notice;

iv. *Project Eligibility Criteria:* Explain how the project meets the project eligibility criteria in Section C(3) of this notice.

v. *Detailed Project Description:* Provide a detailed project description. This detailed description should provide, at a minimum, additional background on the challenges the project aims to address, the expected beneficiaries of the project, the specific components and elements of the project, and any other information the applicant deems necessary to justify the proposed project. This information could include counts of trespass incidents and casualties, close calls and media coverage of high-visibility encounters. Include geospatial data for the project showing trespass Hot Spots. If applicable, the project description must also cite specific DOT National Highway-Rail Crossing Inventory information for trespass Hot Spots at grade crossings, including the name of the railroad that owns the infrastructure (or the crossing owner, if different from the railroad), the name of the primary operating railroad, the DOT National Highway-Rail Crossing Inventory Number, and the name of the roadway at the crossing. Applicants can search for data to meet this requirement at the following link: *http://safetydata.fra.dot.gov/OfficeofSafety/default.aspx.* Be specific regarding the relevance or relationship of the proposed project to other investments, as well as the changes that are anticipated to result from the project. Provide a detailed summary of all work completed to date, including the project's previous accomplishments and funding history including Federal financial assistance, and a chronology of funding events (*e.g.,* grants and financing) and key documents produced. An applicant should explain how the proposed scope of work relates to work previously receiving Federal financial assistance. Finally, the applicant must identify the metrics that will be used to measure the success of the project.

vi. *Evaluation and Selection Criteria:* Include a thorough discussion of how the proposed project meets all the evaluation criteria, as outlined in Section E of this notice. If an application does not sufficiently address the evaluation criteria and the selection criteria, it is unlikely to be a competitive application.

b. Additional Application Elements

Applicants must include the following documents in the application package:

i. *SF 424—Application for Federal Assistance;*

ii. *SF 424A—Budget Information for Non-Construction;*

iii. *SF 424B—Assurances for Non-Construction;*

iv. *FRA's Additional Assurances and Certifications; and*

v. *SF LLL—Disclosure of Lobbying Activities.*

Forms needed for the electronic application process are at *www.grants.gov.*

c. Post-Selection Requirements

See Section F(2) for post-selection requirements.

3. Unique Entity Identifier, System for Award Management (SAM), and Submission Instructions

To apply for funding through *Grants.gov*, applicants must be properly registered in SAM before submitting an application, provide a valid unique entity identifier in its application, and continue to maintain an active SAM registration all as described in detail below. Complete instructions on how to register and submit an application can be found at *www.Grants.gov*. Registering with *Grants.gov* is a one-time process; however, it can take up to several weeks for first-time registrants to receive confirmation and a user password. FRA recommends that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application package by the application deadline. Applications will not be accepted after the due date. Delayed registration is not an acceptable justification for an application extension.

FRA may not make a grant award to an applicant until the applicant has complied with all applicable Data Universal Numbering System (DUNS) and SAM requirements and if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant. (Please note that if a Dun & Bradstreet DUNS number must be obtained or renewed, this may take a significant amount of time to complete.) Late applications that are the result of failure to register or comply with *Grants.gov* applicant requirements in a timely manner will not be considered. If an applicant has not fully complied with the requirements by the submission deadline, the application will not be considered. To submit an application through *Grants.gov*, applicants must:

a. *Obtain a DUNS number.* A DUNS number is required for *Grants.gov* registration. The Office of Management and Budget requires that all businesses and nonprofit applicants for Federal funds include a DUNS number in their applications for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, recipients, and sub-recipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity. Applicants may obtain a DUNS number by calling 1–866–705–5711 or by applying online at *http://www.dnb.com/us.*

b. *Register with the SAM at www.SAM.gov.* All applicants for Federal financial assistance must maintain current registrations in the SAM database. An applicant must be registered in SAM to successfully register in *Grants.gov*. The SAM database is the repository for standard information about Federal financial assistance applicants, recipients, and sub-recipients. Organizations that have previously submitted applications via *Grants.gov* are already registered with SAM, as it is a requirement for *Grants.gov* registration. Please note, however, that applicants must update or renew their SAM registration at least once per year to maintain an active status. Therefore, it is critical to check registration status well in advance of the application deadline. If an applicant is selected for an award, the applicant must maintain an active SAM registration with current information throughout the period of the award. Information about SAM registration procedures is at *www.sam.gov.*

c. *Create a Grants.gov username and password.* Applicants must complete an Authorized Organization Representative (AOR) profile on *www.Grants.gov* and create a username and password. Applicants must use the organization's DUNS number to complete this step. Additional information about the registration process is at: *http://*

www.grants.gov/web/grants/applicants/individual-registration.html.

d. *Acquire Authorization for your AOR from the E-Business Point of Contact (E-Biz POC).* The E-Biz POC at the applicant's organization must respond to the registration email from *Grants.gov* and login at *www.Grants.gov* to authorize the applicant as the AOR. Please note there can be more than one AOR for an organization.

e. *Submit an Application Addressing All the Requirements Outlined in this NOFO.* If an applicant experiences difficulties at any point during this process, please call the *Grants.gov* Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and instructions on each of these processes, please see instructions at: *http://www.grants.gov/web/grants/applicants/apply-for-grants.html*

Note: Please use generally accepted formats such as .pdf, .doc, .docx, .xls, .xlsx and .ppt, when uploading attachments. While applicants may imbed picture files, such as .jpg, .gif, and .bmp, in document files, applicants should not submit attachments in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

4. Submission Dates and Times

Applicants must submit complete applications in their entirety to *www.Grants.gov* no later than 5:00 p.m. ET, on December 23, 2019. Applicants will receive a system-generated acknowledgement of receipt. FRA reviews *www.Grants.gov* information on dates/times of applications submitted to determine timeliness of submissions. Late applications will be neither reviewed nor considered. Delayed registration is not an acceptable reason for late submission. Applicants are strongly encouraged to apply early to ensure that all materials are received before this deadline.

To ensure a fair competition of limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the *Grants.gov* registration process before the deadline; (2) failure to follow *Grants.gov* instructions on how to register and apply as posted on its website; (3) failure to follow all the instructions in this NOFO; or (4) technical issues experienced with the applicant's computer or information technology environment.

5. Intergovernmental Review

Executive Order 12372 requires applicants from state and local units of government or other organizations providing services within a State to submit a copy of the application to the State Single Point of Contact (SPOC), if one exists, and if this program has been selected for review by the State. Applicants must contact their State SPOC to determine if the program has been selected for State review.

6. Funding Restrictions

Consistent with 2 CFR 200.458, FRA will only approve pre-award costs if such costs are incurred pursuant to the negotiation and in anticipation of the grant agreement and if such costs are necessary for efficient and timely performance of the scope of work. Under 2 CFR 200.458, grant recipients must seek written approval from the FRA for pre-award activities to be eligible for reimbursement under the grant. Enforcement Activities initiated prior to the execution of a grant or without written approval may not be eligible for reimbursement or included as a grantee's matching contribution, if applicable. Additionally, funding will not be provided for equipment, administrative, or court costs. Further, funding under this NOFO may not be used for costs that are included as a cost or used to meet cost sharing or matching requirements of any other Federally-financed project or program.

7. Other Submission Requirements

If an applicant experiences difficulties at any point during this process, please call the *Grants.gov* Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and instructions on each of these processes, please see instructions at: *http://www.grants.gov/web/grants/applicants/apply-for-grants.html. See section D.1 of this NOFO for information on where applications must be submitted.*

E. Application Review Information

1. Criteria

a. Eligibility and Completeness Review

FRA will first screen each application for eligibility (eligibility requirements are outlined in Section C of this notice) and completeness (application documentation and submission requirements are outlined in Section D of this notice).

b. Evaluation Criteria

FRA subject-matter experts will evaluate all eligible and complete applications using the evaluation criteria outlined in this section. FRA will analyze each application against the following evaluation criteria:

i. Technical Merit. FRA will evaluate application information for the degree to which:

(A) The application is thorough and responsive to all the requirements outlined in this notice.

(B) The tasks outlined in the project narrative are appropriate to achieve the expected safety benefits of the proposed project.

(C) The proposed costs or level of effort are realistic and sufficient to accomplish the tasks.

ii. Project Benefits. FRA intends to award funds to projects that achieve the maximum benefits possible. FRA will evaluate the extent to which:

(A) The application contains data and/or supporting information to describe the safety risk posed by rail trespassing in the applicant's jurisdiction.

(B) The applicant describes reasonably expected safety benefits of the project, namely how initiatives funded by this program will reduce trespassing on the rail ROW.

(C) The applicant demonstrates a cooperative relationship with stakeholders (*e.g.,* railroad owners and operators, adjacent property owners, municipal governments).

c. Selection Criteria

In addition to the eligibility and completeness review and the evaluation criteria outlined in this section, the FRA Administrator (or his designee) will determine the final selection of projects for program funding.

i. FRA will give preference to eligible projects located in one of the 10 states listed in Section C(1).

ii. After applying the above preference, FRA will take into account the following key Departmental objectives:

(A) Using innovative approaches to improve safety and expedite project delivery; and,

(B) Holding grant recipients accountable for their performance and achieving specific, measurable outcomes identified by grant applicants.

iii. In determining the allocation of program funds, FRA will also consider geographic diversity, diversity in the size of the systems receiving funding, the applicant's receipt of other competitive awards, projects located in or that support transportation service in a qualified opportunity zone designated pursuant to 26 U.S.C. 1400Z–1.

2. Review and Selection Process

FRA will review the applications as follows:

a. Screen applications for completeness and eligibility;

b. Evaluate eligible applications (completed by technical panels applying the evaluation criteria); and

c. Select projects for funding (completed by the FRA Administrator or his designee applying additional selection criteria).

3. Reporting Matters Related to Integrity and Performance

Before making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold (*see* 2 CFR 200.88 Simplified Acquisition Threshold), FRA will review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). *See* 41 U.S.C. 2313.

An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM.

FRA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.205.

F. Federal Award Administration Information

1. Federal Award Notices

FRA will announce applications selected for funding in a press release and on the FRA website after the application review period. FRA will contact applicants with successful applications after announcement with information and instructions about the award process. This notification is not an authorization to begin proposed project activities. FRA requires satisfaction of applicable requirements by the applicant and a formal agreement signed by both the grantee and the FRA, including an approved scope, schedule, and budget, to obligate the grant.

The period of performance for grants awarded under this notice will be six months. FRA will only consider written requests to extend the period of performance with specific and compelling justifications for why an extension is required. Any obligated funding not spent by the grantee and reimbursed by the FRA upon completion of the grant work will be de-obligated.

2. Administrative and National Policy Requirements

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, recipients of funds must comply with all applicable requirements of Federal law, including, without limitation, the Constitution of the United States; the conditions of performance, nondiscrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of DOT; and applicable Federal financial assistance and contracting principles promulgated by the Office of Management and Budget. In complying with these requirements, recipients, in particular, must ensure that no concession agreements are denied or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If DOT determines that a recipient has failed to comply with applicable Federal requirements, DOT may terminate the award of funds and disallow previously incurred costs, requiring the recipient to reimburse any expended award funds.

Examples of administrative and national policy requirements include: 2 CFR part 200; procurement standards; compliance with Federal civil rights laws and regulations; disadvantaged business enterprises; debarment and suspension; drug-free workplace; FRA's and OMB's Assurances and Certifications; Americans with Disabilities Act; safety requirements; the National Environmental Policy Act; environmental justice and the Buy American Act, 41 U.S.C. 8301–8305.

See an example of standard terms and conditions for FRA grant awards at *https://www.fra.dot.gov/eLib/details/L05285.*

3. Reporting

a. Progress Reporting on Grant Activity

Each applicant selected for a grant will be required to comply with all standard FRA reporting requirements, including quarterly progress reports, quarterly Federal financial reports, and interim and final performance reports, as well as all applicable auditing, monitoring and close out requirements. Reports may be submitted electronically.

b. Additional Reporting

Applicants selected for funding are required to comply with all reporting requirements in the standard terms and conditions for FRA grant awards including 2 CFR 180.335 and 2 CFR 180.350. See an example of standard terms and conditions for FRA grant awards at: *https://www.fra.dot.gov/eLib/details/L05285.*

c. Performance Reporting

Each applicant selected for funding must collect information and report on the project's performance using measures mutually agreed upon by FRA and the grantee to assess progress in achieving strategic goals and objectives. Performance reporting must include the following information for Enforcement Activities performed using the grant funding:

- Date, time, number of officers, location and description of Enforcement Activity;
- Justification or reason for selected Enforcement Activity;
- Number of contacts (encounters with trespassers);
- Number of warnings and/or citations issued; and
- The deterrence effect of such activities and method for measuring such deterrence. The grantee must explain how they determine deterrence effect.

G. Federal Awarding Agency Contacts

For further information regarding this notice and the Grant Program, please contact Michail Grizkewitsch, Office of Railroad Safety, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W33–446, Washington, DC 20590; email: *Michail.grizkewitsch@dot.gov;* phone: (202) 493–1370. Grant application submission and processing questions should be addressed to Ms. Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590; email: *amy.houser@dot.gov;* phone: (202) 493–0303.

H. Other Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains

Confidential Business Information (CBI)''; (2) mark each affected page ''CBI''; and (3) highlight or otherwise denote the CBI portions.

FRA protects such information from disclosure consistent with applicable law. In the event FRA receives a Freedom of Information Act (FOIA) request for the information, FRA will follow the procedures described in its FOIA regulations at 49 CFR 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

Issued in Washington, DC.

Ronald L. Batory,

Administrator, Federal Railroad Administration.

[FR Doc. 2019–22925 Filed 10–21–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0172]

Request for Comments on the Approval of a Previously Approved Information Collection: Generic Clearance of Customer Satisfaction Surveys

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. In order to work continuously to ensure that our programs are effective and meet our customers' needs, the Maritime Administration (MARAD) seeks to obtain OMB approval of previously approved generic clearance to collect feedback on our service delivery. By 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. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before December 23, 2019.

ADDRESSES: You may submit comments [identified by Docket No. MARAD–2019–0172 through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department 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: Barbara Jackson, (202) 366–0615, Office of Management and Administrative Services, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance of Customer Satisfaction Surveys.

OMB Control Number: 2133–0546.

Type of Request: Renewal of a previously approved collection.

Abstract: Executive Order 12862 ''Setting Customer Service Standards,'' direct Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector (58 FR 48257, Sept. 11, 1993). In order to work continuously to ensure that our programs are effective and meet our customers' needs, MARAD seeks to obtain OMB approval of a previously approved generic clearance to collect qualitative feedback from our customers on our 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 noncontroversial 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 intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency (if released, the agency must indicate the qualitative nature of the information);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be 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 nonresponse 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.

Respondents: Individuals or Households, Business or Other For-Profit.

Estimated Number of Respondents: 15.

Estimated Number of Responses: 5,900.

Estimated Hours per Response: 10–120 minutes.

Annual Estimated Total Annual Burden Hours: 1,758.

Frequency of Response: Once Per Request.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.)

* * * * *

Dated: October 17, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–22996 Filed 10–21–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0171]

Request for Comments on the Approval of a Previously Approved Information Collection: Title XI Obligation Guarantees—46 CFR Part 298

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected will be used to evaluate an applicant's project and capabilities, make the required determinations, and administer any agreements executed upon approval of loan guarantees. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before December 23, 2019.

ADDRESSES: You may submit comments [identified by Docket No. MARAD–2019–0171] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.

Mail or Hand Delivery: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department 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: David Gilmore, (202) 366–2118, Office of Marine Financing, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

Title: Title XI Obligations Guarantees—46 CFR part 298.

OMB Control Number: 2133–0018.

Type of Request: Renewal of a previously approved collection.

Abstract: In accordance with 46 U.S.C. Chapter 537, the Maritime Administration (MARAD) is authorized to execute a full faith and credit guarantee by the United States of debt obligations issued to finance or refinance the construction or reconstruction of vessels. In addition, the program allows for financing shipyard modernization and improvement projects.

Respondents: Individuals/businesses interested in obtaining loan guarantees for construction or reconstruction of vessels as well as businesses interested in shipyard modernization and improvements.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 10.

Estimated Hours per Response: 150.

Annual Estimated Total Annual Burden Hours: 1,500.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.)

* * * * *

Dated: October 17, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–23007 Filed 10–21–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Rev. Proc. 2018–31

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Revenue Procedure 2018–31, Changes in Accounting periods and in Methods of Accounting.

DATES: Written comments should be received on or before December 23, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this revenue procedure should be directed to Martha R. Brinson, at (202)317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Changes in accounting periods and in methods of accounting.

OMB Number: 1545–1551.

Revenue Procedure Number: 2018–31.

Abstract: The information collected in this revenue procedure is required in order for the Commissioner to determine whether the taxpayer properly is requesting to changes its method of accounting and the terms and conditions of the change.

Current Actions: Revenue Procedure 2018–31, which has been modified by Rev. Proc. 2018–29, 2018–22 I.R.B. 634, Rev. Proc. 2018–35, 2018–28 I.R.B. 204, Rev. Proc. 2018–40, 2018–34 I.R.B. 320, Rev. Proc. 2018–44, 2018–37 I.R.B. 426, Rev. Proc. 2018–49, 2018–41 I.R.B. 548, Rev. Proc. 2018–56, 2018–50 I.R.B. 985, Rev. Proc. 2018–60, 2018–51 I.R.B. 1045, Rev. Proc. 2019–08, 2019–03 I.R.B. 347, Rev. Proc. 2019–30, 2019–33 I.R.B. 638, Rev. Proc. 2019–33, 2019–34 I.R.B. 6, Rev. Proc. 2019–34, 2019–35 I.R.B. 669, and Rev. Proc. 2019–37, 2019–39 I.R.B. 731, provides the List of Automatic Changes to which the automatic change procedures in Revenue Procedure 2015–13, 2015–5 I.R.B. 419, as clarified and modified by Rev. Proc. 2015–33, 2015–24 I.R.B. 1067, and as modified by Rev. Proc. 2017–59, 2017–48 I.R.B. 543, and by section 17.02 of Rev. Proc. 2016–1, 2016–1 I.R.B. 1, apply.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 28,046.

Estimated Time per Respondent: 1 hour, 15 minutes.

Estimated Total Annual Burden Hours: 34,279.

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: October 17, 2019.

Philippe Thomas,

Supervisory Tax Analyst.

[FR Doc. 2019–23009 Filed 10–21–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning obligations of states and political subdivisions.

DATES: Written comments should be received on or before December 23, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Obligations of States and Political Subdivisions.

OMB Number: 1545–1730.

Regulation Project Number: T.D. 8941

Abstract: Section 421(f)(4) of the Internal Revenue Code of 1986 permits a person engaged in the local furnishing of electric energy or gas that uses facilities financed with exempt facility bonds under section 142(a)(8), and that expands its service area in a manner inconsistent with the requirements of sections 142(a)(8) and 142(f) to make an election to ensure that those bonds will continue to be treated as tax-exempt bonds. The final regulations (1.142(f)-1) set forth the required time and manner of making this statutory election.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and state, local, or tribal governments.

Estimated Number of Respondents: 15.

Estimated Time per Respondent: 1 hours.

Estimated Total Annual Burden Hours: 15 hours.

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: October 17, 2019.

Philippe Thomas,

Supervisor Tax Analyst.

[FR Doc. 2019–22976 Filed 10–21–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form Project.

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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning tuition payments statement.

DATES: Written comments should be received on or before December 23, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tuition Payments Statement.

OMB Number: 1545–1574.

Form Number: Form 1098–T.

Abstract: Section 6050S of the Internal Revenue Code quires eligible education institutions to report certain information to the IRS and to students. Form 1098–T has been developed to meet this requirement.

Current Actions: There are no changes being made to the form at this time that would affect burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 25,973,000.

Estimated Time Per Respondent: 13 minutes.

Estimated Total Annual Burden Hours: 5,973,790 hours.

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: October 17, 2019.

Philippe Thomas,

Supervisor Tax Analyst.

[FR Doc. 2019–22975 Filed 10–21–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Performance Review Boards

AGENCY: Department of the Treasury.

ACTION: Notice of appointments to Performance Review Boards (PRBs).

SUMMARY: This notice announces the appointment of members to the Department of the Treasury's Performance Review Boards (PRBs). The purpose of these Boards are to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions in the Department.

DATES: *Applicable date:* October 22, 2019.

Composition of the PRB: The Boards shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The persons listed below may be selected to serve on one or more PRB within Treasury. This notice is given pursuant to 5 U.S.C. 4314(c)(4).

Names for Federal Register Publication

Top Officials

- David F. Eisner, Assistant Secretary for Management
- Leonard Olijar, Director for the Bureau of Engraving and Printing
- Timothy Gribben, Commissioner for the Bureau of the Fiscal Service
- Jeffrey Tribiano, Deputy Commissioner for Operations Support (IRS)
- Mary G. Ryan, Deputy Administrator for the Alcohol and Tobacco Tax and Trade Bureau (currently serving as Acting Administrator)
- Kenneth Blanco, Director, Financial Crimes Enforcement Network
- Jamal El-Hindi, Deputy Director, Financial Crimes Enforcement Network
- Patricia Greiner, Deputy Director, Chief Administrative Officer, Bureau of Engraving and Printing
- Charlene William, Deputy Director, Chief Operating Officer, Bureau of Engraving and Printing
- Stephen L. Manning, Deputy Commissioner, Bureau of the Fiscal Service
- Matthew J. Miller, Deputy Commissioner (Accounting and Shared Services), Bureau of the Fiscal Service
- Jeffrey J. Schramek, Deputy Commissioner (Financial Services and Operations), Bureau of the Fiscal Service

Departmental Offices

- John M. Farley, Director, Executive Office for Asset Forfeiture
- Michael O. Thomas, Deputy Assistant Secretary for Treasury Operations
- Amy Edwards, Deputy Assistant Secretary for Accounting Policy and Financial Transparency
- Adam Lerrick, Counselor to the Secretary
- Andrew E. Eilts, Deputy Executive Secretary
- David B. Dwyer, Executive Secretary
- Joseph M. Smith, Director of Operations (Scheduling and Advance)
- Daniel Kowalski, Counselor to the Secretary
- Donna Ragucci, Director for the Office of Small and Disadvantaged Business Utilization
- Joseph R. Clark, Senior Advisor to the Deputy Secretary and Counselor to the General Counsel

- Edward D. Hearst Sr, Senior Advisor
- Elizabeth Shortino, Director for International Monetary Policy
- Elizabeth Berry, Deputy Assistant Secretary for Europe and Eurasia
- Andy Baukol, Principal Deputy Assistant Secretary for International Monetary Policy
- Matthew Haarsager, Deputy Assistant Secretary for International Development Finance and Policy
- Robert Kaproth, Deputy Assistant Secretary for South and East Asia
- Michael Kaplan, Deputy Assistant Secretary for Western Hemisphere and South Asia
- William McDonald, Deputy Assistant Secretary for Technical Assistance Policy
- Sharon Yang, Deputy Assistant Secretary for International Financial Markets
- Eric Meyer, Deputy Assistant Secretary for Africa, Middle East and MDB Operations
- Jason R. Orlando, Director, Office of Technical Assistance
- Howard Adler, Deputy Assistant Secretary for Financial Stability Oversight Counsel
- Stephen Ledbetter, Director of Policy
- David Lebryk, Fiscal Assistant Secretary
- Gregory Till, Deputy Assistant Secretary for Fiscal Operations and Policy
- Christopher H. Kubeluis, Director for the Office of Fiscal Projections
- Theodore R. Kowalsky, Director for the Office of Grants and Asset Management
- Walter Kim, Director for the Office of Financial Institutions and Policy
- Brian Peretti, Director for the Office of Cybersecurity and Critical Infrastructure Protection
- Steven E. Seitz, Director for the Office of Federal Insurance Office
- David B. Lacquement, Deputy Assistant Secretary for Cybersecurity and Critical Infrastructure
- Jodie L. Harris, Director for Community Development and Financial Institutions
- Dennis E. Nolan, Deputy Director for Finance and Operations
- Marcia Sigal, Deputy Director for Policy and Programs
- Brian M. Smith, Deputy Assistant Secretary for Federal Finance
- Gary Grippo, Deputy Assistant Secretary for Government Financial Policy
- Peter Phelan, Deputy Assistant Secretary for Capital Markets
- Jeffrey Stout, Director of Federal Program Finance
- Fred Pietrangeli, Director for the Office of Debt Management
- Michael K. Kranbuhl, Principal Deputy Assistant Secretary for Financial Markets
- Daniel J. Harty, Director, Capital Markets
- Melissa Moye, Director for State and Local Finance
- Andrea Gacki, Director for the Office of Foreign Assets Control
- Bradley T. Smith, Deputy Director for the Office of Foreign Assets Control
- Gregory Gatjanis, Associate Director for the Office of Global Targeting
- Lisa M. Palluconi, Associate Director for the Office of Program Policy and Implementation, Office of Foreign Assets Control
- John H. Battle, Associate Director for Resource Management, Office of Foreign Assets Control
- Billy Bradley, Deputy Director, Treasury Executive Office for Asset Forfeiture
- Lawrence Scheinert, Associate Director for the Office of Compliance and Enforcement
- Todd Conklin, Deputy Associate Director for the Office of Global Targeting
- Scott Rembrandt, Deputy Assistant Secretary for the Office of Strategic Policy, Terrorist Financing and Financial Crimes
- Arthur McGlynn, Principal Deputy Assistant Secretary for the Office of Intelligence and Analysis
- Thomas J. Wolverton, Deputy Assistant Secretary for Security and Counterintelligence
- Jill L. Jermano, Director for the Office of Transnational Issues
- Michael Neufeld, Deputy Assistant Secretary for the Support and Technology
- Patrick Conlon, Director for the Office of Economics and Finance
- Everette E. Jordan, Deputy Assistant Secretary for Intelligence Community Integration
- Kimberly J. Pinter, Deputy Assistant Secretary for Legislative Affairs (Tax and Budget)
- Michael D. DiRoma, Deputy Assistant Secretary for Legislative Affairs (International Affairs)
- Andrew Eck, Deputy Assistant Secretary for Legislative Affairs (Terrorism and Financial Intelligence)
- Lauren Nunnally, Deputy Assistant Secretary for Legislative Affairs (Appropriations and Management)
- Jonathan M. Blum, Deputy Assistant Secretary for Legislative Affairs (Banking)
- Frederick Vaughan, Deputy Assistant Secretary for Legislative Affairs (Oversight)
- Devin O'Malley, Principal Deputy Assistant Secretary for Public Affairs
- Seth Unger, Deputy Assistant Secretary for Public Affairs (Terrorism and Financial Intelligence)
- Brian R. Morgenstern, Deputy Assistant Secretary for Public Affairs (Domestic)
- Jonathan S. Jaquette, Director for Receipts Forecasting
- Edith Brashares, Director for Individual Business and International Taxation
- Janet G. McCubbin, Director for the Office of Tax Analysis
- Curtis Carlson, Director for Business Revenue
- Timothy E. Skud, Deputy Assistant Secretary for Tax, Trade and Tariff Policy
- Robert E. Gillette, Director for Economic Modeling and Computer Applications
- Jeffrey Van Hove, Senior Advisor for Tax Policy
- Lafayette G. Harter, Deputy Assistant Secretary for International Affairs
- Ryan Law, Deputy Assistant Secretary for Privacy Transparency and Records
- Robert Mahaffie, Deputy Assistant Secretary for Management and Budget
- Tonya Burton, Director for the Office of Financial Management
- Stephen Cotter, Director, Special Entity Accounting
- William Sessions, Departmental Budget Director
- Carole Y. Banks, Deputy Chief Financial Officer
- J. Trevor Norris, Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer
- Lorraine Cole, Director, Office of Minority and Women Inclusion
- Nancy Ostrowski, Director of DC Pensions
- Eric R. Olson, Deputy Assistant Secretary for Management, Information Systems and CIO
- Antony P. Arcadi, Associate Chief Information Officer for Enterprise Infrastructure Operations
- Francis O'Hearn, Associate Chief Information Officer, IT Strategy, Technology Management and CTO
- Christopher Weaver, Director for the Office of Consumer Policy

Bureau of Engraving and Printing

- Judith Diazmyers, Senior Advisor
- Steven Fisher, Associate Director (Chief Financial Officer)
- Richard Roy Clark, Associate Director (Quality)
- Frank Freeman III, Associate Director (Management)
- Justin D. Drahein, Associate Director (Product Design and Development)
- Harinder Singh, Associate Director, (Chief Information Officer)

Financial Crimes Enforcement Network

- Amy L. Taylor, Associate Director, Technology Solutions and Services/CIO
- Andrea Sharrin, Associate Director, Policy Division
- Peter Bergstrom, Associate Director, Management/CFO
- Thomas Ott, Associate Director, Enforcement Division
- Kenneth L. O'Brien, Deputy Associate Director, Chief Technology Officer
- Matthew R. Stiglitz, Associate Director, Global Investigations Division
- Timothy Ott, Associate Director, Liaison Division
- Ana Tirol, Associate Director, Liaison Division

U.S. Mint

- Matthew Holben, Associate Director for Sales and Marketing/Chief Marketing and Sales Officer
- Kristie L. McNally, Associate Director for Financial Management/CFO
- David Croft, Associate Director for Manufacturing
- Joseph Jankauskas, Associate Director for Information Technology
- Robert Kuryzna, Plant Manager, Philadelphia
- B.B. Craig, Associate Director for Environment, Safety and Health
- Patrick L. Hernandez, Chief Administrative Officer
- Randall Johnson, Plant Manager for Denver
- Jon Marc Landry, Senior Advisor
- Mark S. Teskey, Senior Advisor

Tax and Trade Bureau

- Daniel T. Riordan, Assistant Administrator, HQ Operations
- Cheri Mitchell, Assistant Administrator, Management/CFO
- Nicholas Colucci, Assistant Administrator, Field Operations
- Robert Hughes, Assistant Administrator, Information Resources/CIO
- Elisabeth C. Kann, Assistant Administrator, External Affairs/Chief of Staff

Bureau of Fiscal Service

- Keith Alderson, Director (DMSOC-East)
- Douglas Anderson, Senior Advisor
- Linda C. Chero, Director
- David T. Copenhaver, Assistant Commissioner
- Christina M. Cox, Deputy Assistant Commissioner
- Paul Deuley, Deputy Assistant Commissioner
- Jan P. Draber, Assistant Commissioner
- Peter T. Genova, Deputy Assistant Commissioner
- Joseph Gioeli, Deputy Assistant Commissioner
- Adam H. Goldberg, Executive Architect (Financial Innovation)
- Jason T. Hill, Deputy Assistant Commissioner (Shared Services)
- John B. Hill, Director (Financial Innovation and Transformation)
- Wallace H. Ingram, Director (DMSOC-West)
- Ronda L. Kent, Assistant Commissioner
- Theresa Kohler, Assistant Commissioner
- D. Michael Linder, Assistant Commissioner
- Justin Marsico, Executive Director (Data Transparency Commission Staff)
- Kimberly A. McCoy, Senior Advisor
- Corvelli A. McDaniel, Assistant Commissioner
- Alyssa W. Riedl, Director (Compliance and Reporting Group)
- Vona Susan Robison, Executive Director (Kansas City)
- Tamela Saiko, Deputy Assistant Commissioner
- Lori Santamorena, Executive Director (Government Securities Regulations Staff)
- Marisa Schmader, Deputy Assistant Commissioner
- Dara N. Seaman, Assistant Commissioner
- Thomas T. Vannoy, Deputy Assistant Commissioner
- Daniel J. Vavasour, Assistant Commissioner
- Sandra Paylor Sanders, Director (Collections and Deposits Group)
- Gavin Jackson, Deputy Assistant Commissioner

Effective Date: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT:

Julia J. Markham or Kimberly Jackson, Office of Executive Resources, 1500 Pennsylvania Avenue NW, ATTN: 1722 Eye Street, 9th Floor, Washington, DC 20220, Telephone: 202–622–0774

Kimberly Jackson,

Human Resources Specialist, Office of Executive Resources.

[FR Doc. 2019–22920 Filed 10–21–19; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0099]

Agency Information Collection Activity Under OMB Review: Dependent's Request for Change of Program or Place of Training

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 21, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0099'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION:

Authority: 38 United States Code 3034(a), 3034(b), 3323(a), 3323(b), 3471, 3513, 3521, 3691, and 38 Code of Federal Regulations 21.4234.

Title: Dependent's Request for Change of Program or Place of Training (VA Form 22–5495).

OMB Control Number: 2900–0099.

Type of Review: Reinstatement with change of a previously approved collection.

Abstract: VA has used the current information collection to determine (1) if the claimant continues to qualify for education benefits when taking a different program of training and (2) to verify that a new place of training is approved for benefits. The information on the form can be obtained only from the individual claimant. VA cannot make an eligibility determination without this information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information

unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR 39894 on August 12, 2019, page 39894.

Affected Public: Individual and households.

Estimated Annual Burden: 36,083 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 144,333.

By direction of the Secretary.

Danny S. Green,

VA Interim Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–22941 Filed 10–21–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Tuesday,

No. 204 October 22, 2019

Part II

Department of Energy

10 CFR Part 430

Energy Conservation Program: Energy Conservation Standards for Fluorescent Lamp Ballasts; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2015–BT–STD–0006]

RIN 1905–AD51

Energy Conservation Program: Energy Conservation Standards for Fluorescent Lamp Ballasts

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

ACTION: Notice of proposed determination and request for comment.

SUMMARY: The Energy Policy and Conservation Act of 1975, as amended (EPCA), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including fluorescent lamp ballasts. EPCA also requires the U.S. Department of Energy (DOE) to periodically determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would result in significant energy savings. In this notice of proposed determination (NOPD), DOE has initially determined that energy conservation standards for fluorescent lamp ballasts do not need to be amended and also asks for comment on this proposed determination and associated analyses and results.

DATES:

Meeting: DOE will hold a webinar on Wednesday, October 30, 2019, from 10:00 a.m. to 3:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. If no participants register for the webinar than it will be cancelled. DOE will hold a public meeting on this proposed determination if one is requested by November 5, 2019.

Comments: Written comments and information are requested and will be accepted on or before December 23, 2019.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2015–BT–STD–0006, by any of the following methods:

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

(2) *Email: FluorLampBallast2015STD0006@ee.doe.gov.* Include the docket number EERE–2015–BT–STD–0006 in the subject line of the message.

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

(4) *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section VII of this document.

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

The docket web page can be found at *https://www.regulations.gov/document?D=EERE-2015-BT-STD-0006.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VII, ''Public Participation,'' for further information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–1777. Email: *Sarah.Butler@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

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I. Synopsis of the Proposed Determination

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975, as amended (EPCA),[2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include fluorescent lamp ballasts, the subject of this NOPD.

DOE is issuing this NOPD pursuant to the EPCA requirement that not later than 6 years after issuance of any final rule establishing or amending an energy conservation standard for a covered product, DOE must publish either a notice of determination indicating that standards for the product do not need to be amended, or a notice of proposed rulemaking (NOPR) including new proposed energy conservation standards. (42 U.S.C. 6295(m)(1)(A) and (B))

For this proposed determination, DOE analyzed fluorescent lamp ballasts subject to standards specified in 10 CFR 430.32(m). In addition, DOE evaluated whether current standards should be extended to additional fluorescent lamp ballasts. Specifically, DOE considered standards for dimming ballasts and 4-foot T8 medium bipin (MBP) programmed start (PS) ballasts with an average current less than 140 mA (hereafter low-current PS ballasts). Hence, potential amended energy conservation standards in this NOPD refer not only to changes to existing standards but also extension of standards to additional fluorescent lamp ballasts.

DOE first analyzed the technological feasibility of more efficient fluorescent lamp ballasts. For those fluorescent lamp ballasts for which DOE determined it to be technologically feasible to have higher standards or be subject to standards, DOE estimated energy savings that would result from potential energy conservation standards by conducting a national impacts analysis (NIA). DOE evaluated whether these amended standards would be cost effective by conducting life-cycle cost (LCC) and payback period (PBP) analyses, and estimated the net present value (NPV) of the total costs and benefits experienced by consumers. In addition to the consideration of these criteria, DOE conducted a manufacturer impact analyses (MIA).

Based on the results of these analyses summarized in section V of this document, DOE has tentatively determined that current standards for fluorescent lamp ballasts do not need to be amended because amended standards would not be cost effective.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed determination, as well as some of the relevant historical background related to the establishment of standards for fluorescent lamp ballasts.

A. Authority and Background

Title III, Part B of EPCA includes the fluorescent lamp ballasts that are the subject of this proposed determination. (42 U.S.C. 6292(a)(13)) EPCA prescribed energy conservation standards for these products. (42 U.S.C. 6295(g)(5)) EPCA directed DOE to (1) conduct two rulemaking cycles to determine whether these standards should be amended; and (2) for each rulemaking cycle, determine whether the standards in effect for fluorescent lamp ballasts should be amended so that they would be applicable to additional fluorescent lamp ballasts. (42 U.S.C. 6295(g)(7)(A) and (B)) Through amendments to EPCA under the Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, Congress promulgated new energy conservation standards for certain fluorescent lamp ballasts. (EPACT section 135(c)(2); codified at 42 U.S.C. 6295(g)(8)(A))

The energy conservation program for covered products under EPCA 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. (42 U.S.C. 6295(o)(3)(A) and (r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for fluorescent lamp ballasts appear at title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix Q.

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a) through (c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

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

the procedures and other provisions set forth under 42 U.S.C. 6297(d)).

Pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A) and (B)) DOE's current test procedures for fluorescent lamp ballasts address standby mode and off mode energy use. In this analysis DOE considers such energy use in its determination of whether energy conservation standards need to be amended.

DOE is issuing this proposed determination pursuant to 42 U.S.C. 6295(m), which states that DOE must periodically review its already established energy conservation standards for a covered product no later than 6 years from the issuance of a final rule establishing or amending a standard for a covered product. As a result of this review, DOE must either publish a determination that standards do not need to be amended or a NOPR, including new proposed standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) EPCA further provides that, not later than 3 years after the issuance of a final determination not to amend standards, DOE must make a new determination and publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B)) DOE must make the analysis on which the determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6295(m)(2)) A determination that amended standards are not needed must be based on consideration of whether amended standards will result in significant conservation of energy, are technologically feasible, and are cost effective. (42 U.S.C. 6295(m)(1)(A) and (n)(2)) An evaluation of cost effectiveness requires that DOE consider savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price of, or initial charges for, or maintenance expenses of, the covered products that are likely to result from the standard. (42 U.S.C. 6295(n)(2) and (o)(2)(B)(i)(II))

1. Current Standards

In a final rule published on November 14, 2011, DOE prescribed the current energy conservation standards for fluorescent lamp ballasts manufactured on and after November 14, 2014 (2011 FL Ballast Rule). 76 FR 70548. These standards require a minimum power factor of 0.9 or greater for ballasts that are not residential ballasts or 0.5 or greater for residential ballasts and a minimum ballast luminous efficiency (BLE) as set forth in DOE's regulations at 10 CFR 430.32(m) and repeated in Table II.1.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR FLUORESCENT LAMP BALLASTS

BLE = A / (1 + B * average total lamp arc power ^ − C) Where A, B, and C are as follows:

Description	A	B	C
Instant start and rapid start ballasts (not classified as residential) that are designed to operate:			
4-foot medium bipin lamps, 2-foot U-shaped lamps, 8-foot slimline lamps	0.993	0.27	0.25
Programmed start ballasts (not classified as residential) that are designed to operate:			
4-foot medium bipin lamps, 2-foot U-shaped lamps, 4-foot miniature bipin standard output lamps, 4-foot miniature bipin high output lamps	0.993	0.51	0.37
Instant start and rapid start ballasts (not classified as sign ballasts) that are designed to operate 8-foot high output lamps	0.993	0.38	0.25
Programmed start ballasts (not classified as sign ballasts) that are designed to operate 8-foot high output lamps	0.973	0.70	0.37
Sign ballasts that operate 8-foot high output lamps	0.993	0.47	0.25
Instant start and rapid start residential ballasts that operate:			
4-foot medium bipin lamps, 2-foot U-shaped lamps, 8-foot slimline lamps	0.993	0.41	0.25
Programmed start residential ballasts that are designed to operate:			
4-foot medium bipin lamps, 2-foot U-shaped lamps	0.973	0.71	0.37

2. History of Standards Rulemakings for Fluorescent Lamp Ballasts

On September 19, 2000, DOE published a final rule in the **Federal Register**, which completed the first of the two rulemaking cycles to evaluate and amend the energy conservation standards for fluorescent lamp ballasts (2000 FL Ballast Rule). 65 FR 56740. The rulemaking established a standard reflecting a recommendation presented in a joint comment submitted by members of the fluorescent lamp ballast (FLB) industry and energy efficiency advocacy organizations. (*Id.*)

On October 18, 2005, DOE published a final rule in the **Federal Register** codifying the new FLB standards established in EPACT 2005 section 135(c)(2) into the CFR at 10 CFR 430.32(m). 70 FR 60407. These standards established ballast efficiency requirements for ballasts that operate ''energy saver'' versions of full-wattage lamps, such as the F34T12 lamp.

Following the amendments from EPACT 2005, the second rulemaking cycle required by 42 U.S.C. 6295(g)(7) was completed with publication of the 2011 FL Ballast Rule. 76 FR 70548. The 2011 FL Ballast Rule changed the metric required for fluorescent lamp ballasts from ballast efficacy factor (BEF) to ballast luminous efficiency (BLE) and set new and amended energy conservation standards.

In support of the present review of the fluorescent lamp ballast energy conservation standards, DOE prepared the ''Energy Conservation Standards Rulemaking Framework Document for Fluorescent Lamp Ballasts'' (Framework Document), which describes the procedural and analytical approaches DOE anticipated using to evaluate energy conservation standards for fluorescent lamp ballasts. On June 23, 2015, DOE published a notice announcing the availability of the Framework document. 80 FR 35886. The Framework document is available

at *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=3.*

DOE held a public meeting on July 17, 2015, at which it described the various analyses that DOE would conduct as part of its review of the energy conservation standards for fluorescent lamp ballasts, such as the engineering analysis, the LCC and PBP analyses, and the NIA. Representatives for manufacturers, trade associations, environmental and energy efficiency advocates, and other interested parties attended the meeting.[3]

III. General Discussion

DOE developed this proposed determination after considering oral and written comments, data, and information from interested parties that represent a variety of interests. This notice addresses issues raised by these commenters.

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q)) The product classes for this proposed determination are discussed in further detail in section IV.A.5. This proposed determination covers fluorescent lamp ballasts defined as a device which is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operation. 10 CFR 430.2. The scope of coverage is discussed in further detail in section IV.A.1.

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. DOE's current energy conservation standards for fluorescent lamp ballasts are expressed in terms of BLE. (See 10 CFR 430.32(m).)

DOE published a test procedure final rule on October 22, 2009, establishing standby mode energy consumption test procedures for fluorescent lamp ballasts (2009 Standby Test Procedure). 74 FR 54445. DOE published a test procedure final rule on May 4, 2011, establishing revised active mode test procedures for fluorescent lamp ballasts (2011 Active Mode Test Procedure). 76 FR 25211. The test procedures for fluorescent lamp ballasts are codified in appendix Q to subpart B of part 430.[4]

Subsequently, DOE published several final rules further refining the test procedures for fluorescent lamp ballasts. On February 4, 2015, in a final rule, DOE adopted amendments to further specify the appropriate test procedure and that followed the intent of the 2011 Active Mode Test Procedure to support any new or revised energy conservation standards at the time those standards require compliance. 80 FR 5896. On June 5, 2015, in a final rule, DOE revised definitions and test setup, modified organization of requirements, and deleted obsolete requirements. 80 FR 31971. On April 29, 2016, in a final rule, DOE replaced all instances of ballast efficacy factor (BEF) with BLE as applicable, added rounding instructions for BLE and power factor, clarified represented value instructions for power factor, and clarified lamp-ballast pairings for testing. 81 FR 25595.

In the Framework document, DOE requested comments on the current test procedures for fluorescent lamp ballasts and whether amendments are needed. Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric Company, and Southern California Edison, collectively referred to herein as the California investor-owned utilities (CA IOUs), and the Northwest Energy Efficiency Alliance (NEEA) recommended that DOE begin a review of its test procedure for fluorescent lamp ballasts if it is considering expanding the scope of standards to dimming ballasts. (CA IOUs, No. 10 at p. 3; NEEA, Public Meeting Transcript, No. 5 at p. 68) The National Electrical Manufacturers Association (NEMA) and Philips Lighting North America Corporation (Philips)[5] stated that some technical experts have been considering an alternative testing procedure that would require preheating potted ballasts. They asserted that this alternative test procedure would remove the need to acquire large amounts of data and save time but yield comparable results to the current DOE test procedure. (Philips, No. 8 at p. 2; NEMA, No. 12 at p. 2)

DOE appreciates the feedback on DOE's current test procedures for fluorescent lamp ballasts. DOE initiated a review of the test procedures and on March 18, 2019, published a notice of proposed rulemaking for FLB test procedures in which it discusses these comments in detail (hereafter ''FLB TP NOPR''). 84 FR 9910.

C. Technological Feasibility

1. General

In evaluating potential amendments to energy conservation standards, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i)

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv) Additionally, it is DOE policy not to include in its analysis any proprietary technology that is a unique pathway to achieving a certain efficiency level. Section IV.A.4 of this document discusses the results of the screening analysis for fluorescent lamp ballasts, particularly the designs DOE considered, those it screened out, and

[3] A transcript of the public meeting and supporting documents are available in the docket for this proposed determination at: *https://www.regulations.gov/docket?D=EERE-2015-BT-STD-0006.*

[4] The 2011 Active Mode Test Procedure Final Rule established appendix Q1 to subpart B of part 430, which was subsequently redesignated as appendix Q to subpart B of part 430 by the clarification rule published in 2015. 80 FR 31971 (June 5, 2015).

[5] Between the time of the public meeting and the publication of this NOPD, Philips Lighting changed its name to Signify. However, because at the time, the name was Philips, as well as comments in the docket were provided under the Philips name, throughout this document, its comments will refer to the company name at the time of the public meeting.

those that are the basis for the standards considered in this proposed determination. For further details on the screening analysis for this proposed determination, see chapter 4 of the NOPD technical support document (TSD).

2. Maximum Technologically Feasible Levels

When DOE considers amended standards for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such a product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for fluorescent lamp ballasts, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this analysis are described in section IV.B of this proposed determination and in chapter 5 of the NOPD TSD.

D. Energy Savings

1. Determination of Savings

For each efficiency level (EL) evaluated, DOE projected energy savings from application of the EL to the fluorescent lamp ballast purchased in the 30-year period that begins in the assumed year of compliance with the potential standards (2023–2052). The savings are measured over the entire lifetime of the fluorescent lamp ballasts purchased in the previous 30-year period. DOE quantified the energy savings attributable to each EL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards.

DOE used its NIA spreadsheet model to estimate national energy savings (NES) from potential amended standards for fluorescent lamp ballasts. The NIA spreadsheet model (described in section IV.G of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports NES in terms of both site and source energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. DOE also calculates NES in terms of full-fuel-cycle (FFC) energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[6] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.G of this document.

2. Significance of Savings

In determining whether amended standards are needed, DOE must consider whether such standards will result in significant conservation of energy. (42 U.S.C. 6295(m)(1)(A)) In the Proposed Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment (''Proposed Process Rule''), DOE recently proposed to define a significant energy savings threshold. (84 FR 3910, February 13, 2019). Specifically, DOE stated that it is considering using two step approach that would consider both a quad threshold value and a percentage threshold value 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.'' 84 FR 3924. In a subsequent Notice of Data Availability, DOE noted that because EPCA uses a household energy consumption metric as a threshold for setting standards for new covered products (42 U.S.C. 6295(l)(1)), DOE believes that site energy would be the most appropriate metric for evaluating energy savings across rulemakings. (86 FR 36037, July 26, 2019) As a result, DOE provided national site energy savings data from its past rulemakings for public comment to help inform DOE's decision regarding whether (and how) to define a threshold for significant energy savings. Consistent with this approach, in addition to source energy savings and FFC energy savings, DOE's analysis presents site energy savings. In addition, DOE's conclusions with respect to significance of energy savings are based on site energy savings. DOE's updates to the Process Rule have not yet been finalized.

[6] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

E. Cost Effectiveness

In making a determination of whether amended energy conservation standards are needed, EPCA requires DOE to consider the cost effectiveness of amended standards in the context of the savings in operating costs throughout the estimated average life of the covered product compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(m)(1)(A), (n)(2), and (o)(2)(B)(i)(II))

In determining cost effectiveness of amending standards for fluorescent lamp ballasts, DOE conducted LCC and PBP analyses to evaluate the economic effects on individual consumers of potential energy conservation standards for fluorescent lamp ballasts. To further inform DOE's consideration of the cost effectiveness of amended standards, DOE considered the NPV of total costs and benefits estimated as part of the NIA. The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings.

F. Other Analyses

In addition, DOE conducted a MIA that determines the potential economic impact of amended standards on FLB manufacturers.

The analyses employed by DOE in its consideration of each of the criteria applied are discussed in the following sections.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE performed for this proposed determination with regard to fluorescent lamp ballasts. Separate subsections address each component of DOE's analyses. DOE used several analytical tools to estimate the impact of potential energy conservation standards. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential energy conservation standards. The NIA uses a second spreadsheet set that provides shipments projections and calculates NES and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (GRIM), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the website: *https://*

www.regulations.gov/docket?D=EERE-2015-BT-STD-0006.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment for this proposed determination include (1) a determination of the scope and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of fluorescent lamp ballasts. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the NOPD TSD for further discussion of the market and technology assessment.

1. Scope of Coverage and Product Classes

Fluorescent lamp ballast means a device which is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operation. 10 CFR 430.2. In this analysis, DOE relied on the definition of ''fluorescent lamp'' in 10 CFR 430.2, which provides the specific lamp lengths, bases, and wattages included by the term. Any product meeting the definition of fluorescent lamp ballast is included in DOE's scope of coverage, though all products within the scope of coverage may not be subject to standards.

As part of its review of energy conservation standards for fluorescent lamp ballasts, DOE also evaluated whether current standards should be extended to additional fluorescent lamp ballasts.

Fluorescent lamp ballasts manufactured on or after November 14, 2014, that are designed and marketed to operate at an input voltage at or between 120 volts (V) and 277 V, to operate with an input current frequency of 60 hertz, and for use with fluorescent lamps as defined in 10 CFR 430.2, are currently required to comply with the energy conservation standards at 10 CFR 430.32(m)(1).

Fluorescent lamp ballasts manufactured on or after November 14, 2014, that are designed and marketed to operate at an input voltage at or between 120 and 277 V, to operate with an input current frequency of 60 hertz, for dimming to 50 percent or less of the maximum output of the ballast, and to operate one or two F34T12 lamps, two F96T12 Energy Saver (ES) lamps, or two F96T12 high output (HO) ES lamps are required to comply with the energy conservation standards at 10 CFR 430.32(m)(2).

The following fluorescent lamp ballasts are exempt from standards: (1) A dimming ballast designed and marketed to operate exclusively lamp types other than one F34T12, two F34T12, two F96T12/ES, or two F96T12HO/ES lamps; (2) a low frequency ballast that is designed and marketed to operate T8 diameter lamps; is designed and marketed for use in electromagnetic-interference-sensitive-environments only; and is shipped by the manufacturer in packages containing 10 or fewer ballasts; or (3) a programmed start ballast that operates 4-foot medium bipin T8 lamps and delivers on average less than 140 milliamperes (mA) to each lamp. 10 CFR 430.32(m)(3).

In the Framework document, DOE considered extending the scope of standards to the following: (1) All dimming ballasts, (2) 4-foot T8 MBP programmed start (PS) ballasts with an average current less than 140 mA, and (3) ballasts that operate on an input voltage of 480 V. DOE did not consider extending the scope of standards to low frequency ballasts that are designed and marketed to operate T8 diameter lamps and for use in electromagnetic-interference-sensitive-environments (EMI-sensitive-environments) only.

DOE received several general comments on its consideration of extending standards to additional fluorescent lamp ballasts. Philips noted that such consideration should account for the declining ballast market that is reducing annually by about 20 percent. (Philips, No. 8 at p. 16) NEMA noted that no new products or categories of ballasts are under development. (NEMA, No. 12 at p. 5) However, CA IOUs stated that DOE has the opportunity to capture significant energy savings for fluorescent lamp ballasts by expanding the scope of standards to previously exempted products (*e.g.,* dimming ballasts). CA IOUs recommended that DOE evaluate the market and utility for ballasts used in EMI environments, ballasts that operate at input voltages of 480 V, and low-current PS ballasts to determine if exemptions for these products are still warranted. (CA IOUs, No. 10 at p. 1) The Appliance Standards Awareness Project (ASAP) similarly stated that DOE should consider expanding the scope of standards to include other fluorescent lamp ballasts to avoid potential loopholes. (ASAP, No. 7 at p. 3) Lutron noted that because light-emitting diode (LED) technology is still new and already more efficacious than fluorescent technology, it is premature to subject LED drivers to standards. (Lutron, No. 9 at p. 3)

DOE conducted an assessment of whether standards should be extended to certain fluorescent lamp ballasts that are not currently subject to standards. DOE also evaluated whether current exemptions from standards should be maintained. DOE notes that this proposed determination addresses only fluorescent lamp ballasts and not any other technology such as LED drivers. The following sections discuss DOE's consideration of extending the scope of standards to additional fluorescent lamp ballasts.

a. Dimming Ballasts

Currently, only certain dimming ballasts are subject to standards.[7] In the Framework document, DOE stated it would consider extending standards to all dimming ballasts. Several stakeholders did not support DOE considering standards for all dimming ballasts. Universal Lighting Technologies (ULT) asserted that energy savings from improving the efficiency of dimming ballasts were likely to be smaller than energy savings from the use of controls in a space. (ULT, No. 6 at p. 2) NEMA stated that its business market survey data indicated that dimming ballasts are about 2.29 percent of the linear FLB market. (NEMA, No. 12 at pp. 3–4) Philips stated that while the fixed output ballast market has declined overtime and dimming ballasts have become a larger portion of the overall mix, in absolute numbers, dimming ballasts have not increased as indicated by NEMA's market data from the past 12 quarters. Further, Philips noted that it will be difficult to justify costs to improve efficiency of dimming ballasts over investment in solid-state lighting (SSL) development. (Philips, No. 8 at pp. 10–11) NEMA, Philips, and ULT indicated that the dimming ballast market will shrink due to the penetration of solid-state lighting. (ULT,

[7] Fluorescent lamp ballasts manufactured on or after November 14, 2014, that are designed to operate at an input voltage at or between 120 and 277 V and with an input current frequency of 60 hertz, for dimming to 50 percent or less of the maximum output of the ballast, and to operate one or two F34T12 lamps, two F96T12 ES lamps, or two F96T12 HO ES lamps. 10 CFR 430.32(m)(2)

No. 6 at p. 2; Philips, No. 8 at pp. 10–11; NEMA, No. 12 at p. 4)

Several stakeholders expressed support for DOE analyzing standards for all dimming ballasts. ASAP requested that DOE consider standards for fluorescent lamp ballasts capable of dimming below 50 percent of full output, and to include digitally addressable or networkable ballasts. (ASAP, No. 7 at p. 2) ASAP and CA IOUs stated that the California Title 24 (CA Title 24 [8]) building code will greatly increase sales of ballasts capable of dimming below 50 percent of full light output, which currently are not subject to DOE standards. Therefore, ASAP and CA IOUs stated that the majority of ballasts purchased for new construction projects (as well as some retrofit projects according to CA IOUs) in California will not be regulated by DOE. (CA IOUs, No. 10 at p. 2; ASAP, No. 7 at p. 2; CA IOUs, Public Meeting Transcript, No. 5 at p. 106) ASAP added that it expects that these changes in California will occur across the country as new dimming ballasts become more widely available. (ASAP, No. 7 at p. 2)

However, ULT and NEMA asserted that PS fixed output ballasts that are controlled by occupancy sensors or other control devices can meet the requirements of California building codes and ASHRAE standards (when adopted) and are already covered by DOE standards. ULT added that outside of a specific room (*e.g.,* conference room) a continuously dimmed product is not necessary. Further, ULT noted that solid-state lighting already comes standard with the ability to continuously dim. (ULT, No. 6 at p. 2; NEMA, No. 12 at p. 4)

DOE appreciates the feedback regarding the shipment trends of fluorescent lamp ballasts as a whole and that of dimming ballasts. However, DOE has observed that since the 2011 FL Ballast Rule, product offerings of dimming ballasts have increased. DOE's review of manufacturer catalogs indicates a wide range of dimming ballast products are now available for use with several lamp types.[9] Further, DOE has observed a range of efficiencies for dimming ballasts, indicating that less efficient products can be improved. Additionally, as noted by stakeholders, state and local regulations and building codes with increased dimming and/or lighting control requirements (*e.g.,* CA Title 24 and ANSI/ASHRAE/IES Standard 90.1–2016 [10]) will continue to support installation of dimming ballasts in the near future. Therefore, DOE considers that standards for dimming ballasts could result in potential energy savings.

Lutron and NEMA stated that regulations on dimming ballast efficiency may reduce their availability and may limit potential energy savings from dimming systems. (Lutron, No. 9 at p. 2; NEMA, No. 12 at pp. 3–4) Lutron agreed with extending standards to dimming ballasts if the standards accommodate functionality and features of dimming ballasts when used in an intelligent light system, noting that these systems will result in more energy savings than improving the efficiency of dimming ballasts. (Lutron, No. 9 at p. 2)

In evaluating potential standards, DOE's analysis contemplates that performance characteristics (including reliability), features, sizes, capacities, and volumes available to the consumer would remain available at improved efficiencies of the product.

In summary, in this analysis DOE considered standards for dimming ballasts and presents the results of an analysis of the technological feasibility, energy savings, and cost effectiveness of standards for dimming ballasts.

b. Ballasts Operating at 480 V

Currently only fluorescent lamp ballasts designed and marketed to operate at nominal input voltages at or between 120 and 277 V are subject to standards. 10 CFR 430.32(m)(1)(i), (2)(i). ASAP requested that DOE change the scope of current standards to include ballasts that operate at 120 V to 480 V. (ASAP, No. 7 at p. 3) However, ULT, General Electric (GE), and NEMA stated that the market for ballasts that operate at 480 V is very small, and regulation of these products would not result in a lot of energy savings. (GE, Public Meeting Transcript, No. 5 at p. 38; ULT, No. 6 at p. 3; NEMA, No. 12 at p. 5) Philips agreed and noted that current standards cover the vast majority of the market by regulating ballasts that operate at input voltages of 120 V to 277 V. (Philips, No. 8 at pp. 11–12)

ASAP and CA IOUs raised concerns that even if the market for these products is small, they may become a loophole in industrial applications because fluorescent technology has been replacing high-intensity discharge (HID) lighting in high bay applications that are often on 377 V or 480 V circuits. They encouraged DOE to determine if this shift to fluorescent technology, particularly in the retrofit market, will continue to increase in the future. (ASAP, No. 7 at p. 3; CA IOUs, No. 10 at p. 10)

ULT stated that ballasts that operate at 480 V are typically used in the industrial applications that function on highly transient power (*i.e.,* ''dirty power''). ULT and NEMA stated that these ballasts have added circuitry to ensure that they can withstand high transient lines, which also makes them expensive. (ULT, Public Meeting Transcript, No. 5 at p. 37; ULT, No. 6 at p. 3; NEMA, No. 12 at p. 5) GE added that because these ballasts are niche products, manufacturers would not expend time and effort to redesign them. (GE, Public Meeting Transcript, No. 5 at p. 38) NEMA asserted that if regulated they would become obsolete. (NEMA, No. 12 at p. 5)

When considering extending coverage to additional ballasts, DOE considers whether potential energy conservation standards for these products would result in significant energy savings. In the 2011 FL Ballast Rule, DOE examined the ballast market and found input voltages of 120 V to 277 V to be common to the U.S. market. Ballasts outside this range were primarily designed for foreign markets, such as 347 V ballasts for the Canadian market. 76 FR 70548, 70559. In this analysis, based on DOE's review of manufacturer catalogs, fluorescent lamp ballasts designed to operate at 120 V to 277 V remain the most common, and product offerings for ballasts designed to operate at voltages higher than 277 V were minimal. Further, based on manufacturer feedback and DOE research, a shift from HID to fluorescent technology will likely be minor as SSL technology continues to penetrate the lighting market.[11] Based on DOE's assessment, standards for fluorescent lamp ballasts operating at 480 V would not likely result in significant energy savings. Hence, DOE is not considering extending the scope of standards to fluorescent lamp ballasts designed and marketed to operate at voltages higher than 277 V.

[8] California Energy Commission. *2013 Building Energy Efficiency Standards for Residential and Nonresidential Buildings.* CEC-400-2012-004–CMF–REV2. Sacramento, CA: CEC, 2012. Available at *http://www.energy.ca.gov/2012publications/CEC-400-2012-004/CEC-400-2012-004-CMF-REV2.pdf.*

[9] Specifically, 4-foot MBP lamps, 2-foot U-shaped lamps, 4-foot MiniBP SO lamps, and 4-foot MiniBP HO lamps.

[10] American Society of Heating, Refrigerating, and Air-Conditioning Engineers. *ANSI/ASHRAE/IES Standard 90.1–2016—Energy Standard for Buildings Except Low-Rise Residential Buildings.* Atlanta, GA: ASHRAE, 2016.

[11] There was no increase in shift from HID technology to fluorescent technology in high-bay applications from 2012 to 2014 according to the DOE *Adoption of Light-Emitting Diodes in Common Lighting Applications.* Available at *http://energy.gov/sites/prod/files/2015/07/f24/led-adoption-report_2015.pdf.*

c. Low-Current PS Ballasts

Currently DOE exempts from standards a PS ballast that operates 4-foot T8 MBP lamps and delivers on average less than 140 milliamperes (mA) to each lamp (*i.e.,* low-current PS ballast). 10 CFR 430.32(m)(3)(iii). In the Framework document, DOE stated it will reevaluate the justification for this exemption. (Framework Document, No. 1 at p. 13)

NEMA, ULT, and GE stated that DOE should continue to exempt low-current PS ballasts from standards as they are a niche market. (ULT, Public Meeting Transcript, No. 5 at p. 37; NEMA, No. 12 at p. 5; GE, Public Meeting Transcript, No. 5 at p. 38; Philips, No. 8 at p. 11) ULT added that energy savings from standards would be offset by those resulting from the low light output. (ULT, Public Meeting Transcript, No. 5 at pp. 35–36)

ASAP raised concerns that low-current PS ballasts may become a loophole in the future as they could serve as a low-cost option in markets for inefficient equipment. (ASAP, Public Meeting Transcript, No. 5 at p. 33) ULT responded that to operate at a low ballast factor, a ballast must have an open current voltage, flicker control, as well as cathodes, all of which add cost to such products. (ULT, Public Meeting Transcript, No. 5 at pp. 35–36)

Further, NEMA and ULT stated that if regulated, these products would not comply with DOE efficiency standards and become obsolete as their low volume would not warrant redesign, eliminating a unique utility. (NEMA, No. 12 at p. 5; ULT, No. 6 at p. 3) ASAP and CA IOUs stated that the unique utility of low-current PS ballasts is unclear. (ASAP, No. 7 at p. 3; CA IOUs, No. 10 at p. 10) ASAP stated that there are multiple more-efficient lamp-and-ballast combinations available on the market that can provide light output comparable to low-current PS ballast systems. (ASAP, No. 7 at p. 3) CA IOUs suggested alternatives such as using reduced-wattage lamps or fewer lamps and/or fixtures as efficient replacements. However, CA IOUs stated that if DOE does find the low-current PS ballasts have a unique utility, DOE should ensure that they are operating as efficiently as possible. (CA IOUs, No. 10 at p. 10)

During the 2011 FL Ballast Rule, DOE determined that ballasts designed to operate 4-foot T8 MPB lamps are required to use some level of cathode power when operating lamps at currents less than 155 mA to maintain lamp life. Through testing, DOE learned the ballast factor of these ballasts was similar to or less than 0.7, offering a unique utility of low light output. Such ballasts also offered energy savings from their low power levels and use with occupancy sensors. However, DOE concluded that, because BLE decreases as current is decreased, none of the PS ballasts tested with an average current of less than 140 mA were able to meet the maximum efficiency levels analyzed in the PS product class. Therefore, DOE exempted these low-current PS ballasts from standards. 76 FR 70548, 70558.

In this analysis, DOE evaluated whether DOE should continue to maintain the exemption of low-current PS ballasts. DOE has tentatively determined that alternative options such as using PS ballasts with operating current at 140 mA or higher, paired with reduced-wattage lamps or decreasing the number of lamps in the system could provide low light output levels comparable to those attained using low-current PS ballasts. DOE identified lamp-and-ballast replacements that maintained system light output within 10 percent of a lamp-and-ballast system using a low-current PS ballast and saved energy.

Because there are reasonable alternatives to providing the low light output utility offered by low-current PS ballasts, the low-light feature provided may no longer be unique to these products as when DOE evaluated them for the 2011 Ballast Rule. As such, DOE included in its current analysis potential standards for PS ballasts that operate 4-foot T8 MBP lamps and deliver on average less than 140 mA to each lamp.

d. Low Frequency EMI Ballasts

Currently DOE exempts low frequency ballasts designed and marketed to operate T8 diameter lamps for use in EMI environments only (''low frequency EMI ballasts''). They must be shipped by the manufacturer in packages containing 10 or fewer ballasts. 10 CFR 430.32(m)(3)(ii) For applications in which EMI has been or is expected to pose safety concerns, magnetic ballasts that operate at low frequency are typically recommended. Because these EMI-related safety concerns still exist, in the Framework document, DOE stated it did not plan to remove this exemption.

NEMA, GE, ULT, and Philips agreed that low frequency EMI ballasts should not be subject to standards. (ULT, No. 6 at p. 3; Philips, No. 8 at p. 12; NEMA, No. 12 at p. 5; GE, Public Meeting Transcript, No. 5 at p. 43) GE added that these are a low volume, niche product and the best solution for EMI-sensitive environments. (GE, Public Meeting Transcript, No. 5 at p. 43) ASAP stated that the exemption of these ballasts made sense to the extent that EMI from technology continues to be a concern. (ASAP, Public Meeting Transcript, No. 5 at pp. 42–43)

In the 2011 FL Ballast Rule, DOE conducted research and interviews with FLB and fixture manufacturers to identify several applications as potentially sensitive to EMI. Applications potentially sensitive to EMI include but are not limited to medical operating room telemetry or life support systems, airport control systems, electronic test equipment, radio communication devices, radio recording studios, correctional facilities, clean rooms, facilities with low signal-to-noise ratios, and aircraft hangars or other buildings with predominantly metal construction. 76 FR 70548, 70557. In this analysis, DOE tentatively finds that EMI from fluorescent lamp ballasts continues to be a safety concern.

ASAP asked for more information regarding the definition of EMI-sensitive environments, Federal Communications Commission's (FCC's) authority on this issue, and the method of sales and shipment to restrict leakage of EMI-labeled product into other applications. (ASAP, Public Meeting Transcript, No. 5 at pp. 42–43) FCC in 47 CFR part 18 regulates industrial, scientific, and medical (ISM) equipment that emits electromagnetic energy on frequencies within the radio frequency spectrum in order to prevent harmful interference to authorized radio communication services. 47 CFR 18.101. Falling under the category of radio frequency lighting devices, fluorescent lamp ballasts would be subject to certain conduction limits. 47 CFR 18.307(c). (The Department of Defense (DoD) also has its own EMI requirements.[12]) The FCC should be consulted for further information on regulating products that emit electromagnetic energy.

ASAP stated DOE should examine the full range of existing low EMI, energy efficient fluorescent lamp technology options. (ASAP, No. 7 at p. 4) CA IOUs stated instead of magnetic ballasts designed and labeled specifically for use in EMI-sensitive environments,

[12] The DoD MIL–STD–461G section CE102 applies to conducted emissions from power leads between 10 kilohertz (kHz) and 10 megahertz (MHz) while the standards in section RE102 apply to radiated emissions between 10 kHz and 18 gigahertz (GHz). These standards establish ''interface and associated verification requirements for the control of the EMI emission and susceptibility characteristics of electronic, electrical, and electromechanical equipment and subsystems designed or procured for use by activities and agencies of the Department of Defense (DoD).''

consumers can use ''hybrid'' magnetic/electronic ballasts and remote-mounted electronic ballasts, as well as LED light sources. CA IOUs encouraged DOE to reconsider the need for these less efficient products when alternatives are available. (CA IOUs, No. 10 at p. 10)

The source of EMI in a fluorescent lamp-and-ballast system consists mainly of switching components (transistors) in the ballast and the fluorescent lamp and lead wires. In high-frequency electronic ballasts, switching components create rapidly changing electric fields eventually resulting in interference with other circuits on the line. Low-frequency magnetic ballasts do not have switching components, dramatically reducing EMI generation. Additionally, lamp and lead wires create a loop that in the presence of a rapidly switching alternating current (AC) waveform creates an antenna for radiated EMI. This phenomenon is more pronounced with electronic ballasts compared to magnetic ballasts. For these reasons, magnetic ballasts are typically recommended for use in EMI-sensitive environments.

In the 2011 FL Ballast Rule, DOE examined alternative options such as use of external EMI filters with electronic ballasts as well as shielding the ballast with conductive material to mitigate the effects. However, DOE could not confirm that such methods would definitely prevent issues related to EMI. In this analysis, DOE again researched alternative options. In general, DOE found limited product offerings for hybrid magnetic/electronic ballasts and remote-mounted electronic ballasts. DOE's research indicated that the hybrid magnetic/electronic ballasts would not meet existing efficiency standards. Further remote-mounted electronic ballasts would require separate fixtures for the lamp and for the ballast and require installation of additional components such as EMI shielding on the leads and ferrite clamp on the output wires to safeguard against EMI issues.[13] While the typical LED systems in which AC power is converted to DC would cause the same EMI issues as electronic ballasts, direct DC-powered LED systems do have the potential to mitigate EMI issues. However, these also would require a fixture change. Further, because these products are not designed specifically for EMI-sensitive applications, it is not clear that they adequately mitigate the effects of EMI.

ASAP stated that because residential ballasts are subject to less stringent energy efficiency standards than commercial ballasts due to being subject to more stringent FCC EMI requirements, DOE should at least subject the low frequency EMI ballasts to the current residential FLB energy efficiency standards. (ASAP, No. 7 at p. 4)

DOE's evaluation indicates that magnetic ballasts continue to not meet existing standards, including those for residential ballasts.

ASAP also stated that DOE should evaluate if it is necessary to further limit the language ''designed, labeled, and marketed for use in EMI-sensitive environments only'' used to specify the exemption as it creates a significant opportunity for low EMI, low price, and energy inefficient ballasts to gain significant market share. ASAP encouraged DOE to collect sales data on ballasts specified as low EMI and intended for commercial use. (ASAP, No. 7 at pp. 3–4; ASAP, Public Meeting Transcript, No. 5 at p. 43) Philips stated that EMI environments are very specific (*e.g.,* nuclear power plants, military bases) and because of the low volume, these ballasts are more expensive. Therefore, it is unlikely that they would start replacing electronic ballasts or LED technology with low frequency EMI ballasts. (Philips, Public Meeting Transcript, No. 5 at pp. 43–44)

DOE currently describes the exemption as ''A low frequency ballast that is designed and marketed to operate T8 diameter lamps; is designed and marketed for use in EMI environments only; and is shipped by the manufacturer in packages containing 10 or fewer ballasts.'' 10 CFR 430.32(m)(3)(ii) DOE finds that because the definition requires the application to be stated in all publicly available documents and caps the amount of ballasts sold in one package, it is a sufficient deterrent to potential unintended use of these ballasts. Further, based on a review of manufacturer catalogs, DOE did not find a substantial number of magnetic ballasts designed and marketed for use in EMI-sensitive environments only, which might have indicated an increasing market share.

Because magnetic ballasts are the only option that can definitively address safety concerns regarding EMI and they do not meet existing standards, DOE is not considering removing the current exemption for low frequency EMI-sensitive ballasts.

2. Metric

a. Active Mode Energy Consumption

Current energy conservation standards for fluorescent lamp ballasts are applicable to active mode energy use and are based on BLE. This metric is a ratio of the power provided by the ballast to the lamp divided by the input power to the ballast. The metric also includes an adjustment factor to account for the reduced system efficacy associated with operation at low-frequency (*i.e.,* 60 Hertz). DOE continues to use the BLE metric in this proposed determination to assess active mode energy use.

DOE received comments recommending it adopt a weighted BLE metric for dimming ballasts. CA IOUs stated that they had supported California Energy Commission (CEC) in developing Title 20 state appliance energy efficiency standards for fluorescent lamp ballasts and strongly suggested DOE take this analysis into consideration in this effort. (CA IOUs, No. 10 at p. 2) CA IOUs stated that dimming ballasts have a large potential for energy savings because not all products dim the same way, and prior to the CEC rule regarding dimming ballasts, there was no description of ballast performance at dimmed settings. (CA IOUs, Public Meeting Transcript, No. 5 at pp. 72–73)

Due to this lack of data, CA IOUs tested dimming ballasts to understand performance below full light output using the DOE's test procedure for fixed output ballasts. (These data are publicly available in CEC's rulemaking docket: #14–AAER–1.) Specifically, CA IOUs tested 34 T8 dimming ballasts that operate from one lamp up to four lamps, which were selected from 180 T8 dimming ballasts listed by the Consortium for Energy Efficiency (CEE) as qualifying commercial lighting products. In addition they tested seven T5 dimming ballasts that operate two lamps. CA IOUs stated that this testing, while not comprehensive of the full market, was a good starting point. CA IOUs measured the performance of dimming ballasts at 100 percent full output and then at input powers decreasing by 5 percent increments until reaching zero light output using DOE's current test procedure. Based on these data, CA IOUs noted that ballasts that have the same efficiency at full light output may not perform the same at lower light output levels. For instance, two ballasts may have the same performance at full light output, but may have a 3–5 W difference in power consumption at 50 percent of full output. (CA IOUs, No. 10 at pp. 2–3, 8;

[13] Philips states remote mounting impacts EMI behavior and additional measures may be necessary to reduce EMI:

http://images.philips.com/is/content/PhilipsConsumer/PDFDownloads/United%20States/ODL20160330_001_UPD_en_US_PAd-1615DG_Advance_Xitanium_Indoor_Driver_20160324.pdf#page=5.

CA IOUs, Public Meeting Transcript, No. 5 at pp. 17, 54)

Because of this difference in efficiency at lower light outputs, CA IOUs stated that CEC has proposed standards for dimming fluorescent lamp ballasts based on weighting the ballast efficiency measurements at 100 percent, 80 percent, and 50 percent of full arc power in order to generate one BLE value. CA IOUs stated that 80 percent is a typical setting when tuning light and a built-in assumption for savings in certain utility lighting programs, and 50 percent is a representative operating setting for bi-level dimming ballasts. CA IOUs also stated that these levels were established after consulting with major FLB manufacturers and stakeholders who agreed that accurate and repeatable measurements could be taken at each of those operating levels. CA IOUs stated that DOE consider using these two points but supported additional test points below 50 percent of full light output and recommended DOE conduct further analysis on the feasibility of measurements at lower output levels. (CA IOUs, No. 10 at pp. 2–3; CA IOUs, Public Meeting Transcript, No. 5 at pp. 17, 54) ASAP agreed with CA IOUs that the test procedure and metric should be amended to measure BLE at partial light output for dimming ballasts, specifically testing at 80 and 50 percent of full light output in addition to 100 percent. (ASAP, No. 7 at pp. 2–3)

The efficiency of a dimming ballast may differ at different light outputs, and the efficiency at full light output may not reflect the efficiency at which the ballast always performs in application. However, DOE notes several issues with the accuracy and consistency in determining the performance of dimming ballasts using a weighted metric approach. First, the lack of conclusive data makes it difficult to determine the appropriate weightings to assign to reduced light output levels to reflect the most common use of dimming ballasts. For example, the weightings proposed by CEC are based on approximate average energy savings of dimming ballasts determined from a study on energy savings from institutional tuning including the use of dimming ballasts and switches (*i.e.,* light levels adjusted based on location-specific needs or building policies).[14] This study determines energy savings for one scenario of dimming ballast usage and is not necessarily representative of the common application nor actual operating hours of these products.

Second, as data provided by CA IOUs show, there is no consistent trend between efficiency and light output at lower levels across products. Manufacturers apply a range of acceptable cathode powers at lower currents and choose to do so through various techniques (*i.e.,* step, gradual) resulting in varied performance at lower light output levels. The range of acceptable cathode powers for T8 fluorescent dimming systems is provided by NEMA LL 9,[15] and both ballast and lamp manufacturers design their products accordingly. Hence, the cathode power required by a lamp may vary by lamp manufacturer. A manufacturer who produces both ballasts and lamps may design both products to provide/use the minimum amount of cathode heat. However, a manufacturer who produces only ballasts may design their product to provide the maximum amount of cathode heat so that it can operate all lamps available on the market. DOE finds that it is important to allow for this flexibility in designing ballasts and a metric should not favor one approach over another.

Hence, it is unclear if a weighted BLE metric would be an accurate representation of dimming ballasts in application or provide an approach for appropriately measuring performance across dimming products. Therefore, DOE evaluates the efficiency of dimming ballasts as the BLE at full light output, which reflects the most energy consumptive state. Measuring BLE at full light output ensures the accuracy of measured values and provides a consistent basis for comparing efficiencies across fluorescent lamp ballasts. DOE seeks comments on its evaluation of the efficiency of dimming ballasts as BLE at full light output. See section VII.C for a list of issues on which DOE seeks comment.

For dimming ballasts, Philips recommended a ballast efficiency metric that would include cathode power as opposed to the BLE metric which does not. Philips explained that to dim light output the lamp power and thereby cathode power is reduced. To prevent the resulting possibility of shortening lamp life and unstable lamp operation, most dimming ballasts utilize added cathode power in dimming mode. Philips presented an example of a 2L T8 MBP 32 W ballast showing that at full light output BLE and ballast efficiency are the same but at lower light output levels, ballast efficiency is higher because it includes total lamp arc power plus cathode power while BLE includes total lamp arc power. Philips concluded that using the BLE metric at lower light output levels would underrepresent the efficiency of the ballast. (Philips, No. 8 at pp. 16–29) Therefore, Philips asserted and NEMA agreed that including cathode power in the metric is important because it provides utility to dimming ballasts at lower light output levels. (Philips, No. 8 at pp. 16–29; NEMA, No. 12 at p. 7) Philips noted that measuring ballast efficiency would require more measurements, but testing time could be reduced with the use of a multiport power analyzer. (Philips, No. 8 at pp. 16–29)

Because DOE is using a metric of BLE measured at full light output for dimming ballasts, the exclusion of cathode power from this measurement would not underrepresent the efficiency of dimming ballasts operating at lower light output levels. DOE is aware that the BLE metric represents cathode power as a loss and that ballasts that use cathode power will therefore appear less efficient than ballasts that do not. DOE accounts for this potential difference in efficiency by establishing separate product classes based on starting method. 10 CFR 430.32(m)(1)(ii)(B).

Philips also commented that the use of dimming ballasts is different than fixed output ballasts because they are always part of a lighting control system, whether or not it is a simple control. Philips stated that if dimming ballasts are required to use less energy, then to meet such requirements manufacturers will move control and communications designs from within the ballast to a separate extender box. Hence, while the ballast may be more efficient, the total efficiency of the system may not increase. Therefore, Philips suggested that DOE consider the entire system as opposed to only the ballast efficiency in its analysis. (Philips, Public Meeting Transcript, No. 5 at p. 119)

The scope of this proposed determination is fluorescent lamp ballasts and not an entire fluorescent lighting system. DOE finds that BLE adequately captures the efficiency of all fluorescent lamp ballasts. DOE does analyze energy use of the lamp-and-ballast system and uses this assessment of system energy use in its downstream analyses (*i.e.,* LCC, NIA, etc.).

CA IOUs stated that it is likely that their analysis of efficiencies of dimming ballasts in the dimming range below 140 mA will also be useful in understanding the cathode heating needs and determining appropriate standard levels

[14] Williams, Alison, Barbara Atkinson, Karina Garbesi, and Francis Rubinstein. *A Meta-Analysis of Energy Savings from Lighting Controls in Commercial Buildings.* Ernest Orlando Lawrence Berkeley National Laboratory. September 2011.

[15] NEMA LL 9–2011, *Dimming of T8 Fluorescent Lighting Systems* (approved April 12, 2011).

for fixed-output, low current ballasts. (CA IOUs, No. 10 at p. 10)

DOE appreciates the data provided by CA IOUs. As noted, DOE evaluates all fluorescent lamp ballasts in this analysis based on BLE measured at full light output.

b. Standby Mode Energy Consumption

EPCA requires energy conservation standards adopted for a covered product after July 1, 2010, to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) EPCA defines active mode as the condition in which an energy-using piece of equipment is connected to a main power source, has been activated, and provides one or more main functions. (42 U.S.C. 6295)(gg)(1)(A)(i)) Standby mode is defined as the condition in which an energy-using piece of equipment is connected to a main power source and offers one or more of the following user-oriented or protective functions: Facilitating the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer; or providing continuous functions, including information or status displays (including clocks) or sensor-based functions. (42 U.S.C. 6295)(gg)(1)(A)(iii)) Off mode is defined as the condition in which an energy-using piece of equipment is connected to a main power source, and is not providing any standby or active mode function. (42 U.S.C. 6295)(gg)(1)(A)(ii))

In the 2009 Standby Test Procedure, DOE determined that fluorescent lamp ballasts do not exhibit off mode energy use. In addition, DOE stated that the only ballasts subject to standby mode power measurements would be those that incorporate some electronic circuit enabling the ballast to communicate with and be part of a lighting control system (*e.g.,* a digitally addressable lighting interface, DALI). 74 FR 54445, 54448.

Based on DOE's characterization of ballasts capable of operating in standby mode in the 2009 Standby Test Procedure, NEMA and Philips concluded that DOE considers ballasts capable of operating in standby mode as digitally controlled ballasts, such as DALI. (NEMA, No. 12 at p. 3; Philips, No. 8 at pp. 5–6) ULT and NEMA stated that DALI ballasts are mostly used in conference rooms for atmospheric lighting and are shrinking in market size. They stated that the most common linear fluorescent lamp ballasts are operated as discrete devices from a centralized control panel that sends on/off and dimming commands and do not operate in standby mode. Further, ULT and NEMA asserted that 99 percent of the ballasts in the scope of this analysis do not operate in standby mode. (ULT, No. 6 at p. 2; NEMA, No. 12 at pp. 2–3) Lutron noted that DALI is not the only communication protocol used in ballasts capable of standby mode power consumption. (Lutron, Public Meeting Transcript, No. 5 at p. 49)

ASAP stated DOE should include digitally addressable or networkable ballasts and consider the associated standby losses of these products. ASAP expected dimming ballasts with digital control will be part of luminaire level lighting control, which involves independently controlling each luminaire in a space through integrated, programmable, network sensors. ASAP added that in such scenarios while the ballast may reduce active mode power consumption, it may also continue to consume power when switched ''off'' and not emitting light. Therefore, ASAP recommended that DOE should consider both standby losses and the benefits of increased controllability in its consideration of coverage for additional dimming ballasts. ASAP advised DOE to develop a better definition for ''network standby.'' (ASAP, No. 7 at p. 2) Additionally, CA IOUs recommended that DOE amend its standby mode test procedure to specify that a communications network (if applicable) should be connected to the ballast during testing to capture energy use in ''network standby.'' CA IOUs stated that this is important because ballasts will likely be consuming additional energy while actively ''listening'' for commands when connected to a communications network. (CA IOUs, No. 10 at p. 3)

NEMA stated that it is not easy to define a power consumption standard for a networked product because the standby and full mode power consumptions will vary based on the particular design and extent of functionality. (NEMA, Public Meeting Transcript, No. 5 at pp. 49–50) NEEA agreed with NEMA but noted that DOE would likely have to look at network standby if it decides to regulate dimming ballasts. (NEEA, Public Meeting Transcript, No. 5 at p. 50) Philips stated that DOE's determination of ballasts capable of operating in standby mode prevents conflict with other modes of operation defined in standards such as IEC 62301, which distinguishes between standby mode power and network mode power. (Philips, No. 8 at pp. 5–7) Philips also recommended that DOE develop a standby mode power test method that accounts for the wide range of input voltages. (Philips, No. 8 at p. 8)

EPCA requires DOE to address the standby mode consumption of a product. (42 U.S.C. 6295(gg)(3)) Based on DOE's definition of standby mode, DOE continues to consider a ballast is in standby mode if it has some electronic circuit enabling the ballast to communicate with and be part of a lighting control system and if at zero light output the ballast is standing by, connected to a main power source without being disconnected by an on/off switch or other type of relay. 74 FR 54445, 54448. Therefore, standby mode energy consumption of a ballast encompasses any communication by the ballast at zero light output. DOE finds that additional definitions to capture communication through specific types of protocols or systems (*i.e.,* network) are not necessary.

CA IOUs stated standby mode power constitutes a significant portion of the overall dimming ballast annual energy use and noted that CEC proposed a separate standard for standby mode power consumption for dimming ballasts. (CA IOUs, No. 10 at p. 4) CA IOUs reported that testing done according to DOE's test procedure showed dimming ballasts to have standby mode power consumption ranging from 0.3 to 1.9 W. (CA IOUs, Public Meeting Transcript, No. 5 at pp. 15–16) ASAP supported CA IOUs comments recommending testing of standby mode energy consumption of ballasts similar to that proposed by CEC. (ASAP, No. 7 at p. 3)

NEMA and Philips noted that standby power energy use in the U.S. lighting industry varies greatly due to the wide range of functionality provided by digital ballasts. (NEMA, No. 12 at p. 3; Philips, No. 8 at p. 8) NEMA cautioned against overly restrictive limits on standby power, as they could reduce consumer-demanded functionality and DOE should note that lighting may become the point of connection for smart products. (NEMA, Public Meeting Transcript, No. 5 at pp. 49–50; NEMA, No. 12 at p. 3)

DOE tentatively finds in this analysis that a separate standard for standby power is unnecessary. Currently FLB standards for active mode are based on BLE, which is a ratio of the power provided by the ballast to the lamp divided by the input power to the ballast. DOE finds that for ballasts that are capable of standby mode operation, the measurement of input power for BLE in active mode would include standby mode power. Thus, DOE finds that energy conservation standards based on measuring the BLE of the

ballast in active mode also capture the energy consumption in standby mode, where applicable. Further, DOE's analysis of standards for fluorescent lamp ballasts includes consideration of the continued availability of products that provide consumer utility presently provided.

3. Technology Options

In the Framework document, DOE identified several technology options that would be expected to improve the efficiency of fluorescent lamp ballasts, as measured by the DOE test procedure. To develop a list of technology options, DOE reviewed manufacturer catalogs, recent trade publications and technical journals, and consulted with technical experts. Specifically, DOE identified technology options identified in the 2011 FL Ballast Rule: magnetic FLB design, electronic FLB design, varying lamp diameter, higher grade components, and improved circuit design. In addition, DOE considered the following improved components as technology options:

- Increasing the number of steel laminations to lower core losses,
- Using optimized-gauge copper to increase the conductor cross section to reduce winding losses,
- Using wire with multiple smaller coils instead of one larger coil to increase the number of turns of wire, and
- Using shape-optimized winding to reduce the proximity effect losses.

In the Framework document, DOE requested comments on technology options for improving the BLE of fluorescent lamp ballasts. NEMA pointed out that core losses in the transformers and inductors used in electronic ballasts can be minimized by using low-loss ferrite materials. (NEMA, No. 12 at p. 6) In this analysis, DOE also considered the option of using low-loss ferrite materials to reduce the proximity effect.

CA IOUs recommended that DOE analyze the technology options for improving efficiency listed in the 2011 FL Ballast Rule, including improved components such as magnetics, diodes, capacitors, and transistors, as well as improved circuit design. (CA IOUs, No. 10 at p. 5)

Philips stated that the only way to increase efficiency would be to move to a different technology. ULT, Philips, and GE added that they and the industry are focusing on solid-state lighting, specifically LED. (ULT, Public Meeting Transcript, No. 5 at pp. 45–46; Philips, Public Meeting Transcript, No. 5 at p. 58; GE, Public Meeting Transcript, No. 5 at p. 67) Further, NEMA, GE, Philips, and ULT commented that fluorescent lamp ballasts are already at or close to their maximum achievable efficiency, and that the currently regulated products have no margin to improve efficiency. (NEMA, Public Meeting Transcript, No. 5 at pp. 9–11; GE, Public Meeting Transcript, No. 5 at p. 67; Philips, No. 8 at pp. 13–14; ULT, No. 6 at p. 5) NEMA, GE, and ULT asserted that the last rulemaking compressed the available levels of efficiency such that the current market only consists of a maximum and a minimum level, with very little room for differentiation among manufacturers. (NEMA, No. 12 at p. 7; GE, Public Meeting Transcript, No. 5 at p. 67; ULT, Public Meeting Transcript, No. 5 at pp. 45–46) Philips and ULT added that technology options such as transistors with reduced resistance, lowering impedance value on capacitors, increasing steel laminations, reducing winding resistance, increasing the turns of wire, and reducing proximity effect losses are already incorporated in current products. (Philips, Public Meeting Transcript, No. 5 at p. 58; ULT, No. 6 at p. 5) Lutron stated DOE should assume that all the dimming ballasts that are going to be available after any rule becomes effective are already on the market. (Lutron, Public Meeting Transcript, No. 5 at p. 104) Philips and GE noted that because fluorescent technology is on the decline, there are no new investments in fluorescent lamp ballasts. (Philips, Public Meeting Transcript, No. 5 at p. 58; GE, Public Meeting Transcript, No. 5 at p. 67)

Based on DOE's review of the product offerings and their efficiencies in manufacturer catalogs and DOE's Compliance Certification Management System (CCMS) database, there are ballasts on the market at multiple levels of efficiencies. DOE finds that the technology options identified, individually and/or in combination, are being utilized to improve the efficiency of products. Therefore, DOE continues to consider these technology options as a means to improve the efficiency of fluorescent lamp ballasts.

Based on their test data for dimming ballasts, CA IOUs asserted that cathode cutout is a major efficiency improvement opportunity for dimming ballasts and is currently employed by multiple dimming ballast manufacturers. CA IOUs compared two 3-lamp dimming ballasts, one that saved energy by using less than the allowable cathode power at lower currents and cutout cathode power at higher currents, and another that saved less energy by employing a continuous maximum amount of allowable cathode power. (CA IOUs, Public Meeting Transcript, No. 5 at p. 57; CA IOUs, No. 10 at pp. 5–7)

NEMA commented that there are several patents on how to employ cathode cutout technology and urged DOE to exercise caution not to inadvertently favor one method over another. (NEMA, Public Meeting Transcript, No. 5 at pp. 58–59) CA IOUs responded that based on conservative assumptions for hot cathode resistance per the maximum voltage allowance at lower currents defined by NEMA LL 9–2011, any ballast can use anywhere from 0 up to 5.6 W per lamp of cathode power at lower currents. CA IOUs stated that while not all manufacturers may have access to every piece of technology, this range provided enough space for achieving significant energy savings. CA IOUs added that based on their analysis for CEC's proposed standards for dimming ballasts, all major manufacturers had products meeting standards, and they determined that the necessary technology is not being limited to one or two manufacturers due to intellectual property issues. (CA IOUs, Public Meeting Transcript, No. 5 at pp. 59–61; CA IOUs, No. 10 at pp. 5–7)

DOE agrees that cathode cutout can improve ballast efficiency and considered it as a technology option in this analysis. Information obtained in manufacturer interviews indicated that patents may apply to certain methods of achieving cathode cutout, but achievement of the highest levels of efficiency analyzed in this proposed determination did not require use of technologies subject to a patent.

CA IOUs stipulated that improved components and other circuit design approaches are also viable methods for improving dimming ballast efficiency, and encouraged DOE to explore the full range of technology options available to manufacturers. (CA IOUs, Public Meeting Transcript, No. 5 at p. 57; CA IOUs, No. 10 at pp. 5–7)

DOE considers the full range of technology options identified, for both dimming and fixed-output ballasts. DOE notes it considers the same metric (*i.e.,* BLE at full light output) for dimming ballasts as it does for fixed-output ballasts (see section IV.A.2 for further details).

NEMA commented that steel laminations comprise a very small percentage of magnetics in an electronic ballast and are used for line frequency ballasts. Further, they are typically used for dedicated line voltage such as 120 V AC. (NEMA, No. 12 at p. 6) Philips stated that use of amorphous steel doesn't provide for an effective work

product and it will continue to use it only for magnetic ballasts. (Philips, Public Meeting Transcript, No. 5 at p. 64)

DOE determined that using laminated sheets of steel to create the core of the inductor may not minimize losses in ballasts that operate at high frequencies. Therefore, because the ballasts analyzed in this proposed determination are electronic ballasts and operate at high frequencies, DOE did not consider laminated sheets of amorphous steel or increasing the number of steel laminations to lower core losses as technology options.

DOE agrees that the use of low-loss ferrite materials can minimize losses in transformers and inductors used in ballasts. Ferrite is already widely used in electronic ballasts. However, DOE determined that ferrite can be optimized to reduce losses by changing the percent composition from three principal oxides: Manganese oxide, zinc oxide, and iron (III) oxide. If the ideal amounts of each oxide are selected, the ferrite can have lower losses.[16] For example, manganese-zinc ferrite is a common solid core material selected for its size efficiency and can be optimized for high frequencies, up to 2 MHz.[17] Hence, in this analysis, DOE is including use of low-loss ferrite materials to create the core of the inductor in the transformer of the ballast as a technology option to increase ballast efficiency.

NEMA also added that the technology option, as described by DOE, which involves using wire with multiple smaller coils instead of one larger coil is poorly defined. They indicated that this technology option should refer to litz wire and added that most electronic ballast manufacturers already use litz wire where appropriate. (NEMA, No. 12 at p. 6)

The technology option of using wire with multiple smaller coils (instead of the technology option of using one larger coil to increase the number of turns of wire) describes a way to increase the inductance of a coil and therefore the induced voltage of the transformer. The magnitude of the induced voltage is based on the magnetic field in the transformer (which is based on the inductance), the frequency of operation, number of turns of the coil, and the cross sectional area of the transformer. For the same length of wire, a series of smaller coils will have a larger number of turns than one coil that has a core with a large cross sectional area. The additional number of turns of the wire will increase the induced voltage, and thereby minimize losses from the transformer. Provided that the number of turns is increased more than the cross sectional area is reduced, the series of smaller coils would have fewer losses than one large coil. This technology option is different from the use of litz wire. Litz wire refers to a bundle of thin insulated wires braided together such that the same sides of the two wires are not interacting with one another the entire time, thereby minimizing the magnetic effects between wires that negatively affect current flow. In this analysis DOE continues to consider both use of multiple smaller coils and litz wire as technology options to increase the efficiency of the ballast.

In summary, for this analysis, DOE considers the technology options shown in Table IV.1. Detailed descriptions of these technology options can be found in chapter 3 of the NOPD TSD.

TABLE IV.1—FLUORESCENT LAMP BALLAST TECHNOLOGY OPTIONS

Technology option	Description
Electronic Ballast	Use an electronic ballast design.
Improved Components:	
Transformers/Inductors	Use litz wire to reduce winding losses.
	Use wire with multiple smaller coils instead of one larger coil to increase the number of turns of wire.
	Use optimized-gauge copper to increase the conductor cross section to reduce winding losses.
	Use shape-optimized winding to reduce the proximity effect losses.
	Use low-loss ferrite materials to create the core of the inductor.
Diodes	Use diodes with a lower voltage drop.
Capacitors	Use capacitors with a lower effective series resistance.
Transistors	Use transistors with low drain-to-source resistance.
Improved Circuit Design:	
Cathode Cutout or Cutback	Remove or reduce cathode/filament heating after lamp has started.
Integrated Circuits	Substitute discrete components with an integrated circuit.
Starting Method	Use of instant start (IS) starting method instead of a rapid start (RS) starting method.

4. Screening Analysis

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If it is determined that a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers or would 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 United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b)

In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed four criteria, it will be excluded from further consideration in

[16] *Standard Recommendations: Soft Ferrite Cores, A User's Guide.* 2011.

[17] McLyman, C. *Transformer and Inductor Design Handbook.* 2011. Boca Raton, FL: CRC Press.

the engineering analysis. Additionally, it is DOE policy not to include in its analysis any proprietary technology that is a unique pathway to achieving a certain efficiency level.

DOE received some general comments regarding the screening methodology and its application to fluorescent lamp ballasts. Philips commented that occasionally the criterion of manufacturing practicality has been slanted toward being theoretically possible rather than economically justifiable for a ballast manufacturer and consumer. Philips stated that DOE should be cognizant of the costs associated with design-in, approbation, marketing, and implementation of that new, revised design into luminaires and that it might not have a positive business case. (Philips, No. 8 at p. 15)

When determining manufacturing practicality, DOE will only consider a technology option practical to manufacture if mass production and reliable installation and servicing of the technology can be achieved in the appropriate scale and timeframe. DOE finds that the technology options under consideration are being utilized in ballast designs for commercially available ballasts and, therefore, meet the criteria of practicable to manufacture. Regarding the costs associated with design options, DOE considers economic impacts including costs to the individual customers, manufacturers, and the nation of efficiency levels incorporating design options under consideration in the LCC, NIA, and MIA analyses.

DOE received several comments regarding the impact of the technology options under consideration on the size of the ballast. Philips and NEMA commented that any improvements in efficiencies will likely cause an increase in the ballast footprint. (Philips, No. 8 at p. 11; NEMA, No. 12 at p. 11) ULT, Philips, and NEMA emphasized that avoiding technology and efficiency improvements that necessitate changes in the physical size outside the normal ballast case footprint would be an ideal approach. (ULT, No. 6 at p. 9; Philips, No. 8 at pp. 13–14; NEMA, No. 12 at p. 11) NEMA added that implementing efficiency changes causing fluorescent lamp ballasts to have designs outside of standard case sizes would increase maintenance costs. (NEMA, No. 12 at p. 11) ULT also noted that any changes in technology that increase ballasts' physical volume would be disruptive to the original equipment manufacturer (OEM) and replacement channels. (ULT, No. 6 at p. 5) Philips stated that while incremental design improvements leading to additional energy savings with efficiency gains of 1 to 2 percent are theoretically possible, they will result in a negative impact on luminaire compliance with existing, size-based electrical requirements. (Philips, No. 8 at pp. 13–14)

When determining adverse impacts to consumer utility and product availability, DOE takes into account whether a technology option will result in lessening of utility to the consumer. Therefore, in its analysis, DOE accounts for scenarios in which a technology option increases the size of the ballast making it unusable in an application in which it is currently used. DOE found no evidence that the technology options identified could not be utilized in a manner that would maintain the size of the ballast.

Regarding impacts of technology options on costs, DOE does not consider cost as a factor for screening out technology options. DOE considers the economic impacts and costs on individual customers, manufacturers, and the nation in the LCC, NIA, and MIA analyses.

DOE also received specific comments regarding the screening of technology options under consideration. In the Framework document, DOE considered using optimized-gauge copper or increasing the conductor cross section to reduce winding losses, using wire with multiple smaller coils, and using shape-optimized winding to improve the transformer component of the ballast. ULT stated that industry already considers the technology options of using optimized-gauge copper, wire with multiple smaller coils, and using shape-optimized winding in the development of their product and any adjustments would increase the physical volume of these products. (ULT, No. 6 at pp. 4–5) NEMA commented that copper losses can be minimized by increasing the cross section of the conductor, but increasing the wire gauge can result in larger, more costly magnetics. (NEMA, No. 12 at p. 6) Philips stated that optimized-gauge copper or increasing the conductor cross section may also increase the size of the ballast and increase manufacturing costs. (Philips, No. 8 at p. 14)

Implementing certain technology options to increase ballast efficiency may increase the size of the ballast. However, as noted in manufacturer comments, these technology options are likely already being used in certain commercially available products; therefore, DOE believes it is possible to utilize them while maintaining the size of the ballast so it would not impact the application in which it is used.

Philips noted that the use of multiple smaller coils is a good approach that has been in use for a long time and is optimized at this point; and while manufacturers could use smaller multiple coils, it would increase the complexity of the process, possibly making the coil wire easier to break. (Philips, No. 8 at p. 14)

Because DOE has observed ballasts at multiple efficiencies, manufacturers are likely utilizing different levels of technology options under consideration including the number of small coils used. Therefore, DOE continues to consider the use of multiple smaller coils as a design option.

Regarding shape-optimized wiring, Philips stated that while this technique can reduce proximity effect losses in industries such as motors, it is more complex and expensive for ballast manufacturers. Philips added that if it used a special process to make an EF25 [18] coil to reduce the proximity effect losses, it will increase efficiency by 0.1 percent. (Philips, No. 8 at p. 14)

In identifying design options, DOE does not consider costs, which are analyzed in separate analyses. DOE identifies technology options that will improve efficiency. However, improvement in efficiency is not a criteria used to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking. 10 CFR part 430, subpart C, appendix A, 4(a)(4) Therefore, DOE continues to consider shape-optimized wiring as a design option.

a. Screened-Out Technologies

For this analysis, DOE did not screen out any technology options identified.

b. Remaining Technologies

After reviewing each technology, DOE tentatively concludes that all of the identified technologies listed in section IV.A.3 pass all four screening criteria to be examined further as design options in this analysis. In summary, DOE did not screen out the following technology options and considers them as design options in the engineering analysis:

(1) Electronic Ballasts
(2) Improved Components
  (a) Use litz wire to reduce winding losses.
  (b) Use wire with multiple smaller coils instead of one larger coil to increase the number of turns of wire.
  (c) Use optimized-gauge copper or increase the conductor cross section

[18] An EF25 coil is a coil for an E-shaped ferrite core that is 25 mm high.

to reduce winding losses.
(d) Use shape-optimized winding to reduce the proximity effect losses.
(e) Use diodes with lower losses.
(f) Use capacitors with a lower effective series resistance.
(g) Use transistors with low drain-to-source resistance.
(h) Use low-loss ferrite to create the core of the inductor.
(3) Improved Circuit Design
(a) Remove filament heating after the lamp has started.
(b) Substitute discrete components with an integrated circuit.

DOE determined that these technology options are technologically feasible because they are being used or have previously been used in commercially available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety). For additional details, see chapter 4 of the NOPD TSD.

5. Product Classes

In general, when evaluating and establishing energy conservation standards, DOE divides the covered product into classes by (1) the type of energy used, (2) the capacity of the product, or (3) any other performance-related feature that affects energy efficiency and justifies different standard levels, considering factors such as consumer utility. (42 U.S.C. 6295(q))

DOE received some general comments regarding product classes. ULT and NEMA commented that current product class definitions should not be changed. (ULT, No. 6 at p. 4; NEMA, No. 12 at p. 5) Giving the example of a dimming ballast that can adjust the cathode power for a specific lamp based on the lamp's filament impedance, Philips commented that DOE should ensure that within the dimming product class, dimming ballasts with added features not be eliminated because they consume more energy than a standard dimming ballast. (Philips, Public Meeting Transcript, No. 5 at p. 61)

In this analysis, DOE reviewed FLB types to identify those with a capacity or other performance-related feature which other FLBs do not have, and considered whether such feature would justify a higher or lower standard compared to all other ballast types. In the following sections, DOE discusses the resulting product classes DOE considered for analysis and responds to comments on specific product class setting factors.

a. Existing Product Classes

In the Framework document, DOE considered maintaining the product classes for ballasts currently subject to standards. The product classes are currently divided based on starting method, lumen package, sign ballasts, and residential versus commercial application.

Both rapid start (RS) and PS ballasts use cathode power; however, PS ballasts limit the voltage across the lamp to prevent glow discharge during initial cathode heating resulting in an increase in lifetime during on/off cycling, and the cathode heat can be removed or reduced after the lamp is in full conduction. Therefore, DOE considers PS ballasts to offer a performance-related feature that justifies a different efficiency level compared to instant start (IS) ballasts. Hence, DOE maintains a separate product class for ballasts with the PS starting method in this analysis. See chapter 3 of the NOPD TSD for further details.

To obtain a higher lumen package (*i.e.,* amount of light from a lamp-and-ballast system), certain lamps are designed to operate with ballasts that run the lamps at high currents. Unlike ballasts generally, ballasts designed to operate HO lamps are typically used in high ceiling or outdoor applications. Ballasts operating HO lamps operate at higher total lamp arc powers compared to standard output (SO) lamps. BLE generally increases with total lamp arc power. However, DOE found that even though 8-foot HO ballasts have higher lamp arc powers, they generally have lower BLEs when compared to 8-foot single pin (SP) slimline ballasts. This may be because this ballast type has a different topology, or circuit design, than other ballast types (*e.g.,* 4-foot MBP and 8-foot SP slimline ballasts). Because the lumen package provides a feature that other ballasts do not and that feature justifies a different efficiency requirement compared to other ballasts, DOE maintains a separate product class for ballasts that operate 8-foot HO lamps. See chapter 3 of the NOPD TSD for further details.

Ballasts that are designed for use in outdoor signs offer performance-related features that other ballasts generally do not. To operate in outdoor environments and to be able to handle numerous lamp combinations, sign ballasts contain more robust components compared to regular 8-foot HO ballasts in the commercial sector. Thus, sign ballasts are inherently less efficient. Therefore, DOE maintains a separate product class for sign ballasts that operate 8-foot HO lamps. See chapter 3 of the NOPD TSD for further details.

Finally, DOE noted in the Framework document that it planned to maintain separate product classes for residential and commercial ballasts. DOE received several comments on this consideration. ASAP encouraged DOE to consider the rationale for a product class for residential ballasts. (ASAP, Public Meeting Transcript, No. 5 at pp. 50–51) NEEA agreed asserting that commercial ballasts work just as well in a house and have no obvious impact on anything in the house. (NEEA, Public Meeting Transcript, No. 5 at pp. 51–52) ASAP and CA IOUs recommended DOE revisit its analysis of residential ballasts to account for changes in the market, such as cost of higher quality components, trends in ballast efficiency, or other factors that may have changed since standards from the 2011 FL Ballast Rule took effect. (CA IOUs, No. 10 at p. 9; ASAP, No. 7 at pp. 4–5; ASAP, Public Meeting Transcript, No. 5 at p. 50–51)

Philips noted that residential ballasts are subject to more stringent FCC EMI requirements, and some customers may have sensitive equipment that requires extra protection. Further, Philips stated that even if residential customers were satisfied with commercial ballasts, because of the FCC requirements, manufacturers must produce separate ballasts that include additional EMI filtering for the residential market. (Philips, Public Meeting Transcript, No. 5 at p. 52) Lutron agreed with Philips comments. (Lutron, Public Meeting Transcript, No. 5 at p. 52) Philips added that whereas incremental design improvements leading to additional energy savings with efficiency gains of 1 to 2 percent are theoretically possible, they will result in a negative impact on ballast compliance with FCC EMI requirements as specified in 47 CFR part 18. (Philips, No. 8 at pp. 13–14)

CA IOUs referred to a comment made in the 2011 FL Ballast Rule by Acuity Brands Lighting, Inc. (Acuity) stating that a residential ballast that achieves the same efficiency as the most efficient commercial products would be 50 percent more expensive. CA IOUs stated that this indicated it is technically feasible to improve the efficiency of residential ballasts, though it may be more expensive. (CA IOUs, No. 10 at p. 9) Further, ASAP and CA IOUs stated that the increasing affordability and confidence in LED technology will provide consumers with more cost-effective, efficient technology options while regulations from EISA will limit the availability of less energy-efficient options. Therefore, the potential risk of residential fluorescent lighting users

''backsliding'' to less efficient lighting technologies due to the possibly higher cost of energy efficient residential fluorescent lamp ballasts has been significantly reduced. (CA IOUs, No. 10 at p. 9; ASAP, No. 7 at pp. 4–5; ASAP, Public Meeting Transcript, No. 5 at pp. 50–51)

Further, ASAP and CA IOUs stated that compared to commercial ballasts, more stringent EMI filter requirements for residential ballasts may lower efficiency, but the less stringent power factor requirements can increase efficiency by not requiring more robust power factor control devices. CA IOUs and ASAP suggested that DOE analyze how these two factors impact achievable efficiency through additional testing and/or modeling, as necessary, and develop an adjustment factor that can be applied to the current standard for commercial ballasts to define an appropriate standard level for residential ballasts. Further, CA IOUs and ASAP suggested that DOE not limit itself to available commercial products and model achievable efficiency levels for residential ballasts based on the same set of technology options available to commercial ballasts. (CA IOUs, No. 10 at p. 9; ASAP, No. 7 at pp. 4–5; ASAP, Public Meeting Transcript, No. 5 at pp. 50–51)

In the 2011 FL Ballast Rule, DOE determined that the FCC requires residential ballasts to have more stringent or maximum allowable EMI and per American National Standards Institute (ANSI) standards [19] have a lower minimum power factor than commercial ballasts. Based on these differing requirements, DOE concluded that residential ballasts serve distinct market sectors and applications. 76 FR at 70564. In this analysis, DOE finds that these requirements continue to exist. Further, DOE's review of ballast efficiencies showed that residential ballasts are unable to achieve similar maximum efficiencies as commercial ballasts. Therefore, because residential ballasts serve distinct market sectors and applications, and are unable to meet commercial efficiency levels, DOE continues to consider separate product classes for residential ballasts.

DOE did not model efficiencies for residential ballasts. Based on its review of patents and product offerings, DOE did not find more efficient prototypes or commercially available products with design requirements similar to residential ballasts that could serve as a basis for modeling higher efficiencies. Further, without a physical model to test, it would be difficult to confirm that design changes made to improve ballast efficiency would continue to allow the ballast to meet FCC's EMI filter requirements. See chapter 5 of the NOPD TSD for the assessment of efficiency levels of residential ballast product classes.

NEMA commented that as this rulemaking proceeds and other regulatory impacts are discussed, NEMA and Electrofed Canada have been in discussions with FCC and Industry Canada regarding revisions to emissions requirements for lighting products in North America. They expect the forthcoming binational negotiations to determine the appropriate emissions limits may take a few years. NEMA stated it will keep DOE informed of the progress of these negotiations as this FLB rulemaking progresses. NEMA cautioned that if emissions requirements become more stringent across the board, added functionality and filtering could impact price and efficiency. (NEMA, Public Meeting Transcript, No. 5 at pp. 52–53)

DOE appreciates information on discussions regarding emissions requirements for lighting products and looks forward to learning of their progress.

b. Additional Product Classes

In the Framework document, DOE considered product classes for dimming fluorescent lamp ballasts based on the following four factors: (1) Residential versus commercial, (2) lamp type operated by the ballast, (3) continuous versus step dimming, and (4) dimming communication protocol.

Lutron and NEMA commented that proprietary control systems can save the same or more energy than standardized control interfaces such as DALI, and DOE should broadly define a product class to be ''digitally-controlled dimming ballasts, such as DALI'' and should only include ballasts that operate 4-foot T5 and T8 lamps. Lutron and NEMA added that digital dimming ballasts have energy-saving advantages such as the ability to react to demand response events and report power usage as well as to allow for independent occupancy-sensed and daylighting zones. They stated that these features require off-state power consumption for which digital ballasts should be given an allowance. (Lutron, No. 9 at p. 2; NEMA, No. 12 at pp. 5–6)

CA IOUs noted that CEC proposed one single product class for all dimming ballasts including T5 and T8 dimming ballasts, irrespective of number of lamps. However, CA IOUs shared initial test results suggesting dimming ballasts operating 2L T5 may be able to achieve higher efficiencies than those operating 2L T8 ballasts. CA IOUs recommended that DOE test a full range of dimming ballasts that operate T5 lamps to determine whether a separate product class is necessary to set more appropriate standard levels for these ballasts. (CA IOUs, No. 10 at pp. 4–5)

Unlike other ballasts, dimming ballasts allow consumers to control the level of light output. Further, DOE's research and feedback from manufacturer interviews indicate that due to the added circuitry, dimming ballasts are less efficient than standard ballasts. Therefore, for this analysis, DOE maintains a separate product class for dimming ballasts.

DOE recently published a request for information (RFI) on the emerging smart technology appliance and equipment market. 83 FR 46886 (Sept. 17, 2018). In that RFI, DOE sought information to better understand market trends and issues in the emerging market for appliances and commercial equipment that incorporate smart technology. DOE's intent in issuing the RFI was to ensure that DOE did not inadvertently impede such innovation in fulfilling its statutory obligations in setting efficiency standards for covered products and equipment. In this NOPD, DOE seeks comment on the same issues presented in the RFI as they may be applicable to fluorescent lamp ballasts.

DOE analyzed one product class for all types of dimming FLBs regardless of use in sector, lamp type, or communication protocol used. DOE did not identify any dimming ballasts designed and marketed only for residential use. While some communication protocols used with dimming ballasts provide added features, DOE's evaluation of dimming ballast efficiencies indicated that these features did not affect efficiency, and analysis of separate product classes based on communication protocols was not necessary. Hence, for this analysis DOE does not consider a separate product class for ballasts with digital communication protocols.

Additionally, DOE's evaluation of the dimming ballast market and feedback from manufacturer interviews did not indicate that consideration of a separate product class (or classes) based on the lamp type operated by a dimming ballast was justified. DOE's analysis showed that with the exception of digital ballasts, the efficiency of dimming ballasts operating T8 lamps is

[19] ANSI C82.77–2002 requires residential ballasts to have a minimum power factor of 0.5 and commercial ballasts to have a minimum power factor of 0.9. *American National Standard for Lighting Equipment—Harmonic Emissions Limits—Related Power Quality Requirements for Lighting Equipment* (Approved January 17, 2002).

comparable to those operating T5 lamps. Regarding digital ballasts, product offerings showed that digital ballasts that operate T5 lamps are slightly more efficient than digital ballasts that operate T8 lamps. Manufacturer catalogs also indicated that there are more product offerings for digital ballasts that operate T5 lamps than T8 lamps. DOE identified digital ballasts that operate T8 MBP lamps as lower volume products, and tentatively determined that the lower efficiencies are not due to the dimming function but instead because these ballasts are likely not utilizing the most advanced technologies and the efficiencies of these ballasts can be improved. As such, DOE tentatively determined that a separate product class for digital ballasts that operate T8 MBP lamps would not be justified.

As noted in section IV.A.1.c, DOE includes in the scope of this analysis standards for low-current PS ballasts. In the Framework document, DOE considered a separate product class for such ballasts, based on factors such as lamp type operated by the ballast, starting method, and ballast input voltage. DOE's review of efficiency data indicates that low-current PS ballasts have a lower efficiency than comparable PS ballasts. These ballasts typically have ballast factors equal to or below 0.7 allowing them to offer low light outputs. However, DOE finds that the ability to provide low light outputs can be achieved by using ballasts with higher ballast factors paired with reduced-wattage lamps or by decreasing the number of lamps in the system. Therefore, because the ability to provide low light output is not limited to low-current PS ballasts, DOE did not consider a separate product class for these ballasts for the purpose of this analysis.

c. Summary

In summary, DOE assessed the product classes shown in the following list in its analysis. In describing product classes, DOE includes the types of lamps each class of ballast operates. In this analysis, DOE updated the list of lamp types based on a review of the latest product offerings on the market and added 4-foot T5 SO and 4-foot T5 HO lamp types for the IS/RS (not classified as residential), IS/RS residential, and PS residential product classes. See chapter 3 of the NOPD TSD for further discussion.

(1) IS and RS ballasts (not classified as residential) that operate
  (a) 4-foot MBP lamps
  (b) 2-foot U-shaped lamps
  (c) 4-foot T5 SO lamps
  (d) 4-foot T5 HO lamps
  (e) 8-foot SP slimline lamps
(2) PS ballasts (not classified as residential) that operate
  (a) 4-foot MBP lamps
  (b) 2-foot U-shaped lamps
  (c) 4-foot T5 SO lamps
  (d) 4-foot T5 HO lamps
(3) IS and RS ballasts (not classified as sign ballasts) that operate
  (a) 8-foot HO lamps
(4) PS ballasts (not classified as sign ballasts) that operate
  (a) 8-foot HO lamps
(5) Sign ballasts that operate
  (a) 8-foot HO lamps
(6) IS and RS residential ballasts that operate
  (a) 4-foot MBP lamps
  (b) 2-foot U-shaped lamps
  (c) 4-foot T5 SO lamps
  (d) 4-foot T5 HO lamps
  (e) 8-foot SP slimline lamps
(7) PS residential ballasts that operate
  (a) 4-foot MBP lamps
  (b) 2-foot U-shaped lamps
  (c) 4-foot T5 SO lamps
  (d) 4-foot T5 HO lamps
(8) Dimming ballasts that operate
  (a) 4-foot MBP lamps
  (b) 2-foot U-shaped lamps
  (c) 4-foot T5 SO lamps
  (d) 4-foot T5 HO lamps

B. Engineering Analysis

In the engineering analysis, DOE selects representative product classes to analyze, selects baseline ballasts within those representative product classes, and identifies more-efficient substitutes for the baseline ballasts. DOE uses these more-efficient ballasts to develop efficiency levels.

For this proposed determination, DOE selected more efficient substitutes in the engineering analysis and determined the consumer prices of those substitutes in the product price determination. DOE estimated the consumer price of ballasts directly because reverse-engineering ballasts is impractical due to the use of potting, a black pitch added to the ballast enclosure to reduce vibration damage and act as a heat sink for the circuit board. Potting does not allow for the visual observation and identification of individual components of the ballast making it infeasible to apply a reverse-engineering approach. By combining the results of the engineering analysis and the product price determination, DOE derived typical inputs for use in the LCC analysis and NIA. Section IV.C discusses the product price determination (see chapter 6 of the NOPD TSD for further detail).

The methodology for the engineering analysis consists of the following steps: (1) Selecting representative product classes, (2) selecting baseline lamps, (3) identifying more efficient substitutes, (4) developing efficiency levels by directly analyzing representative product classes, and (5) scaling efficiency levels to non-representative product classes. The details of the engineering analysis are discussed in chapter 5 of the NOPD TSD.

1. Significant Data Sources

DOE received several comments on data used in the engineering analysis. To ensure DOE analyzes currently available compliant products, Philips advised DOE to only use ballasts in DOE's CCMS database to analyze the performance of fixed output ballasts. (Philips, No. 8 at p. 30) Regarding dimming ballasts, low-current PS ballasts, or 480 V ballasts, ULT and NEMA commented that these products have not been evaluated in terms of efficiency or test method changes, and such assessments are necessary to ensure a meaningful analysis. (ULT, No. 6 at p. 5; NEMA, No. 12 at p. 7)

CA IOUs suggested DOE take into account the analysis they had conducted in support of developing CEC's proposed standards for fluorescent lamp ballasts. CA IOUs stated that for this analysis they tested 34 T8 dimming ballasts selected from 180 T8 dimming ballasts listed by the CEE as qualifying commercial lighting products and additionally tested seven T5 dimming ballasts. CA IOUs noted that this testing, while not comprehensive of the full market, was a good starting point. (CA IOUs, No. 10 at p. 8) Further, CA IOUs added that it is likely that their analysis of efficiencies of low-current PS dimming ballasts will also be useful in understanding the cathode heating needs and determining appropriate standard levels for fixed-output, low-current ballasts. (CA IOUs, No. 10 at p. 10)

For this analysis, DOE developed a database of ballasts based on manufacturer catalogs and DOE's CCMS public database.[20] For ballasts currently subject to energy conservation standards, DOE used BLE values in the CCMS database. For ballasts not subject to standards, BLE values are not present in the CCMS database, and DOE determined BLE values using catalog data. This method was used for low-current PS ballasts and dimming ballasts designed and marketed to operate exclusively lamp types other than one F34T12, two F34T12, two

[20] Compliance data are publicly available on DOE's Compliance Certification Database available at *http://www.regulations.doe.gov/certification-data/*.

F96T12/ES, or two F96T12HO/ES lamps.

DOE used the test data for dimming ballasts provided by CA IOUs to understand the general performance of these types of ballasts. However, for the engineering analysis DOE relied on catalog data as it allowed for an analysis of all dimming products available on the market. Further, because DOE considered only standards based on a BLE value at full light output, it did not analyze BLEs at lower light outputs to develop ELs.

Additionally, DOE paired baseline and more-efficient ballasts with full-wattage and/or reduced-wattage lamps, where appropriate, to reflect the most common configurations of lamp-and-ballast systems. DOE reviewed the lamp market and identified performance characteristics common for the chosen lamps and determined the system initial and mean lumen outputs. The tables provided in the sections that follow specify only the characteristics of the representative unit with a full wattage-lamp. The complete list of pairings of lamps with selected representative units is available in chapter 5 of the NOPD TSD.

2. Representative Product Classes

In the case where a covered product has multiple product classes, DOE identifies and selects certain product classes as ''representative'' and concentrates its analytical effort on those classes. For fluorescent lamp ballasts, DOE chose product classes as representative primarily because of their high market volumes. Within certain representative product classes, DOE also selected multiple representative ballast types to account for multiple high volume units within the same product class.

In response to the Framework document, Philips commented that most dimming ballasts use a 0–10 V communication protocol and nearly all are in the commercial sector especially if it includes retail space but noted that they do not have full visibility into application-specific dimming habits. (Philips, No. 8 at p. 33)

In selecting representative product classes, DOE took into account comments from stakeholders and also reviewed product offerings and feedback from manufacturer interviews regarding market shares of ballast types. Based on its assessment, DOE analyzed as representative 6 product classes and 13 ballast types as shown (in grey shading) in Table IV.2. This includes analyzing ballasts using a 0–10 V communication protocol as representative in the dimming product class.

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Table IV.2 Representative Product Classes and Ballast Types

Product Class Description*	Representative Ballast Type(s)
IS/RS Commercial IS/RS Commercial that operate: • 4-foot MBP • 2-foot U-shaped • 4-foot T5 SO • 4-foot T5 HO • 8-foot SP slimline lamps	2L 4-foot MBP
	4L 4-foot MBP
	2L 8-foot SP slimline
PS Commercial PS Commercial that operate: • 4-foot MBP • 2-foot U-shaped • 4-foot T5 SO • 4-foot T5 HO lamps	2L 4-foot MBP
	4L 4-foot MBP
	2L 4-foot MiniBP SO
	2L 4-foot MiniBP HO
IS/RS 8-foot HO IS/RS ballasts that operate 8-foot HO lamps	2L 8-foot recessed double contact (RDC) HO
PS 8-foot HO PS ballasts that operate 8-foot HO lamps	N/A
Sign Sign ballasts that operate 8-foot HO lamps	4L 8-foot RDC HO
IS/RS Residential IS/RS Residential ballasts that operate: • 4-foot MBP • 2-foot U-shaped • 4-foot T5 SO • 4-foot T5 HO • 8-foot SP slimline lamps	2L 4-foot MBP
PS Residential PS Residential ballasts that operate: • 4-foot MBP • 4-foot T5 SO • 4-foot T5 HO • 2-foot U-shaped	N/A
Dimming Dimming ballasts that operate: • 4-foot MBP • 4-foot T5 SO • 4-foot T5 HO • 2-foot U-shaped	2L 4-foot MBP 0-10V
	2L 4-foot MiniBP SO 0-10 V
	2L 4-foot MiniBP HO 0-10 V

*Grey shading indicates a representative product class.

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3. Baseline Ballasts

For each representative product class, DOE selected a baseline ballast as a reference point against which to measure changes resulting from energy conservation standards. Typically the baseline ballast is the most common, least efficient ballast that meets existing energy conservation standards. In this analysis, DOE selected as baselines the least efficient ballast meeting standards that operated the most common lamp type (*i.e.,* wattage and diameter) and where possible, has the most common ballast factor, input voltage, and operating voltage type [21] for the product class. DOE used the BLE values from the CCMS database to identify baseline ballasts for all product classes except dimming. Because most dimming ballasts are not currently subject to standards and therefore do not have CCMS data, DOE determined BLE values by using catalog input power and associated total lamp arc power based on the catalog ballast factor of the ballast.

In summary, DOE directly analyzed the baseline ballasts shown in Table

[21] Operating voltage type denotes whether the ballast can operate multiple voltages and is considered universal or can only operate one voltage and is considered dedicated.

IV.3. See chapter 5 of the NOPD TSD for more detail.

TABLE—IV.3 BASELINE BALLASTS

Product class	Ballast type	Lamp type	Starting method	Input voltage/ operating voltage * (V)	Power factor	Ballast factor	Input power (W)	BLE
IS/RS Commercial	2L 4-foot MBP	32 W T8	IS	277, Universal	0.97	0.89	57.6	0.903
	4L 4-foot MBP	32 W T8	IS	277, Universal	0.98	0.88	112.2	0.916
	2L 8-foot SP slimline	59 W T8	IS	277, Universal	0.98	0.88	109.2	0.920
PS Commercial	2L 4-foot MBP	32 W T8	PS	277, Universal	0.90	0.88	57.1	0.900
	4L 4-foot MBP	32 W T8	PS	277, Universal	0.90	0.87	110.5	0.920
	2L 4-foot MiniBP SO	28 W T5	PS	277, Universal	0.98	1.00	62.4	0.891
	2L 4-foot MiniBP HO	54 W T5	PS	277, Universal	0.98	0.99	116.8	0.912
IS/RS 8-foot HO	2L 8-foot RDC HO	110 W T12	RS	277, Universal	0.99	0.89	197.7	0.900
Sign	4L 8-foot RDC HO	110 W T12	RS	120, Dedicated	0.90	** 0.61	271.6	0.898
IS/RS Residential	2L 4-foot MBP	32 W T8	IS	120, Dedicated	0.50	0.88	58.9	0.872
Dimming	2L 4-foot MBP 0–10V	32 W T8	PS	277, Universal	0.98	0.88	59.0	0.871
	2L 4-foot MiniBP SO 0–10V	28 W T5	PS	277, Universal	0.98	1.00	64.0	0.869
	2L 4-foot MiniBP HO 0–10V	54 W T5	PS	277, Universal	0.98	1.00	118.0	0.912

* Universal indicates that the ballast can operate multiple voltages (*i.e.,* 120 V or 277 V); dedicated indicates it can only operate the voltage specified.
** DOE found limited information on ballast factors of ballasts in the Sign product class. Based on this information, DOE used the most common ballast factor found in catalogs for the product class for representative units that did not specify ballast factor.

4. More-Efficient Substitutes

DOE selected more-efficient ballasts as replacements for each of the baseline ballasts by considering technologies not eliminated in the screening analysis. DOE considered these technologies in the engineering analysis, either by modeling potential efficiency improvements due to the design options or by analyzing commercially available ballasts in which the design options are incorporated.

As fluorescent lamp ballasts are designed to operate fluorescent lamps, DOE considered properties of the entire lamp-and-ballast system in the engineering analysis. Fluorescent lamp ballasts are capable of operating several different configurations and wattages of lamps, so DOE chose the most common fluorescent lamp used with each ballast type for analysis. Further, DOE selected a more-efficient fluorescent lamp ballast with the same or similar ballast factor as the baseline ballast, so that light output would be maintained without needing to change the spacing of the fixture. Specifically, DOE ensured that potential substitutes maintained the system light output within 10 percent of the baseline lamp-and-ballast system light output.

Finally, DOE selected more-efficient substitutes that showed an improvement in BLE and a reduction in input power. As with the baseline ballasts, DOE used the BLE values from the CCMS database for all product classes except those dimming classes which are not currently subject to standards and therefore do not have CCMS data. For dimming ballasts, DOE determined BLE values by using catalog input power and associated total lamp arc power based on the catalog ballast factor of the ballast.

ULT and NEMA commented that the data manufacturers submit to DOE's CCMS database should be reproducible and, therefore, could be used in modeling. (ULT, No. 6 at p. 6; NEMA, No. 12 at p. 8) Regarding modeling potential system efficiency, NEMA and ULT encouraged DOE to take into account factors such as form factor, ability to reproduce in manufacturing, and tolerance of all incorporated parts, and then conduct physical tests of any models and design projections not available in the market or dismiss them from analysis. (NEMA, No. 12 at p. 7; ULT, No. 6 at p. 6) ULT also asserted that the HID rulemaking had modeled products at efficiency levels that could not be manufactured. (ULT, Public Meeting Transcript, No. 5 at p. 70)

When evaluating more-efficient substitutes, DOE can model potential efficiency improvements based on design options identified in the screening analysis. As noted in section IV.A.4, the technology options identified as design options must be technologically feasible; practicable to manufacture, install, and service; have no adverse impacts on product utility or product availability; and have no adverse impacts on health or safety.

For the IS/RS 2L 8-foot SP slimline representative ballast type, DOE modeled a representative unit at EL 3 (EL values are provided in Table IV.4). As noted, in most cases BLE increases with increasing total lamp arc power for fluorescent lamp ballasts. DOE found that 4L 4-foot MBP ballasts, which operate similar total lamp arc powers as 2L 8-foot SP slimline ballasts, are able to meet EL 3. Further, DOE found that ballasts operating 2L 8-foot T12 SP slimline lamps also meet EL 3. Therefore, DOE determined that design options in commercially available ballasts meeting EL 3 could be applied to a ballast operating two 8-foot T8 SP slimline lamps to achieve a higher efficiency. DOE assumed the modeled ballast would have characteristics common to the product class such as universal operating voltage, normal ballast factor, and 0.98 power factor (PF). Using a common ballast factor for the product class, DOE determined the lamp arc power and BLE for a ballast operating two 8-foot T8 SP slimline lamps that would meet EL 3. The performance characteristics of the modeled 2L 8-foot SP slimline ballast are shown in Table IV.4.

ULT and NEMA stated that while reduced-wattage lamp-and-ballast systems are common and the first step to offering higher energy savings, the ballasts in these systems have added features that make them less efficient. ULT noted that ballasts designed to operate reduced-wattage lamps require higher open circuit voltages and flicker control. (ULT, No. 6 at p. 7; ULT, Public Meeting Transcript, No. 5 at pp. 82–83; NEMA, No. 12 at p. 9)

As noted previously, DOE chose baseline and more-efficient substitute representative units that operate the most common lamps, which in many cases are full-wattage lamps. DOE's review of products in the market indicates that highly efficient ballasts operating full-wattage lamps can also operate reduced-wattage lamps. DOE notes sign ballasts as an exception, which predominantly operate full-wattage 8-foot T12 recessed double contact (RDC) HO lamps and have limited reduced-wattage options. Therefore, the analysis accounts for any

potential impacts on efficiency due to added features required for operating reduced-wattage lamps.

ASAP recommended that reference lamps rather than ballast manufacturer's specified lamps be used in DOE's analysis of total system energy consumption of the lamp-and-ballast system. (ASAP, Public Meeting Transcript, No. 5 at pp. 71–72)

DOE paired baseline and more-efficient ballasts with full-wattage and/or reduced-wattage lamps, where appropriate, to reflect the most common configurations of lamp-and-ballast systems. DOE reviewed the lamp market and identified performance characteristics common for the chosen lamps and determined the system initial and mean lumen outputs. The complete list of pairings of lamps with selected representative units is available in chapter 5 of the NOPD TSD.

5. Efficiency Levels

After identifying more-efficient substitutes for each of the baseline ballasts, DOE developed ELs based on the consideration of several factors, including: (1) The design options associated with the specific ballasts being studied, (2) the ability of ballasts across wattages to comply with the standard level of a given product class, and (3) the max-tech level.

In this analysis, DOE used the same equation-based approach used in the 2011 FL Ballast Rule. DOE determined that a power law equation best modeled the observed trend between total lamp arc power and average BLE. Specifically, DOE used the following equation that relates the total lamp arc power operated by a ballast to BLE to develop ELs:

$$BLE = \frac{A}{1 + B * power^{-C}}$$

where power = average total lamp arc power and A, B, and C are constants that vary by product class.

DOE conducted extensive testing in the 2011 FL Ballast Rule to develop the above equation. Based on this testing, DOE determined the exponent C, which relates power to ballast losses, to be 0.25 for the IS starting method and 0.37 for the PS starting method. Further, DOE applied an adjustment factor A to reflect BLE values representative of testing at the average test lab. DOE developed coefficient B based on the tested BLE values for each product class and adjusted it to reflect different levels of efficiencies based on representative characteristics of the product class. Based on DOE's analysis of data in this proposed determination, DOE determined that the methodology used in the 2011 FL Ballast Rule to determine exponent C and adjustment factor A remain valid.

DOE received some general comments on ballast efficiency levels. ASAP stated that the shift to solid-state lighting will come with higher costs of drivers and light sources, and fluorescent lamp ballasts should not become the lowest common denominator in terms of price and performance. (ASAP, Public Meeting Transcript, No. 5 at pp. 31–32) ULT and NEMA commented that because manufacturing was close to the implementation date of the last rulemaking, all products on the market manufactured after November 2014 will be at the minimum or slightly higher than the minimum BLE standard. Therefore, these products reflect both the minimum and maximum technology efficiency levels. (ULT, No. 6 at p. 5; NEMA, No. 12 at p. 7) Philips agreed that ballast technology is already close to its maximum potential. (Philips, No. 8 at p. 15)

DOE identified several commercially available ballasts performing at efficiency levels higher than existing standards. The efficiencies determined from manufacturer catalogs and certification data indicate several efficiency levels higher than the existing standard. Thus, manufacturers appear to be utilizing more advanced technologies than required to just meet the standard level.

DOE based initial ELs on the more-efficient representative units selected for each product class. For product classes with multiple representative ballast types, DOE established ELs after considering the representative units of all representative ballast types in the product class.

To establish final minimum efficiency requirements for each EL, DOE evaluated whether any adjustments were necessary to the initial ELs to ensure ballasts were available across a range of lamp arc powers and ballast factors representative of each product class. For example, DOE found ballasts operating certain lamp arc powers or ballasts factors do not meet the highest efficiency level. DOE reviewed these products and found they are low volume and are likely not using the most recent advanced technologies. Some of them operated a total lamp arc power that was between the total lamp arc powers operated by ballasts that did comply with the highest standard level analyzed. Based on this review, these FLBs appear to not have been fully optimized to achieve the highest efficiency levels, and can be improved. Based on its observations and analysis, DOE tentatively determined that no additional adjustments to the initial ELs were necessary.

The ELs and characteristics of the representative units are summarized in Table IV.4 through Table IV.9. Grey shading indicates the modeled unit for the two-lamp 8-foot SP slimline representative ballast type operating a T8 lamp. See chapter 5 of the NOPD TSD for more detail.

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Table IV.4 IS/RS Commercial Representative Units

Product Class	EL	Ballast Type	Lamp Type	Starting Method	Input Voltage/ Operating Voltage* *V*	Power Factor	Ballast Factor	Input Power *W*	BLE
IS/RS Commercial	EL 1	2L 4-foot MBP	32 W T8	IS	277, Universal	0.98	0.88	56.3	0.913
		4L 4-foot MBP	32 W T8	IS	277, Universal	0.98	0.88	110.9	0.927
		2L 8-foot SP slimline	59 W T8	IS	277, Universal	0.98	0.88	108.5	0.926
	EL 2	2L 4-foot MBP	32 W T8	IS	277, Universal	0.98	0.88	55.7	0.923
		4L 4-foot MBP	32 W T8	IS	277, Universal	0.98	0.88	109.7	0.937
		2L 8-foot SP slimline	59 W T8	IS	277, Universal	0.98	0.87	106.4	0.934
	EL 3	2L 4-foot MBP	32 W T8	IS	277, Universal	0.99	0.89	55.3	0.940
		4L 4-foot MBP	32 W T8	IS	277, Universal	0.98	0.87	107.0	0.950
		2L 8-foot SP slimline**	59 W T8	IS	277, Universal	0.98	0.87	105.1	0.945

* Universal indicates that the ballast can operate multiple voltages (*i.e.*, 120 V or 277 V).
** Grey shading indicates a modeled product.

As shown in Table IV.4 for the IS/RS commercial representative product class, three ELs are analyzed. The baseline, presented in Table IV.3, represents a basic ballast with an efficiency near the existing standard level. EL 1 represents an improved ballast with more-efficient components (*e.g.,* transformers, diodes, capacitors, transistors) that minimize losses and circuit design (*e.g.,* integrated circuitry). EL 2 represents an advanced ballast with improved components and improved circuit design. EL 3 is the maximum technologically feasible level and represents a ballast with the most efficient combination of improved components and circuit design.

TABLE IV.5—PS COMMERCIAL REPRESENTATIVE UNITS

Product class	EL	Ballast type	Lamp type	Starting method	Input voltage/ operating voltage* (V)	Power factor	Ballast factor	Input power (W)	BLE
PS Commercial	EL 1	2L 4-foot MBP	32 W T8	PS	277, Universal	0.97	0.88	56.3	0.913
		4L 4-foot MBP	32 W T8	PS	277, Universal	0.98	0.87	109.5	0.928
		2L 4-foot MiniBP SO	28 W T5	PS	277, Universal	0.98	1.00	61.4	0.905
		2L 4-foot MiniBP HO	54 W T5	PS	277, Universal	0.97	1.00	115.9	0.928
	EL 2	2L 4-foot MBP	32 W T8	PS	277, Universal	0.98	0.88	53.9	0.953
		4L 4-foot MBP	32 W T8	PS	277, Universal	0.99	0.87	107.6	0.944
		2L 4-foot MiniBP SO	28 W T5	PS	277, Universal	0.98	1.00	59.8	0.929
		2L 4-foot MiniBP HO	54 W T5	PS	277, Universal	0.98	1.00	113.6	0.947

* Universal indicates that the ballast can operate multiple voltages (*i.e.,* 120 V or 277 V).

As shown in Table IV.5 for the PS commercial product class, two ELs are analyzed. The baseline, presented in Table IV.3, represents a basic ballast with an efficiency near the existing standard level. EL 1 represents an improved ballast with more-efficient components (*e.g.,* transformers, diodes, capacitors, transistors) that minimize losses and circuit design (*e.g.,* integrated circuitry). EL 2 is the maximum technologically feasible level and represents a ballast with the most efficient combination of improved components and circuit design.

Table IV.6 IS/RS 8-foot HO Representative Units

Product Class	EL	Ballast Type	Lamp Type	Starting Method	Input Voltage/ Operating Voltage* *V*	Power Factor	Ballast Factor	Input Power *W*	BLE
IS/RS 8-foot HO	EL 1	2L 8-foot RDC HO	110 W T12	RS	277, Universal	0.98	0.90	192.7	0.934
	EL 2	2L 8-foot RDC HO**	110 W T12	RS	277, Universal	0.98	0.90	188.0	0.957

* Universal indicates that the ballast can operate multiple voltages (*i.e.*, 120 V or 277 V).
** Grey shading indicates a modeled product.

As shown in Table IV.6 for the IS 8-foot HO commercial product class, two ELs are analyzed. The baseline, presented in Table IV.3, represents a basic ballast with an efficiency near the existing standard level. EL 1 represents an improved ballast with more-efficient components (*e.g.,* transformers, diodes, capacitors, transistors) that minimize losses and circuit design (*e.g.,* use of cathode cutout technology, integrated circuitry). EL 2 is the maximum technologically feasible level and represents a ballast with the most efficient combination of improved components and circuit design.

TABLE IV.7—SIGN REPRESENTATIVE UNITS

Product class	EL	Ballast type	Lamp type	Starting method	Input voltage/ operating voltage * (V)	Power factor	Ballast factor **	Input power (W)	BLE
Sign	EL 1	4L 8-foot RDC HO	110 W T12	IS	120, Dedicated	0.99	0.61	265.1	0.920
	EL 2	4L 8-foot RDC HO	110 W T12	IS	120, Dedicated	0.90	0.61	258.4	0.944

* Dedicated indicates it can only operate the voltage specified.
** DOE found limited information for ballast factor, and therefore used the most common ballast factor found in product class for representative units that did not specify ballast factor.

As shown in Table IV.7 for the sign product class, two ELs are analyzed. The baseline, presented in Table IV.3, represents a basic ballast with an efficiency near the existing standard level. EL 1 represents an improved ballast with more-efficient components (*e.g.,* transformers, diodes, capacitors, transistors) that minimize losses and circuit design (*e.g.,* integrated circuitry). EL 2 is the maximum technologically feasible level and represents a ballast with the most efficient combination of improved components and circuit design.

TABLE IV.8—IS/RS RESIDENTIAL REPRESENTATIVE UNITS

Product class	EL	Ballast type	Lamp type	Starting method	Input voltage/ operating voltage * (V)	Power factor	Ballast factor	Input power (W)	BLE
IS/RS Residential	EL 1	2L 4-foot MBP	32 W T8	IS	120, Dedicated	0.56	0.85	56.2	0.884
	EL 2	2L 4-foot MBP	32 W T8	IS	120, Dedicated	0.56	0.85	55.2	0.899
	EL 3	2L 4-foot MBP	32 W T8	IS	120, Dedicated	0.55	0.83	53.1	0.913

* Dedicated indicates it can only operate the voltage specified.

As shown in Table IV.8 for the IS/RS residential product class, three ELs are analyzed. The baseline, presented in Table IV.3, represents a basic ballast with an efficiency near the existing standard level. EL 1 represents an improved ballast with more-efficient components (*e.g.,* transformers, diodes, capacitors, transistors) that minimize losses and circuit design (*e.g.,* integrated circuitry). EL 2 represents an advanced ballast with improved components and improved circuit design. EL 3 is the maximum technologically feasible level and represents a ballast with the most efficient combination of improved components and circuit design.

CA IOUs stated DOE has the opportunity to capture significant energy savings by raising standards for residential ballasts to levels closer to those of commercial ballasts. (CA IOUs, No. 10 at p. 1) ASAP agreed that DOE should reassess the market and set more appropriate levels for residential ballasts to capture additional energy savings. (ASAP, No. 7 at p. 4)

Based on DOE's review of ballast efficiencies discussed previously, residential ballasts are unable to achieve maximum efficiencies similar to commercial ballasts. DOE identified the more-efficient substitute representative units for residential ballasts and identified the efficiency levels specified in Table IV.8. Based on the methodology and data, DOE finds these efficiency levels to be appropriate for the residential ballast product class.

Table IV.9 Dimming Representative Units

Product Class	EL	Ballast Type	Lamp Type	Starting Method	Input Voltage/ Operating Voltage*	Power Factor	Ballast Factor	Input Power *W*	BLE
Dimming	EL 1	2L 4-foot MBP 0-10V	32 W T8	PS	277, Universal	0.98	0.87	57.0	0.891
		2L 4-foot MiniBP SO 0-10V	28 W T5	PS	277, Universal	0.98	1.00	63.0	0.883
		2L 4-foot MiniBP HO 0-10 V	54 W T5	PS	277, Universal	0.98	1.00	118.0	0.912
	EL 2	2L 4-foot MBP 0-10V**							
		2L 4-foot MiniBP SO 0-10V	28W T5	PS	277, Universal	0.98	1.00	62.0	0.897
		2L 4-foot MiniBP HO 0-10 V**							
	EL 3	2L 4-foot MBP 0-10V	32 W T8	PS	277, Universal	0.99	0.88	56.0	0.918
		2L 4-foot MiniBP SO 0-10V	28 W T5	PS	277, Universal	0.99	1.00	61.0	0.911
		2L 4-foot MiniBP HO 0-10V	54 W T5	PS	277, Universal	0.98	1.00	115.9	0.928

* Universal indicates that the ballast can operate multiple voltages (*i.e.*, 120 V or 277 V).
**Grey shading indicates levels at which products did not exist.

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As shown in Table IV.9 for the dimming product class, three ELs are analyzed. The baseline, presented in Table IV.3, represents a basic ballast with an efficiency near the existing standard level. EL 1 represents an improved ballast with more-efficient components (*e.g.,* transformers, diodes, capacitors, transistors) that minimize losses and circuit design (*e.g.,* use of cathode cutout technology, integrated circuitry). EL 2 represents an advanced ballast with improved components and improved circuit design. EL 3 is the maximum technologically feasible level and represents a ballast with the most efficient combination of improved components and circuit design.

CA IOUs requested DOE review their work in support of developing CEC's standards for dimming ballasts and noted that they have provided numerous associated documents to the docket of this rulemaking including results from testing performance of dimming ballasts from 100 percent full light output down to the minimum dimming level where the lamp is still producing light. (CA IOUs, Public Meeting Transcript, No. 5 at pp. 72–73; CA IOUs, No. 10 at p. 2) CA IOUs stated that while they supported DOE's consideration of dimming ballasts for standards, they recommended that DOE not adopt a less stringent standard than the one proposed by CEC for dimming ballasts. (CA IOUs, No. 10 at p. 2)

However, NEMA stated that DOE should not simply implement the standards proposed by CEC for T8 and T5 dimming ballasts because if those dimming ballasts were tested using DOE's current test method, no dimming ballasts would be available for sale in the United States. (NEMA, Public Meeting Transcript, No. 5 at pp. 9–11) Lutron asserted that the market in California will be driving dimming ballast sales as it is the only state that has building code requirements for dimming ballasts. Therefore, Lutron questioned the need for standards stricter than those already adopted by California for dimming ballasts as no one will manufacture separate products for California and the rest of the country. (Lutron, Public Meeting Transcript, No. 5 at pp. 61–62)

DOE recognizes that certain products evaluated for this NOPD may be subject to State regulation. As noted, DOE is conducting this evaluation of FLB pursuant to the direction in EPCA (see section II.A). Consistent with that statutory direction DOE is evaluating a potential standard for dimming ballasts

based on BLE at full light output rather than based on a weighted metric.

Table IV.10 summarizes the efficiency requirements at each EL for the representative product classes. DOE seeks comment on the ELs under consideration for the representative product classes, including the max tech levels. See section VII.C for a list of issues on which DOE seeks comment.

TABLE IV.10—SUMMARY OF ELS FOR REPRESENTATIVE PRODUCT CLASSES

Representative product class	Efficiency level	BLE = A/(1+B*total lamp arc power∧ − C) where A, B, and C are as follows:		
		A	B	C
IS/RS Commercial	EL 1	0.993	0.24	0.25
	EL 2		0.21	
	EL 3		0.16	
PS Commercial	EL 1	0.993	0.43	0.37
	EL 2		0.31	
IS/RS Residential	EL 1	0.993	0.33	0.25
	EL 2		0.28	
	EL 3		0.24	
IS/RS 8-foot HO	EL 1	0.993	0.24	0.25
	EL 2		0.14	
Sign	EL 1	0.993	0.32	0.25
	EL 2		0.24	
Dimming	EL 1	0.993	0.56	0.37
	EL 2		0.48	
	EL 3		0.40	

6. Scaling to Other Product Classes

DOE identified and selected certain product classes as representative and analyzed these product classes directly. DOE chose these representative product classes primarily due to their high market volumes. The ELs for product classes that were not directly analyzed (''non-representative product classes'') were then determined by scaling the ELs of the representative product classes. Specifically, DOE did not analyze PS 8-foot HO ballasts or PS residential ballasts directly. NEMA and ULT recommended that DOE test all products to be covered because scaling may not produce the correct values. (NEMA, No. 12 at p. 8; ULT, No. 6 at p. 6)

In this analysis, DOE developed ELs for the PS 8-foot HO product class by scaling the ELs of the IS/RS 8-foot HO product class and the ELs for PS residential product class by scaling the ELs of the IS/RS residential product class. The primary difference between these sets of product classes is the starting method. Hence, DOE developed scaling factors by identifying pairs of the same ballast type manufactured by the same manufacturer, within the same product family, that differed only by starting method. The tested and certified efficiency values submitted to the DOE CCMS as well as manufacturer catalog data for these ballast pairs were used to calculate the scaling factors. From this analysis DOE determined that the ballasts with a PS starting method are 2 percent less efficient than those with IS starting method. DOE then applied this reduction in BLE to develop the appropriate EL equation curves for the PS 8-foot HO and PS residential product class. Because it is based on tested CCMS and manufacturer-provided catalog values, DOE has tentatively determined that this an accurate method for developing the ELs of the PS 8-foot HO and PS residential product classes. See chapter 5 of the NOPD TSD for more details.

Table IV.11 summarizes the efficiency requirements at each EL for the non-representative product classes. DOE seeks comment on the ELs under consideration for the non-representative product classes, including the max-tech levels. See section VII.C for a list of issues on which DOE seeks comment.

TABLE IV.11—SUMMARY OF ELS FOR NON-REPRESENTATIVE PRODUCT CLASSES

Non-representative product class	Efficiency level	BLE = A/(1+B*total lamp arc power∧ − C) where A, B, and C are as follows:		
		A	B	C
PS 8-foot HO	EL 1	0.973	0.45	0.37
	EL 2		0.26	
PS Residential	EL 1	0.973	0.54	0.37
	EL 2		0.46	
	EL 3		0.39	

7. Proprietary Designs

In the Framework document, DOE explained it would consider in its engineering and economic analyses all design options that are commercially available or present in a working prototype, including proprietary designs, that meet the screening criteria discussed in section IV.A.4. DOE will consider a proprietary design in the subsequent analysis only if it does not represent a unique path to a given efficiency level. If the proprietary design is the only approach available to achieve a given efficiency level, then DOE will eliminate the efficiency level from further analysis. However, if the efficiency level can be achieved by a number of design approaches, including a proprietary design, DOE will continue to examine the given efficiency level.

NEMA and ULT commented that as long as DOE follows the methodology laid out in the Framework document, they will not have an issue with the examination of proprietary designs. (NEMA, No. 12 at p. 8; ULT, No. 6 at p. 6) NEMA reiterated its comments made in CEC rulemaking proceedings on cathode cutout that there may be various interlinked patents regarding cathode cutout and encouraged DOE to exercise caution not to inadvertently favor one patented method over another. (NEMA, Public Meeting Transcript, No. 5 at pp. 58–59)

DOE received feedback in manufacturer interviews that while there are various patents related to ballast efficiency, the efficiencies of ballasts can be improved without reliance on a patented technology. DOE is not aware of any efficiency level under consideration that can only be achieved by a proprietary design.

C. Product Price Determination

Typically, DOE develops manufacturer selling prices (MSPs) for covered products and applies markups to create end-user prices to use as inputs to the LCC analysis and NIA. Because fluorescent lamp ballasts are difficult to reverse-engineer (*i.e.,* not easily disassembled due to potting), DOE directly derives end-user prices for the ballasts covered in this proposed determination.

In the Framework document, DOE stated that for commercial and industrial ballast designs, fluorescent lamp ballasts can go through two types of distribution channels: sold within fixtures and sold as replacement ballasts. In the fixture distribution channel, the manufacturer sells the ballast to an OEM—in this case, the fixture manufacturer—who in turn sells the ballast in a fixture to an electrical wholesaler (*i.e.,* distributor). The distributor sells it to a contractor, who passes it on to the end-user. In the replacement distribution channel, the manufacturer sells the ballast to an electrical wholesaler, who sells it to a contractor, who passes it on to the end-user. For residential ballast designs, DOE assumes that the manufacturer sells the ballast to an OEM who in turn sells it in a fixture to a home improvement retailer, where it is purchased by the consumer.

GE commented that the distribution channels considered in the Framework document analysis are similar to the 2011 FL Ballast Rule and appear to be appropriate. (GE, Public Meeting Transcript, No. 5 at p. 91) Philips agreed that the value chain had been accurately mapped out. (Philips, No. 8 at p. 34)

In this analysis, DOE retained the basic structure of distribution channels described in the Framework document with minor modifications based on additional research and information learned through manufacturer interviews. DOE determined that ballasts can be sold by electrical wholesalers to the end-user in large volume via a contractor; in large volume without a contractor; and in low volume without a contractor (*e.g.,* homeowners). Based on estimated shipments, DOE assigned a weighting of 85 percent for large volume via contractor; 10 percent for large volume without a contractor; and 5 percent for low volume without a contractor. DOE accounted for all three scenarios in developing end-user prices for representative units identified in the engineering analysis.

ULT and NEMA commented that the best way to understand the cost of products is to work with individual manufacturers under a confidentiality agreement. They stated that teardown analysis or bottom-up analysis would be difficult because of the use of potting material in ballast design, which is still very common. (ULT, Public Meeting Transcript, No. 5 at p. 75; ULT, No. 6 at p. 6; NEMA, No. 12 at p. 8) Philips commented that product teardowns should not be used for market pricing predictions, but only for possible product manufacturing cost analysis and reverse engineering because market prices are not determined on a cost plus basis. Further, Philips noted that while blue book prices may be directionally accurate, they will not account for additional discounts and pricing programs available in the value chain. Philips commented that NEMA data on market units and dollars could be useful in making pricing assumptions and suggested DOE work directly with NEMA to obtain relevant data by channel, and if that was not possible they could provide DOE with their local market analysis expert. (Philips, No. 8 at pp. 30, 34)

DOE was unable to obtain blue book prices (*i.e.,* manufacturer suggested prices) for ballasts and did not utilize the teardown approach due to use of potting in ballasts. To develop end-user prices for fluorescent lamp ballasts, DOE began with a consistent set of prices by determining an average electrical wholesaler price for each representative unit. DOE determined that in addition to electrical distributors such as Grainger, internet retailers can also serve as wholesalers of fluorescent lamp ballasts. Therefore, DOE collected prices from electrical distributors and internet retailers for each representative unit and/or ballast with similar performance characteristics to develop an average wholesaler price.

For the replacement channel, DOE used this average wholesaler price to determine the end-user prices for ballasts going through each wholesaler pathway: Large volume (no contractor), large volume (with contractor), and low volume (no contractor). DOE used the average wholesaler price as the large volume (no contractor) end-user price. DOE applied a contractor markup of 13 percent to the average wholesaler price to develop the large volume (with contractor) end-user price. DOE determined that ballasts sold through the low volume pathway would be sold by home centers. However, DOE found limited price data for representative units at home centers. Therefore, based on manufacturer feedback DOE applied an estimated 20 percent markup to the average wholesaler price to determine the low volume (no contractor) consumer price. DOE then weighted the large volume (with contractor) price by 85 percent; large volume (no contractor) price by 10 percent; and low volume (no contractor) price by 5 percent to develop an average weighted end-user price for each representative unit.

For the fixture channel, DOE applied an OEM markup of 21 percent to the average weighted end-user price determined for the replacement channel.

Based on manufacturer feedback, DOE determined that the estimated shipments going through the replacement channel and fixture channel are each 50 percent. DOE applied this weighting to the average end-user prices for the replacement and OEM channels to develop the final end-user price of a representative unit. Once DOE calculated end-user prices, DOE added sales tax and, if appropriate, installation costs to derive the total, installed end-user cost. See chapter 6 of the NOPD TSD for pricing results and further details on the pricing methodology.

DOE received comments on price trends for dimming ballasts. Although CA IOUs and CEC used slightly different methods to understand the cost effectiveness of dimming ballasts, CA IOUs stated that both methods showed cost-effective results. They encouraged DOE to review both CEC methodology, which was more similar to a tear down approach, and the CA IOU methodology, which was more of a statistical analysis of ballast prices on the market. (CA IOUs, Public Meeting Transcript, No. 5 at p. 75)

CA IOUs stated that they completed a multivariable regression analysis on dimming fluorescent lamp ballasts

available from online retailers to evaluate cost effectiveness of a standard for dimming ballasts. Through this research, CA IOUs found no statistical correlation between product efficiency and price, but rather the results of the regression model suggested that dimming FLB price is more strongly correlated to manufacturer, how many lamps it can operate, and whether or not it is digitally controllable, rather than efficiency. CA IOUs referred to a graphical representation of data they had collected, which indicated that there is no clear trend suggesting that higher efficiency ballasts are generally more expensive than lower efficiency ballasts. CEC's cost-effectiveness evaluation focused on the cost of implementing cathode cutout technology to make the dimming ballasts more efficient. Based on the TSD from the 2011 FL Ballast Rule, CEC assumed that the incremental cost of cathode cutout was $0.89 for a 2-lamp ballast, which was scaled by $0.10 per lamp, resulting in the highest incremental cost for a 4-lamp ballast as $1.09. (CA IOUs, No. 10 at pp. 8–9)

In the product price determination, DOE developed end-user prices for each representative unit. As noted in the engineering analysis, these representative ballasts incorporate the design options to achieve the EL under consideration. Therefore, DOE's end-user prices would include the use of the cathode cutout design option used in a representative unit. DOE's evaluation of prices for dimming ballasts indicate that end-user price does increase with the efficiency of dimming ballast. Further, in interviews, manufacturers indicated that generally all things considered equal, prices will increase with FLB efficiency. DOE seeks comment on the methodology and results for estimating end-user prices for fluorescent lamp ballasts in this analysis. See section VII.C for a list of issues on which DOE seeks comment. Chapter 6 of the NOPD TSD provides details on DOE's development of end-user prices for fluorescent lamp ballasts.

D. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of fluorescent lamp ballasts at different BLE in representative U.S. commercial and industrial buildings, outdoor installations, and single-family homes and multi-family residences, and to assess the energy savings potential of increased BLE for fluorescent lamp ballasts. The energy use analysis estimates the range of energy use of fluorescent lamp ballasts in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended standards.

The energy conservation standards for fluorescent lamps are not within the scope of this analysis; however, the input power of the complete lamp-and-ballast system is considered for the energy use analysis because ballasts are not intended to operate without lamps. The energy use characterization provides estimates of annual energy use for representative lamp-and-ballast systems that DOE evaluates in the LCC and PBP analyses and the NIA. To develop annual energy use estimates, DOE multiplied annual usage (in hours per year) by the system input power (in watts).

DOE selected the most common fluorescent lamps used with each analyzed ballast to develop representative lamp-and-ballast systems. DOE developed the system input power estimates in the engineering analysis. To characterize the country's average use of fluorescent lamp ballasts for a typical year, DOE developed annual operating hours by sector, using data from the 2015 U.S. Lighting Market Characterization (LMC), which was published in 2017.[22]

Philips stated that it was unclear how DOE would assign each ballast type into one or more sectors. Many types of ballasts can be used in both commercial and industrial applications that would affect their usage profile. Philips expected DOE to use an appropriate method to assign the different ballasts the various sectors. (Philips, No. 8 at p. 31) DOE agrees that fluorescent lamp ballasts are used in many applications, and a single ballast model could be used within different sectors. In chapter 7 of the NOPD TSD, DOE analyzed the typical operating hours of the different sectors. DOE then weighted the ballast operation by sector to develop average operating hours.

1. Reduced Wattage Fluorescent Lamps

ULT stated that the use of reduced wattage (also known as energy saving) lamps in the marketplace is very common. (ULT, No. 6 at p. 7) NEMA, SCE, and ULT stated that reduced wattage lamps are the first step in energy savings for a large portion of the market. (NEMA, No. 12 at p. 9; SCE, Public Meeting Transcript, No. 5 at pp. 81–82; ULT, No. 6 at p. 7) DOE agrees and modeled a mixture of full wattage and multiple reduced wattage options (where they exist) for many of the fluorescent lamps operated by the fluorescent lamp ballasts. See chapter 5 of the NOPD TSD for more details.

2. Occupancy Sensors

NEMA and ULT stated that occupancy sensors will be in the off mode more than the on mode with the exception of those installed in offices. In general, these are installed in areas that are not frequently occupied. Spaces can include but are not limited to bathrooms, stairwells, closets, hallways, and warehouse aisles, where sensors are off most of the time. For occupancy sensors used in offices to turn lights off after a preset time of inactivity, the time in the on mode would be difficult to generalize because it would differ greatly from installation to installation. (NEMA, No. 12 at p. 4; ULT, No. 6 at p. 8) NEMA and Lutron directed DOE to review work conducted by Lawrence Berkeley National Laboratory (LBNL) for additional data on occupancy sensors.[23] (NEMA, No. 12 at pp. 9–10; Lutron, No. 9 at pp. 2–3) DOE reviewed the LBNL reports and one report specifically mentioned by Lutron states that energy savings from occupancy controls per zone were 27 percent. However, savings primarily occurred at night between 6 p.m. and 1 a.m. and during early morning and evening hours when occupancy tended to be irregular.[24]

DOE stated in the Framework document that in the 2011 FL Ballast Rule, DOE adjusted the annual operating hours for the ballasts in the commercial sector that are controlled by occupancy sensors by roughly 30 percent compared to the other ballasts. Lutron and NEMA stated that reduced hours are high for intelligent systems using dimming ballasts with multiple control types. Occupancy sensors and time clock operation have the potential to dramatically reduce operating hours. For this analysis, DOE also reduced the operating hours for MBP lamps in the PS commercial product class by 30

[22] U.S. Department of Energy–Office of Energy Efficiency and Renewable Energy. 2015 U.S. Lighting Market Characterization. November 2017. *https://energy.gov/eere/ssl/2015-us-lighting-market-characterization.*

[23] A technical publications list is available at Lawrence Berkeley National Laboratory. DOE relied primarily on *A Meta-Analysis of Energy Savings from Lighting Controls in Commercial Buildings,* available at *https://eta.lbl.gov/publications/meta-analysis-energy-savings-lighting.*

[24] Lawrence Berkeley National Laboratory. *Monitored Lighting Energy Savings from Dimmable Lighting Controls in the New York Times Headquarters Building.* 2013. Available at *https://windows.lbl.gov/publications/monitored-lighting-energy-savings-dimmable-lighting-controls-new-york-times.*

percent to account for the use of occupancy sensors.

NEMA and ULT stated that operating hours can vary for the same model of a ballast installed in different applications. NEMA and ULT suggested that it would be best to develop an average usage number to apply to ballasts and that to figure all scenarios would be virtually impossible. (NEMA, No. 12 at p. 9; ULT, No. 6 at p. 7) DOE agrees and assigned a single average usage to each of the different ballast types. Within the LCC analysis, DOE includes a distribution of operating hours in the Crystal Ball ™ (a commercially available software program) analysis used to determine the average LCC savings as well as the percentage of net customers experiencing a net cost. Resultant average values calculated from the Crystal Ball ™ distributions were used in the NIA.

3. Dimming Ballasts

During the framework public meeting, both GE and CA IOUs stated that dimming ballasts will have an operating profile different from fixed-output (non-dimming) ballasts. Dimming ballasts are typically operating in advanced systems, and as a result, might have fewer operating hours or be operating in a dim mode compared to a standard static system. GE stated that dimming ballasts will have a lower energy use profile, which might be difficult to determine, but it will be less than a non-dimming ballast profile of 100 percent output, 100 percent of the time. (GE, Public Meeting Transcript, No. 5 at pp. 78–79, 88–89; CA IOUs, Public Meeting Transcript, No. 5 at p. 89)

To develop the energy usage profile for dimming ballasts, DOE reviewed *A Meta-Analysis of Energy Savings from Lighting Controls in Commercial Buildings* by LBNL.[25] GE suggested this document as a potential source on the effects of controls on lighting systems but cautioned that there is a broad range of results from even the same control type. (GE, Public Meeting Transcript, No. 5 at pp. 86–87) Lutron also stated during the public meeting that they would provide references in written comments. (Lutron, Public Meeting Transcript, No. 5 at p. 88) Lutron and NEMA both referenced in written comments an LBNL study on energy savings using controls with dimming ballasts. (Lutron, No. 10 at p. 3; NEMA, No. 12 at p. 10) The LBNL study referenced in the written comments is a different version but includes the same data as the LBNL meta-analysis previously cited.[26]

DOE reviewed the meta-analysis and found that Tables 3 and 4 in the LBNL study present the average savings for each control type by building and by control type for peer-reviewed and non-peer-reviewed papers, respectively. Energy savings greater than 30 percent were common from daylighting and personal tuning (controls typically utilizing dimming technology).

Lutron and NEMA stated that dimming ballasts and associated controls and sensors have the potential to save energy in the form of a reduced load and not solely in the reduction of operating hours. (Lutron, No. 10 at p. 3; NEMA, No. 12 at p. 10) DOE agrees and developed a duty cycle of operation to characterize the energy use of the dimming ballast.

Southern California Edison (SCE) suggested that DOE consider dimming ballasts operating below 50 percent. (SCE, Public Meeting Transcript, No. 5 at pp. 38–39) CA IOUs recommended that DOE review documents generated for and submitted to CEC's efforts to develop state requirements for dimming ballasts. CA IOUs submitted these documents to DOE as part of their written comments. (CA IOUs, No. 10 at p. 2) In addition, CA IOUs stated that California's duty cycle for fluorescent dimming ballasts was designed to coincide with elements in California's energy code, Title 24, and involves output at 100 percent, 80 percent, and 50 percent light output. (CA IOUs, Public Meeting Transcript, No. 5 at p. 86)

California's analysis assumes that the dimming ballast operates 20 percent of the time at 100 percent light output, 50 percent of the time at 80 percent light output, and 30 percent of the time at 50 percent light output.[27] Compared to 100 percent of the time at 100 percent light output, this California duty cycle results in an energy savings of 26 percent. In contrast for this preliminary analysis, DOE analyzed a different duty cycle. DOE analyzed a duty cycle that yielded energy savings closer to the values reported in the LBNL meta-analysis. DOE used 10 percent of the time at 100 percent light output, 30 percent of the time at 70 percent light output, and 60 percent of the time at 30 percent light output.

Dimming ballasts have very limited use in residential applications. Both Lutron and NEEA reiterated the low use of dimming ballasts in residential applications. (Lutron, Public Meeting Transcript, No. 5 at pp. 87–88; NEEA, Public Meeting Transcript, No. 5 at p. 87) DOE agrees and assumed 98 percent of dimming ballasts were in commercial applications and 2 percent were in residential applications.

GE and ULT stated that reduced wattage lamps are not used with dimming ballasts because of difficulties with dimming these lamps and other reasons. (GE, Public Meeting Transcript, No. 5 at p. 80; ULT, Public Meeting Transcript, No. 5 at pp. 81–82) Because dimming ballasts are compatible with reduced wattage lamps, some dimming ballasts and reduced wattage systems are likely in use. DOE accounts for this low usage in its weighting of such systems.

4. Tubular LEDs

ULT stated that although tubular LEDs (TLEDs) are becoming prevalent, the ballasts in the field were not designed to operate TLEDs. NEMA and ULT highlighted that standards bodies require certification that the ballast and given lamp can operate. (ULT, Public Meeting Transcript, No. 5 at p. 83; NEMA, Public Meeting Transcript, No. 5 at pp. 84–85) Both NEMA and ULT cautioned that some incompatibility between the ballast and the TLED may occur in the field. NEMA and ULT recommended to not include these lamps in the analysis and if necessary address TLEDs separate from the ballast. (NEMA, No. 12 at p. 9; ULT, No. 6 at p. 7) DOE agrees with ULT that TLEDs are becoming prevalent. DOE also reiterates that the scope of this analysis is the fluorescent lamp ballast and only includes TLEDs in the analysis because the operation of these lamps by the ballast affects the energy use, and that in the field fluorescent lamp ballasts are operated, to a degree, with TLEDs.

ASAP referenced research by other DOE programs that TLEDs operating in a luminaire designed for a fluorescent lamp are significantly less energy efficient than dedicated LED luminaires. (ASAP, No. 7 at p. 5) DOE agrees that differences exist between modified fluorescent luminaires using a TLED and a luminaire designed solely to operate LEDs. DOE notes that LED luminaires are not part of this analysis.

[25] Lawrence Berkeley National Laboratory. *A Meta-Analysis of Energy Savings from Lighting Controls in Commercial Buildings.* Available at *https://eta.lbl.gov/publications/meta-analysis-energy-savings-lighting.*

[26] Williams et al. *Lighting Controls in Commercial Buildings.* Leukos: The Journal of the Illuminating Engineering Society. 2012. 8(3): pp. 161–180. Available at *https://eaei.lbl.gov/publications/lighting-controls-commercial.*

[27] Table 4.3 Average Energy Use for Qualifying Products. p. 16 CA IOUS. *Dimming Fluorescent Lamp Ballasts. Codes and Standards Enhancement (CASE) Initiative for PR2013: Title 20 Standards Development.* (TN 78109) Updated version dated August 5, 2013. Available at *https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=12-AAER-02B.*

ASAP recommended analyzing the TLED market to evaluate its effect on the overall energy savings over time. (ASAP, No. 7 at p. 5) GE and Philips stated that the prevalence of TLEDs is growing rapidly. GE speculated that TLEDs are currently a low percentage of the overall installed base. (GE, Public Meeting Transcript, No. 5 at p. 80; Philips, No. 8 at p. 32) DOE includes a change in TLED penetration over time in this analysis. As the mixture of lamps operated by the ballast changes to include differing amount of TLEDs, the energy use of the ballast changes.

Philips discussed that there is an inverse relationship with the use of TLEDs on fluorescent lamp ballasts. As a general rule, the combination of fluorescent lamp ballast and TLED results in a lower power draw, but the operation of a fluorescent lamp ballast and fluorescent lamp results in a greater ballast efficiency. (Philips, No. 8 at p. 32) Philips also stated that it manufactures a ballast to be paired with specific fluorescent lamps and does not know if the ballast is being paired with a TLED or if the wattage of the TLED is 14, 15, 17 or some other wattage value. (Philips, Public Meeting Transcript, No. 5 at pp. 83–84) Philips stated that TLEDs are available in the 12 to 17 W range and offer significant energy savings when used with compatible fluorescent lamp ballasts. (Philips, No. 8 at p. 32) Philips stated that the power draw for TLEDs will continue to decrease into the future. (Philips, Public Meeting Transcript, No. 5 at p. 82) DOE agrees that ballast efficiency can differ for the same ballast operating a fluorescent lamp and a TLED. DOE used the operating power for TLEDs in the analysis. DOE also analyzed the larger TLED market to determine representative values of fluorescent lamp ballasts operating TLEDs.

DOE seeks comment on the methods to improve DOE's energy-use analysis, as well as any data supporting alternate operating hour estimates or assumptions regarding dimming of fluorescent lamp ballasts. DOE seeks comment on the type, prevalence, and operating hour reductions related to the use of lighting controls used separately in commercial, industrial, and residential sectors. DOE seeks comment on the assumptions and methodology for estimating annual operating hours. See section VII.C for a list of issues on which DOE seeks comment. Chapter 7 of the NOPD TSD provides details on DOE's energy use analysis for fluorescent lamp ballasts.

E. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic effects on individual consumers of potential energy conservation standards for fluorescent lamp ballasts. In particular, DOE performed LCC and PBP analyses to evaluate, in part, the savings in operating costs throughout the estimated average life of fluorescent lamp ballasts at different ELs compared to any associated increase in costs of fluorescent lamp ballasts likely to result from standards at each EL. The effect of amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure effects on the consumer:

- The LCC (life-cycle cost) is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP (payback period) is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of fluorescent lamp ballasts in the absence of new or amended energy conservation standards. Similarly, the PBP for a given efficiency level is measured relative to the baseline reflecting the efficiencies customers are estimated to select absent an amended standard.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of potential customers. Fluorescent lamp ballasts are used widely in commercial, industrial, and residential settings. For each ballast class, DOE identified the types of customers likely to use the ballasts, the number of hours per year each customer type would likely use the ballasts, and a probability of selection for each customer type in the Monte Carlo analysis.

Inputs to the calculation of total installed cost include the cost of the product—which includes manufacturer production costs (MPCs), manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, energy prices, annual operating hours (which determines energy consumption), discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP, which incorporates Crystal Ball™, relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations sample input values from the probability distributions and FLB user samples. The model calculated the LCC and PBP for products at each efficiency level for 10,000 FLB installations per simulation run.

DOE calculated the LCC and PBP for all consumers of fluorescent lamp ballasts as if each were to purchase a new product in the expected year of required compliance with potential amended standards. Any amended standards would apply to fluorescent lamp ballasts manufactured 3 years after the date on which any amended standard is published. (42 U.S.C. 6295(m)(4)(A)) For purposes of its analysis, DOE used 2023 as the first year of compliance with any amended standards for fluorescent lamp ballasts.

Table IV.12 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the NOPD TSD and its appendices.

TABLE IV.12—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying product costs from the engineering analysis by (one plus) sales tax rates.
Installation Costs	Baseline installation cost determined with data from RSMeans. Assumed no change with efficiency level.
Annual Energy Use	The total annual energy use multiplied by the hours per year. Average number of hours based 2015 LMC.
Energy Prices	Based on the Energy Information Administration's (EIA's) Form 861 data for 2017.[28] Average energy prices determined for 50 states plus the District of Columbia.
Energy Price Trends	Based on *Annual Energy Outlook 2019* (*AEO2019*) price projections.
Repair and Maintenance Costs.	Assumed no change with efficiency level.
Product Lifetime	Average: 12.5 Years for commercial installations (approximately 38,000 hours), 12.5 years for outdoor installations (approximately 41,000 hours), 11.4 years for industrial installations (50,000 hours), and 15 years for residential installations (approximately 10,800 hours).
Discount Rates	For residential product class, the calculations involve identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances. For other product classes, the calculations involve estimating weighted average cost of capital for large numbers of companies and using the results to develop discount rate distributions. Primary data were from the Damodaran online web site[29] and the Federal Reserve Board.[30]
Rebound Effect	Rebound is not assumed to be present among FLB consumers. Most consumers are commercial and industrial consumers, and the FLB/light user tends to not see the bills so there would be no perceived change in the cost of using the light.
Compliance Date	2023.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPD TSD.

1. Product Cost

As noted in section IV.C, DOE rulemaking analyses typically calculate consumer product costs by multiplying MPCs developed in the engineering analysis by the markups along with sales taxes. For fluorescent lamp ballasts, the engineering analysis determined customer prices directly; therefore, for the LCC analysis, the only adjustment was to add sales taxes.

In prior energy conservation standards rulemakings, DOE estimated the total installed costs per unit for equipment and then assumed that costs remain constant throughout the analysis period. This assumption is conservative because equipment costs tend to decrease over time. In 2011, DOE published a notice of data availability (NODA) titled *Equipment Price Forecasting in Energy Conservation Standards Analysis.* 76 FR 9696 (Feb. 22, 2011). In the NODA, DOE proposed a methodology for determining whether equipment prices have trended downward in real terms. The methodology examines so-called price or experiential learning, wherein, with ever-increasing experience with the production of a product, manufacturers are able to reduce their production costs through innovations in technology and process.

Consistent with the February 2011 NODA, DOE examined historical price data specific to electronic ballasts. As discussed in Chapter 8 and Appendix 8C of the NOPD TSD, this analysis yielded learning coefficients indicating a 14.8 percent decrease in ballast prices for every doubling in cumulative ballast shipments. Although this price trend was incorporated into the LCC model, it was excluded from the LCC results presented in this NOPD. With shipments falling from historical values, cumulative shipments do not double relative to 2015 (the last year of historical data) in any shipments scenario, and shipments go to zero in one scenario essentially at the projected start date for amended standards. See section IV.F.1 for further details on shipments. Given this range of possible shipments, for the LCC results presented in this NOPD, the price change over time was assumed to be zero; or, in other words, the price trend coefficient was set to 1.00 for all years of the LCC (and NIA) analyses.

Lamp manufacturing is also subject to the learning process. The focus of this NOPD is the fluorescent lamp ballast. However, fluorescent lamp ballasts are designed to operate fluorescent lamps and therefore, the cost analysis accounts for the lamp-and-ballast system. The analysis assumes a differing mixture of general service fluorescent lamps (GSFL) and TLEDs operated by the ballasts. TLED prices are expected to be affected by price learning and are expected to decline significantly over the next 3 years. Therefore, to better represent the total installed cost of the ballast and lamp systems, price learning was applied to the lamps operated by the fluorescent lamp ballasts.

Because this proposed determination is not analyzing lamps, lamp shipments and price information were not collected for this rulemaking. Rather, price trend information for lamps was developed from the final rule for the general service fluorescent lamps (GSFL) standards rulemaking published in January 2015. 80 FR 4041 (January 26, 2015). As discussed in this FLB NOPD TSD Appendix 8C, the GSFL price trends were incorporated into the LCC analysis to account for learning in the lamp manufacturing process. The distribution of lamps selected for use by consumers is not expected to differ for ballasts at different efficiency levels.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE used data from RSMeans to estimate the baseline installation cost for fluorescent lamp ballasts. For installation and repair costs, both NEMA and ULT found the ones discussed in DOE's Framework document to be reasonable. (NEMA, No. 12 at p. 11; ULT, No. 6 at p. 9) Philips also stated that it is unlikely that installation costs would change for ballasts at different efficiency levels. (Philips, No. 8 at p. 35) However, ULT cautioned that if new ballasts required as part of a potential standard changed in size, maintenance costs could change.

[28] DOE used Average Price by State by Provider (EIA–826), sorted for Total Electric Industry, obtained from the EIA web page *https://www.eia.gov/electricity/data/state/.*

[29] See the data page on Damodaran Online, *http://pages.stern.nyu.edu/~adamodar.*

[30] In addition to the previously referenced Survey of Consumer Finances, DOE used interest rate data obtained from the Federal Reserve Bank of St. Louis' FRED Economic Data tool found at *https://fred.stlouisfed.org/.*

(ULT, Public Meeting Transcript, No. 5 at p. 96; ULT, No. 6 at p. 9) DOE agrees and uses the same installation costs for ballasts at each efficiency level. Per the engineering analysis, the ballasts at the different efficiency levels are not expected to change in size at the different efficiency levels and therefore would not affect installation or maintenance costs as suggested by ULT. DOE found no evidence that installation costs would be affected with increased efficiency levels.

3. Annual Energy Consumption

DOE determined the energy consumption for fluorescent lamp ballasts at different efficiency levels using the approach described previously in section IV.D of this document.

4. Energy Prices

DOE derived average annual electricity prices for 50 states plus the District of Columbia using data from the EIA's Form EIA–861 annual survey.[31] EIA calculated average electric prices by dividing total electric revenues by total kWh energy sales, using data aggregated by customer class and by state. The NOPD analysis used the data for 2017, with prices adjusted to 2018 dollars.

To estimate energy prices in future years, DOE multiplied the average state-level electricity prices by a projection of annual change in regional electricity prices in the *Annual Energy Outlook 2019* (*AEO2019*), which has an end year of 2050.[32] The AEO includes price projections by Census regions, which were used for the analyses presented herein. To estimate future electricity prices, DOE uses the price index for the regions corresponding to each state. To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2040 through 2050.

Both ASAP and ULT stated that electricity prices can vary both between utilities as well as a result of larger national trends like distributed generation or Congressional requirements. ASAP suggested an analysis that addressed uncertainty in the electricity market. (ASAP, Public Meeting Transcript, No. 5 at p. 94; ULT, No. 6 at p. 6) DOE accounted for considerable electricity price variability by using data from 50 states plus the District of Columbia. Although this represents a higher level of aggregation than utility-by-utility, it reflects the considerable variability in electricity prices in the analysis and it captures some of the policy and other trends alluded to by ASAP and ULT insofar as the influx of distributed generation typically follows state-level policies and legislation promoting such.

5. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing product components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the product. Typically, small incremental increases in product efficiency produce no, or only minor, changes in repair and maintenance costs compared to baseline efficiency products. For this NOPD, DOE modeled ballasts as not being repaired, and maintenance costs as lamp replacement costs only. Philips agreed with DOE's proposal during the framework public meeting and in written comments that ballasts are not repaired. (Philips, Public Meeting Transcript, No. 5 at p. 95; Philips, No. 8 at p. 35) DOE agrees and did not include ballast repair costs in the LCC analysis.

6. Product Lifetime

For fluorescent lamp ballasts, DOE used lifetime estimates from manufacturer datasheets. In the Framework document, DOE estimated a life of 50,000 hours for fluorescent lamp ballasts. Both NEMA and ULT stated that the standard warranty period within the lighting industry for fluorescent lamp ballasts is 3 to 5 years, depending on application. (NEMA, No. 12 at p. 11; ULT, No. 6 at p. 9) Philips stated they use 50,000 hours as useful life, but in certain circumstances thermal effects can reduce this rated life value. Philips speculated that, depending on the operating hours of the ballast, this translates to 10–15 years as a reasonable estimate for FLB life. (Philips, No. 8 at p. 35) The number of years can vary in operation, and DOE used a life value in total number of years rather than solely relying on operating hours. For this analysis, DOE used a 12.5-year average lifetime for the commercial sector, 11.4-year average lifetime for the industrial sector, and 12.5-year average lifetime for the outdoor sector. Combining DOE's estimate of 50,000 hours and the average operating hours for fluorescent lamps in the commercial and industrial sectors yielded average ballast lifetimes of 16.6 years and 11.4 years, respectively. However, 16.6 years is significantly longer than the lifetime of commercial ballasts used in the 2011 Ballast Rule. For that final rule, DOE used 12.5 years, a value DOE found consistent with the literature at the time of the analyses, and consistent with the comment from Phillips. (Philips, No. 8 at p. 35) DOE has found no literature confirming that the product lifetime would increase by 33 percent when measured in years and focused instead on searching for evidence contradicting the lifetime of 12.5 years. No such evidence was identified. Thus, for the NOPD DOE assumed commercial ballasts would have a 12.5-year average lifetime which, when multiplied by the average commercial sector operating hours per year, yields a lifetime of approximately 38,000 hours.

Replacement of fluorescent lamps have to be considered because it is a cost that will be incurred by the consumer over the course of the life of the fluorescent lamp ballast. GE stated that in contrast to dimming incandescent lamps, dimming fluorescent lamps does not extend lamp life. In fact, in some cases if not done properly, life can be negatively affected. Overall, GE stated to not increase lamp life for lamps operated on dimming ballasts compared to non-dimming ballasts. (GE, Public Meeting Transcript, No. 5 at p. 95) Philips stated that without knowing the extent of ballast modifications to meet a potential new or amended standard, it was difficult to predict the effect on lamp life. (Philips, No. 8 at p. 35) ASAP stated that the typical operating life of a T8 fluorescent lamp is 20,000 hours and the advertised lifespan range of TLED is 50,000 to 80,000 hours. (ASAP, No. 7 at p. 5) DOE does not expect the fluorescent lamp life to extend as a result of modifications to the ballasts. The life of the fluorescent lamps used in the LCC analysis can be found in the engineering analysis. DOE used a life of 50,000 hours for the TLEDs used in the analysis.

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to commercial, industrial, and residential consumers to estimate the present value of future operating costs. DOE estimated a distribution of discount rates for fluorescent lamp ballasts based on consumer financing costs and the opportunity cost of consumer funds.

DOE applies weighted average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates.[33] DOE notes

[31] Available at *https://www.eia.gov/electricity/data.php#sales.*

[32] U.S. Department of Energy—Energy Information Administration. *Annual Energy Outlook 2019 with Projections to 2050.* 2019. Washington, DC. (AEO2019). Available at *https://www.eia.gov/outlooks/aeo/.*

[33] The implicit discount rate is inferred from a consumer purchase decision between two otherwise identical goods with different first cost and operating cost. It is the interest rate that equates the increment of first cost to the difference in net present value of lifetime operating cost,

that the LCC does not analyze the product purchase decision, so the implicit discount rate is not relevant in this model. The LCC estimates NPV over the lifetime of the product, so the appropriate discount rate will reflect the general opportunity cost of household or business funds, taking this time scale into account. Given the long time frame modeled in the LCC, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate effect of this rebalancing using the historical distribution of debts and assets.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances [34] (SCF) for 1995, 1998, 2001, 2004, 2007, 2010, 2013, and 2016. Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. In the Crystal Ball™ analyses, for each of the 10,000 simulations, the model selects an income group and then selects a discount rate from the distribution for that group.

For commercial and industrial consumers, DOE used the cost of capital to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so the cost of capital is the weighted-average cost to the firm of equity and debt financing. This corporate finance approach is referred to as the weighted-average cost of capital. DOE used currently available economic data in developing discount rates. See chapter 8 of the NOPD TSD for details on the development of consumer discount rates.

8. Energy Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of product efficiencies under the no-new-standards case (*i.e.,* the case without amended energy conservation standards).

To estimate the energy efficiency distribution of fluorescent lamp ballasts for 2023, DOE analyzed the distribution of ballasts in the databases used in the engineering analysis. For the non-dimming ballasts, the main source of information is the CCMS database. For non-dimming ballasts, DOE relied on product offerings in manufacturer catalogs. See chapter 8 of the NOPD TSD for the estimated efficiency distributions.

9. Payback Period Analysis

The PBP is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. PBPs are expressed in years. PBPs that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

EPCA, as amended, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the amended standards would be required.

F. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended energy conservation standards on energy use, NPV, and future manufacturer cash flows.[35] The shipments model takes an accounting approach in tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock. DOE received many comments on the shipments and trends related to fluorescent lamp ballasts. Overall, the market is declining; however, DOE received comments on the different rates of decline.

Philips stated that DOE should be working with NEMA in order to obtain market shipment data and, if needed, Philips can work with NEMA to supply the data. Philips also stated that they would provide data to DOE during the interview process. (Philips, No. 8 at pp. 12–13) DOE did receive data from NEMA in written comments that provided indexed values of shipments for a recent set of years. (NEMA, No. 12, at p. 4) DOE also used aggregated data gathered from manufacturers to calibrate the current volume of shipments.

Philips suggested resources for projecting lighting shipments, not just FLB shipments, from Strategies Unlimited, other DOE publications, and NEMA. (Philips, No. 8 at p. 39) DOE reviewed the materials suggested by Philips as well as other data sources to generate shipment projections.

NEMA, Philips, and ULT provided in written comments a graph of fluorescent lamp ballasts indexed to 2010 and shipments through 2014 as a percentage of the index year. This figure indicates a declining market for fluorescent lamp ballasts. (NEMA, No. 12 at pp. 4; Philips, No. 8 at p. 39; ULT, No. 6 at pp. 3–4) NEMA attributes the decline to solid-state lighting and expects the decline to continue into the future. (NEMA, No. 12 at p. 11) NEMA and ULT speculated that based on the data in the figure and certain fit functions that circa 2018 that FLB shipments would end. (NEMA, Public Meeting Transcript, No. 5 at pp. 9–11; ULT, No. 6 at pp. 3–4) However, NEMA did speculate that although an analysis of the data provided suggests an end of the

incorporating the influence of several factors: Transaction costs, risk premiums and response to uncertainty, time preferences, and interest rates at which a consumer is able to borrow or lend.

[34] Board of Governors of the Federal Reserve System. *Survey of Consumer Finances.* Available at *http://www.federalreserve.gov/PUBS/oss/oss2/scfindex.html.*

[35] DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general, one would expect a close correspondence between shipments and sales.

FLB market in 2018, it is probably not realistic. (NEMA, Public Meeting Transcript, No. 5 at pp. 9–11) DOE agrees that the market for fluorescent lamp ballasts is declining. DOE modeled a rapid decline in shipment scenario #1 based on these data provided. NEMA suggested that the ballast shipments curtailing in 2018 was based on 2010 to 2014 shipment data and a second degree polynomial fit standard S-curve shape function. (NEMA, Public Meeting Transcript, No. 5 at p. 9) Shipment scenario #1 was modeled as a similar S-curve shaped function with shipments curtailing shortly after the start of the analysis period.

Philips stated that the submitted figure indicates the FLB market is declining at a fast rate. Philips speculated that the market was declining at a rate of about 20 percent per year. According to Philips, LED technologies are competing with fluorescent light sources to illuminate the same spaces and LED prices are decreasing whereas fluorescent technologies are mature. This is one of the reasons for declining FLB shipments. (Philips, No. 8 at pp. 16, 39) Philips also commented that it has reduced the number of its factories manufacturing fluorescent lamp ballasts from five to one. (Philips, Public Meeting Transcript, No. 5 at p. 55) Lutron stated that FLB shipments are declining at an accelerating rate and potential new amended standards can only affect shipments. (Lutron, Public Meeting Transcript, No. 5 at p. 41) DOE agrees that the market for fluorescent lamp ballasts is declining. DOE modeled a rate of decline similar to the 20-percent rate suggested by Philips in shipment scenario #2 based on the data provided.

NEEA mentioned that 10 percent of lamps sales are T12 lamps. Although T12 lamps are less efficient, as legacy products they can have a significant life and sizeable volume of shipments. NEEA also stated that ballasts have a longer life than fluorescent lamps. (NEEA, Public Meeting Transcript, No. 5 at pp. 40–41) GE acknowledged that although certain ballasts have long lives and there might be legacy products still in operation, the lighting industry is currently at the trailing end of those systems. (GE, Public Meeting Transcript, No.5 at p. 55)

ULT stated during the framework public meeting that the retrofit market is very small and little retrofitting is occurring in the market. (ULT, Public Meeting Transcript, No. 5 at pp. 105–106)

ULT stated that LED lighting penetration is increasing in the new construction market, and ULT expected 90 to 95 percent penetration near 2017. Beyond new construction, rebates for fluorescent lamp ballasts and FLB retrofit kits are virtually nonexistent as utilities and other energy efficiency programs are incentivizing LED technologies. (ULT, Public Meeting Transcript, No. 5 at pp. 104–106)

NEMA and ULT stated that there is no indication of growth in the FLB market and every segment is declining. Both NEMA and ULT suggested that new construction is moving to SSL and by the effective date of a potential standard all new construction will utilize SSL. Rebates for fluorescent systems have declined and in some markets disappeared. Both NEMA and ULT expected these trends to continue through the analysis period of the potential rule. (NEMA, No. 12 at p. 11; ULT, No. 6 at p. 9) DOE agrees and has modeled all shipment scenarios as declining markets.

CA IOUs stated that it is generally accepted that the LED market is growing quickly as LED performance improves and prices come down, and that as a result, LEDs are generally expected to expand into most applications in the coming years. (CA IOUs, No. 10 at p. 11) DOE agrees and has modeled all shipment scenarios as declining markets.

ASAP stated that the widespread installation of UL Type A TLEDs could create an extended ''hybrid'' phase where an LED light source is driven by a ballast designed for a fluorescent light source. (ASAP, No. 7 at p. 5) DOE agrees that this could be a possibility. Shipment scenarios #3 and #4 differ in rates of decline partially to address this aspect of the use of UL Type A TLEDs, which are designed to operate on existing fluorescent lamp ballasts.

1. Shipment Scenarios Modeled

DOE agrees with the commenters that FLB shipments are declining. DOE modeled four different no-new-standards shipment scenarios. These scenarios include the following:

(1) Scenario #1—declining shipments that all terminate in 2024. This scenario is based on the data supplied by NEMA and others depicting the decline between 2010 and 2014. The scenario also assumes that all new construction migrates to other light sources than fluorescent technology.

(2) Scenario #2—declining shipments that all terminate in 2040. This scenario is based on comments from manufacturers during the interview process and written comments of a reduction in shipments of 10 to 20 percent per year. This scenario assumes that most new construction is utilizing other light sources besides fluorescent technology.

(3) Scenario #3—declining shipments that approach zero near the end of the analysis period. This scenario is based on data of shipments of other lighting technologies publicly available. The rate of decline is less compared to the previous scenarios partially also to address comments received about UL Type A TLEDs operating on fluorescent lamp ballasts.

(4) Scenario #4—declining shipments that terminate near the end of the analysis period. This scenario is based on a slower decline rate in the initial part of the analysis period.

DOE presents in this proposed determination the results of analysis for each of the shipment scenarios, but shipment scenario #3 is the Reference Case. This scenario is consistent with other estimates of fluorescent technology in the analysis period.

Beyond the no-new-standards case, DOE also received comments about potential standards-induced changes to shipments and thus the effects on NIA. CA IOUs stated that DOE should account for additional energy savings resulting from an accelerated shift to LED lighting induced by more stringent standards for fluorescent lamp ballasts. (CA IOUs, No. 10 at p. 11) Philips also commented that it would be worthwhile to consider the effect of a new ballast energy efficiency rule if ballast declines continued at a faster rate. (Philips, No. 8 at p. 39) Philips speculated that if the incremental ballast price from ballast modifications necessary for compliance to a potential new and amended standard does not pay back within 2 years using the incremental energy savings, customers will choose something else and in reality it will lead to greater LED adoption. (Philips, No. 8 at pp. 36–37)

Lutron stated that FLB shipments are declining at an accelerating rate and potential new amended standards can only affect shipments. (Lutron, Public Meeting Transcript, No. 5 at p. 41) CA IOUs stated that first costs can still be a barrier to LED adoption and if potential new energy efficiency standards for fluorescent lamp ballasts increase the costs for the ballasts, the result will likely accelerate the shift towards more efficient LEDs. (CA IOUs, No. 10 at p. 11) NEEA stated during the framework public meeting that shipment rates of different technologies will depend on the price relationship of the different technologies. (NEEA, Public Meeting Transcript, No. 5 at pp. 99–101)

DOE agrees that there is a possibility that standards could induce consumers to opt for different technologies other than fluorescent lamp ballasts. Utilizing the shipments model, DOE modeled within the NIA model a potential standards-induced shift to SSL.

2. Dimming Ballasts

NEMA and manufacturers stated that the dimming ballast market was small, not growing, and possibly that dimming ballasts would not be shipped by the start of the analysis period. In contrast, ASAP, SCE, and CA IOUs speculated growth in the dimming ballast market. (CA IOUs, Public Meeting Transcript, No. 5 at pp. 24, 106)

NEMA stated that dimmable linear fluorescent lamp ballasts are roughly 2 percent of the overall FLB market. NEMA speculated that this small portion did not represent significant energy savings potential. Dimming ballast shipments have been declining for the last 5 years, according to NEMA and Lutron. (Lutron, No. 9 at p. 2; NEMA, No. 12 at pp. 3–4, 11) NEMA believes that dimming ballast shipments will continue to decline into the future like all other linear FLB shipments. Finally, Lutron and NEMA speculated that standards on dimming ballasts may reduce shipments of ballasts. (Lutron, No. 9 at p. 2; NEMA, No. 12 at pp. 3–4, 11)

GE stated that other than in California, that most retrofits of FLB systems do not include dimming ballasts. GE discussed during the framework public meeting that California was considering modifying the requirements of dimming ballasts in retrofit applications in Title 24 because of claims of negative effects on the retrofit market. (GE, Public Meeting Transcript, No. 5 at pp. 25–26)

Lutron commented during the public meeting that the requirements in California's Title 24 had changed and the adoption of dimming ballasts in retrofit applications is unknown at this time. (Lutron, Public Meeting Transcript, No. 5 at pp. 27–28) During the public meeting, Lutron stated that they believe it is prudent for DOE to assume that all dimming ballasts that are going to be available after the rule becomes effective are already in the market. (Lutron, Public Meeting Transcript, No. 5 at p. 104) In contrast, during the framework public meeting, CA IOUs stated that they expected the absolute number or the percentage of dimming FLB shipments to increase. (CA IOUs, Public Meeting Transcript, No. 5 at p. 106)

ULT commented that although California's Title 24 required the installation of dimming ballasts, sites were installing TLEDs to not trigger the energy code. ULT stated that as a result, there would be probably fewer dimming systems than compared to previous analysis. (ULT, Public Meeting Transcript, No. 5 at pp. 29–31)

ASAP stated that the revised California Title 24 would dramatically alter the market for fluorescent lamp ballasts within California, resulting in greater sales of ballasts capable of dimming below 50 percent full light output. ASAP expected the change in California to affect other states and that dimming ballasts will be in greater demand. (ASAP, No. 7 at p. 2)

Utility rebates for most fluorescent lamp ballasts have disappeared, but SCE did state that some rebates still exist for dimming ballasts as they related to demand response. (SCE, Public Meeting Transcript, No. 5 at pp. 109–110)

CA IOUs stated during the framework public meeting that the dimming ballast requirements within California's Title 24 is having a major effect on the dimming ballast market within California. The 2016 version of Title 24 essentially requires new construction to use linear fluorescent and that the ballast be a dimming ballast. Title 24 installation of dimming ballast requirements also apply to retrofit applications. (CA IOUs, Public Meeting Transcript, No. 5 at pp. 23–24) NEEA also added during the framework public meeting that the four states in the Pacific Northwest might have dimming ballast requirements similar to Title 24 by the time any potential rule goes into effect. (NEEA, Public Meeting Transcript, No. 5 at p. 24) NEMA stated that they would review its data to see if it could determine any effects on dimming ballast shipments as a result of the Title 24 requirements. (NEMA, Public Meeting Transcript, No. 5 at p. 25)

As stated earlier, DOE agrees with commenters that the overall FLB market is declining. Although dimming ballasts may be a smaller portion of the entire FLB market, DOE does not have enough information to indicate a significantly different rate of decline for dimming ballasts compared to the larger FLB market. DOE modeled the same rate of decline for dimming ballasts as other similar non-dimming fluorescent lamp ballasts operating the same type and quantity of lamps in each of the four different scenarios.

GE speculated that if a potential new standard resulted in a very expensive fluorescent dimming ballast, it would accelerate new construction use of LEDs if they wanted a system that dims. (GE, Public Meeting Transcript, No. 5 at p. 101) Lutron speculated that setting efficiency standards too aggressively will only hasten the decline of dimming ballasts. (Lutron, No. 9 at p. 3) DOE agrees that potential standards could induce a shift from dimming fluorescent lamp ballasts to solid-state lighting. As part of the NIA analysis, DOE included a secondary analysis of a standards-induced shift from dimming ballasts to SSL.

3. Tubular LEDs

During the framework public meeting, SCE stated that many lighting customers are focused on inexpensive solutions and often consider retrofitting options rather than replacing the entire system. Specifically, replacing fluorescent lamps with TLEDs is an option that many customers consider. (SCE, Public Meeting Transcript, No. 5 at p. 39) CA IOUs agreed with other commenters that LED products are increasing across many applications, but fluorescent lighting is still prevalent across many sectors. Many manufacturers offer UL Type A TLEDs that are designed to operate on existing fluorescent lamp ballasts and thus the potential need for fluorescent lamp ballasts to exist. (CA IOUs, No. 10 at pp. 1–2)

DOE agrees that TLEDs are currently desired as a low-cost initial energy option and that the use of TLEDs is growing. DOE included in the NIA analysis a greater penetration of UL Type A TLEDs through the course of the analysis period.

GE views the retrofitting of fluorescent luminaires with TLEDs as a short-term solution while the larger new installation market moves to dedicated LED systems. In 10 or 15 years, more dedicated LED systems will be installed and fewer TLEDs will be retrofitting fluorescent luminaires. (GE, Public Meeting Transcript, No. 5 at p. 39) ASAP also speculates that if TLEDs have lifetimes equal or longer than the lifetimes of the fluorescent lamp ballasts that operate them, the TLEDs could disrupt the normal fluorescent maintenance and replacement cycle. Currently ballast failure in a fluorescent luminaire can present a cost-effective opportunity for luminaire replacement with a LED luminaire. However, if the fluorescent lamps have been replaced with TLEDs and the ballast fails at a later point, this might no longer present a cost-effective opportunity to convert the fixture to a dedicated LED luminaire. ASAP cautioned that this might increase the volume of UL Type A TLEDs that operate on a fluorescent lamp ballast. (ASAP, No. 7 at p. 5)

ASAP stated that the widespread installation of TLEDs could create an

extended ''hybrid'' phase where a LED light source is driven by a ballast designed for a fluorescent light source. (ASAP, No. 7 at p. 5) Philips stated that retrofit jobs using TLEDs to replace linear fluorescent lamps is a big trend, noting that the prevalence of TLEDs operating on fluorescent lamp ballasts is growing rapidly. (Philips, No. 8 at pp. 12, 38)

DOE agrees that the use of UL Type A TLEDs can achieve early energy savings that might prolong the conversion of the lighting system to other technologies. DOE also agrees that this might encourage sites using UL Type A TLEDs to replace a failed fluorescent lamp ballast with another fluorescent lamp ballast to continue the life of the lighting system. Shipment scenarios #3 and #4 incorporate the prolonged shipments of fluorescent lamp ballasts to service systems modified to use UL Type A TLEDs.

Lutron did not believe that there was a scenario where a consumer would purchase a TLED and a fluorescent lamp ballast in a new system. (Lutron, Public Meeting Transcript, No. 5 at p. 84) DOE disagrees with Lutron. DOE's research indicates at least a few UL Type A TLED manufacturers provide warranties for UL Type A TLEDs that are directly related to the installation of a new ballast. However, DOE stipulates that this is rare combination and that the major benefit of UL Type A TLEDs is that this type TLED can operate on the existing fluorescent lamp ballasts, thus reducing initial costs of installation.

DOE seeks comment whether the shipment scenarios under various policy scenarios are reasonable and likely to occur. DOE seeks comment and information on whether dimming ballasts should have a different rate of decline than the similar non-dimming fluorescent lamp ballasts. DOE seeks comments on which shipment scenario most accurately characterizes future dimming FLB shipments. DOE seeks comments on which of the four scenarios best characterize future shipments of fluorescent lamp ballasts. See section VII.C for a list of issues on which DOE seeks comment. Chapter 9 of the NOPD TSD provides details on DOE's shipments analysis for fluorescent lamp ballasts.

G. National Impact Analysis

The NIA assesses the NES and the NPV from a national perspective of total consumer costs and savings that would be expected to result from amended standards at specific efficiency levels.[36] (''Consumer'' in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of fluorescent lamp ballasts sold from 2023 through 2052.

DOE evaluates the effects of amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted amended standards at specific energy efficiency levels (*i.e.,* the ELs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each EL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV.13 summarizes the inputs and methods DOE used for the NIA analysis for the NOPD. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPD TSD for details.

TABLE IV.13—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Modeled Compliance Date of Standard	2023.
Efficiency Trends	No-new-standards case. Standards cases.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each EL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each EL. Incorporates projection of future product prices based on historical data.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	Annual values do not change with efficiency level.
Energy Prices	*AEO2019* projections (to 2050) and extrapolation through 2061.
Energy Site-to-Source and FFC Conversion	A time-series conversion factor based on *AEO2019 and/or the NEMS model.*
Discount Rate	3 percent and 7 percent.
Present Year	2018.

ULT stated that the NIA should rely on input from manufacturers. (ULT, No. 6, at p. 10) Input from manufacturers as well as others was captured via the comment process, and DOE considered the comments in the development of the inputs that affect the NIA. Interviews were conducted with manufacturers as part of the preliminary analysis process, and DOE incorporated aggregated feedback during these interviews into the inputs that feed the NIA.

During the framework public meeting, CA IOUs requested that DOE provide interim values for statewide energy savings and unit savings within the model. (CA IOUs, Public Meeting Transcript, No. 5 at pp. 111–112) NEMA also requested modifications to the typical NIA models during the framework public meeting. NEMA

[36] The NIA accounts for impacts in the 50 states and Washington, D.C.

stated that for other rules, the NIA model is locked and certain inputs cannot be modified or model elements are not readily understandable in the TSD. (NEMA, Public Meeting Transcript, No. 5 at pp. 116–118) DOE acknowledges these requests. The LCC provides unit-level savings. DOE also provides detail as to how the model works and how it can be modified in chapter 10 and appendix 10A of the NOPD TSD.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.E.8 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered product classes for the year of anticipated compliance with an amended standard.

For the standards cases, DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective (2023). In this scenario, the market shares of products in the no-new-standards case that do not meet the standard under consideration would ''roll up'' to meet the amended standard level, and the market share of products above the standard would remain unchanged.

ASAP recommended analyzing the TLED market to evaluate its effect on the overall energy savings over time. (ASAP, No. 7 at p. 5) DOE includes a change in UL Type A TLED penetration over time in this analysis. As the mixture of lamps operated by the ballast changes to include differing amount of UL Type A TLEDs, the NES is affected.

CA IOUs suggested accounting for energy savings from standards-induced shifts away from fluorescent lamp ballasts. CA IOUs raised a concern if the analysis only examined fluorescent lamp ballasts and not the energy savings of potential shifts to other lighting technologies. (CA IOUs, Public Meeting Transcript, No. 5 at pp. 103–104; CA IOUs, No. 10 at p. 11) Lutron stated that FLB shipments are declining at an accelerating rate and potential new amended standards can only affect shipments. (Lutron, Public Meeting Transcript, No. 5 at p. 41) Also during the framework public meeting, NEEA discussed the possibility of setting a potential standard for dimming ballasts that would eliminate some of the dimming ballasts. NEEA suggested that consumers would switch to LED options. NEEA suggested that there should be a scenario that examines consumers switching to LED systems. (NEEA, Public Meeting Transcript, No. 5 at p. 102)

DOE has included within the NIA model a standards-induced shift scenario in which if EL 1 is selected 25 percent of the consumers would migrate to a new LED technology. If EL 2 is selected 50 percent of the consumers would migrate to a new LED technology, and if EL 3 is selected 75 percent of the consumers would migrate to a new LED technology. Within the NIA model, the percentage of customers migrating away is not fixed and can be changed by the user.

Philips speculated that if the incremental ballast price from ballast modifications necessary for compliance to a potential new, amended standard does not pay back within 2 years using the incremental energy savings, customers will choose something else, and in reality it will lead to additional LED adoption. (Philips, No. 8 at pp. 36–37) CA IOUs stated that first costs can still be a barrier to LED adoption, and if potential new energy efficiency standards for fluorescent lamp ballasts increase the costs for the ballasts, the result will likely accelerate the shift towards more efficient LEDs. (CA IOUs, No. 10 at p. 11)

Within DOEs standard-induced shift away from a FLB scenario, DOE modeled the shift to occur at different increments at each EL and not at a specific PBP or specific increase in FLB price. The PBPs vary for all of the product classes and ballasts. The potential cost differential between the baseline ballast and a more efficient EL ballast vary across the products classes as well.

NEEA stated that although LED replacements of traditional lighting are more expensive than traditional lighting systems, the prices will reduce over time. (NEEA, Public Meeting Transcript, No. 5 at p. 99) However, NEEA also stated that the price of FLB systems is known, whereas the price of LED systems in the future is a much bigger variable. (NEEA, Public Meeting Transcript, No. 5 at pp. 101–102) Philips concurred that although LED prices were initially higher, they have reduced and they will be lower cost in the future. (Philips, Public Meeting Transcript, No. 5 at pp. 102–103)

DOE agrees that the potential LED options may have a greater initial cost than a potential compliant fluorescent lamp ballast. Within the standards-induced shift away from the FLB scenario, DOE assumed an equal mixture of TLEDs (UL Type B and C), LED retrofit kits, and new LED luminaires. DOE researched public pricing for each of these devices and developed and aggregate price for the potential LED option. DOE also developed an aggregate device efficacy for the potential option. Using DOE forecasts for future efficacy improvements circa 2023, DOE modeled the efficacy for the LED option in 2023. Using the engineering analysis and system light output, DOE reverse-engineered the input power and price for the LED option. For more information on the methodology refer to the Appendix 10D of chapter 10 of the NOPD TSD.

DOE seeks comment on the percentage of customers to model in a standards-induced shift that would migrate away from FLB technology. DOE seeks comments on the specific incremental cost in fluorescent lamp ballasts that could trigger a standards-induced shift away from fluorescent lamp ballasts. DOE seeks comment on the approach for input power and price for LED devices considered in a standards-induced shift. See section VII.C for a list of issues on which DOE seeks comment.

DOE seeks comment on any potential impediments that would prevent users of fluorescent lamp ballasts from switching to LED lighting to garner additional energy savings. DOE seeks comment on the expected effect of potential standards on the rate at which FLB consumers transition to non-FLB technology. See section VII.C for a list of issues on which DOE seeks comment. Chapter 10 of the NOPD TSD provides details on DOE's NIA for fluorescent lamp ballasts.

2. National Energy Savings

The NES analysis involves a comparison of national energy consumption of the considered products between each potential standards case (EL) and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new-standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to source energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO2019.* Cumulative energy

savings are the sum of the NES for each year over the timeframe of the analysis.

In 2011, in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the NIA and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (NEMS) is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [37] that EIA uses to prepare its AEO. The FFC factors incorporate losses in production, and delivery in the case of natural gas, (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the NOPD TSD.

ULT stated that the NIA model needs to include a declining market for fluorescent lamp ballasts. (ULT, No. 6 at p. 10) DOE agrees with ULT and has included declining shipment scenarios within the shipment analysis (chapter 10 of the NOPD TSD). The shipments analysis serves as part of the basis of the NIA model, and thus the NIA model includes a declining shipments scenario for fluorescent lamp ballasts.

NEMA and ULT stated that the NIA model should include the energy reduction from the natural shift to solid-state lighting. (NEMA, No. 12 at p. 12; ULT, No. 6 at p. 10) As stated previously, the preliminary analysis shipment model includes a declining market scenario that includes a shift to solid-state lighting. This decline of fluorescent lamps ballasts in transition to SSL is in the absence of standards (a natural shift). This decline occurs in the no-new-standards case. The NIA model characterizes the energy usage of the fluorescent lamp ballast and compares the energy usage in both a no-new-standards and a standards scenario. However, DOE has included within the NIA model a scenario in which potential standards accelerate the shift away from fluorescent lamp ballasts to SSL (standards-induced shift).

Both NEMA and ULT suggested that the NIA model should focus on the effects of potential standards on drawing resources from lighting manufacturers from other technologies (*i.e.,* SSL) to comply with potential standards. (NEMA, No. 12 at p. 12; ULT, No. 6 at p. 10) DOE has not analyzed the potential effects of standards on resources and investments of manufacturers as part of the NIA. The MIA assesses the investments manufacturers must make to comply with potential standards (see section IV.H).

During the framework public meeting, Lutron inquired whether DOE could take credit for energy savings resulting from dimming ballast standards across the country. California's Title 20 already contains a dimming standard, and therefore Lutron suggested that DOE should only include energy saving projections from the rest of the country and not in California. (Lutron, Public Meeting Transcript, No. 5 at pp. 27–28) The NIA model uses inputs from the shipments analysis factors in distributions of different values of efficiency of ballasts. Therefore, the ballasts that comply with California's Title 20 are incorporated into the shipments model and thus the NIA model. If a potential standard shifts ballasts to the California Title 20 values, any related savings (or lack of savings because of already compliant ballasts) would be captured by the NIA model.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

DOE developed FLB price trends based on historical pricing information for electronic ballasts. DOE applied the same trends to project prices for each product class at each considered efficiency level. By 2052, which is the end date of the projection period, the average FLB price is projected to drop 8.2 percent relative to 2016. DOE's projection of product prices is described in appendix 8C of the NOPD TSD.

The operating cost savings are energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average residential energy price changes in the Reference Case from *AEO2019,* which has an end year of 2050.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this NOPD, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[38] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

H. Manufacturer Impact Analysis

DOE performed an MIA to estimate the financial impacts of potential amended energy conservation standards on manufacturers of fluorescent lamp ballasts. DOE relied on GRIM, an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in research and development (R&D) and manufacturing capital required to produce compliant products. The key GRIM outputs are the industry net present value (INPV), which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The GRIM calculates cash flows using standard accounting principles and compares

[37] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009,* DOE/EIA–0581(2009), October 2009. Available at *https://www.eia.gov/analysis/pdfpages/0581(2009)index.php.*

[38] United States Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Section E. Available at *https://obamawhitehouse.archives.gov/omb/memoranda_m03-21/.*

changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the amended energy conservation standard on manufacturers. To capture the uncertainty relating to manufacturer pricing strategies following amended standards, the GRIM estimates a range of possible impacts under different markup scenarios.

DOE created initial estimates for the industry financial inputs used in the GRIM (*e.g.,* tax rate; working capital rate; net property plant and equipment expenses; selling, general, and administrative (SG&A) expenses; R&D expenses; depreciation expenses; capital expenditures; and industry discount rate) based on publicly available sources, such as company filings of form 10–K from the SEC or corporate annual reports.[39] DOE then further calibrated these initial estimates during manufacturer interviews to arrive at the final estimates used in the GRIM.

The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of potential standards and extending over a 30-year period following the compliance date of potential standards. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) Creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes.

The GRIM spreadsheet uses inputs to arrive at a series of annual cash flows, beginning in 2019 (the reference year of the analysis) and continuing to 2052. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. DOE used a real discount rate of 9.6 percent for FLB manufacturers. This initial discount rate estimate was derived using the capital asset pricing model in conjunction with publicly available information (*e.g.,* 10-year treasury rates of return and company specific betas). DOE then confirmed this initial estimate during manufacturer interviews. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 11 of the NOPD TSD.

[39] 10-Ks are collected from the SEC's EDGAR database: *https://www.sec.gov/edgar.shtml* or from annual financial reports collected from individual company websites.

1. Manufacturer Production Costs

Manufacturing more efficient fluorescent lamp ballasts is typically more expensive because of the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of covered products can affect the revenues, gross margins, and cash flow of the industry. Typically, DOE develops MPCs for the covered products using reverse-engineering. These costs are used as an input to the LCC analysis and NIA. However, because ballasts are difficult to reverse-engineer, DOE directly derived end-user prices in the engineering analysis and then used the end-user prices in conjunction with markups to calculate the MPCs of fluorescent lamp ballasts. See section IV.C for a further explanation of product price determination.

To determine MPCs of fluorescent lamp ballasts from the wholesale prices calculated in the engineering analysis, DOE divided the wholesale prices by the wholesaler markup to calculate the MSP. DOE then divided the MSP by the manufacturer markup to get the MPCs. DOE determined the wholesaler markup to be 1.23 and the manufacturer markup to be 1.40 for all fluorescent lamp ballasts. Markups are further described in section IV.H.4.

2. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by EL. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment projections from shipments scenario #3 (reference case, see section IV.F.1) starting in 2019 (the reference year) and ending in 2052 (the end year of the analysis period). See chapter 9 of the NOPD TSD for additional details.

3. Product and Capital Conversion Costs

Potential amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and equipment designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered EL in each product class. For the MIA, DOE classified these conversion costs into two major groups: (1) Product conversion costs; and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with amended energy conservation standards. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled.

To evaluate the level of capital conversion costs manufacturers would likely incur to comply with the analyzed energy conservation standards DOE used data submitted during manufacturer interviews and data from the 2011 FL Ballast Rule to estimate costs to update manufacturer production lines by product class. DOE then estimated the number of production lines currently in existence and the number of production lines that would be required to be updated at each analyzed EL using DOE's public Compliance Certification Database. DOE then multiplied these numbers together (*i.e.,* capital conversion costs per production line and number of production lines that would need to be updated) to get the final estimated capital conversion costs for each product class at each analyzed EL.

To evaluate the level of product conversion costs manufacturers would likely incur to comply with the analyzed energy conservation standards, DOE used data submitted during manufacturer interviews and data from the 2011 FL Ballast Rule to estimate per model R&D and testing and certification costs for each product class and EL. DOE then estimated the number of models that would need to be redesigned for each product class at each analyzed EL. DOE then multiplied these numbers together to get the final estimated product conversion costs for each product class at each analyzed EL.

In general, DOE assumes all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the potential amended standards. The conversion cost figures used in the GRIM can be found in Table V.7 and section V.C of this document. For additional information on the estimated capital and product conversion costs, see chapter 11 of the NOPD TSD.

4. Markup Scenarios

To calculate the MPCs used in the GRIM, DOE divided the wholesaler prices calculated in the engineering analysis by the wholesaler markup and the manufacturer markup. The wholesaler markup was calculated in the 2011 FL Ballast Rule by reviewing SEC 10–K reports of electrical wholesalers. DOE also coordinated with

the National Association of Electrical Distributors by contacting two representative electrical wholesalers, who confirmed that DOE's calculated markups were consistent with their actual ballast markups. DOE continued to use a wholesaler markup of 1.23 in this analysis.

The manufacturer markup accounts for the non-production costs (*i.e.,* SG&A, R&D, and interest) along with profit. Modifying the manufacturer markup in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of analyzed energy conservation standards: (1) A preservation of gross margin percentage markup scenario; and (2) a preservation of operating profit markup scenario. These scenarios lead to different manufacturer markup values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin percentage scenario, DOE applied a single uniform ''gross margin percentage'' markup across all ELs, which assumes that manufacturers would be able to maintain the same amount of profit as a percentage of revenues at all ELs within a product class. To calculate the preservation of gross margin markup, DOE took the manufacturer markup used in the 2011 FL Ballast Rule and compared it to the manufacturer markups calculated by examining the SEC 10-Ks of all publicly traded FLB manufacturers and confirmed this with manufacturers during interviews. DOE determined that the manufacturer markup used in the 2011 FL Ballast Rule was consistent with the current SEC 10-Ks of the publicly traded FLB manufacturers and most manufacturers agreed during manufacturer interviews. Therefore, DOE used 1.40 as the manufacturer markup in the preservation of gross margin markup scenario. DOE assumes that this markup scenario represents an upper bound to industry profitability under analyzed energy conservation standards.

Under the preservation of operating profit markup scenario, DOE modeled a situation in which manufacturers are not able to increase operating profit in proportion to increases in manufacturer production costs. Under this scenario, as the cost of production increases, manufacturers are generally required to reduce the manufacturer markups to maintain cost competitive offerings in the market. Therefore, gross margin (as a percentage) shrinks in the standards cases in this markup scenario. This markup scenario represents an upper bound of industry impacts (lower profitability) under amended energy conservation standards.

A comparison of industry financial impacts under the two manufacturer markup scenarios is presented in section V.C.1 of this document.

5. Manufacturer Interviews

DOE interviewed manufacturers of fluorescent lamp ballasts and asked them to describe their major concerns regarding a potential rulemaking to amend the standards for FLBs. Manufacturer interviews are conducted under non-disclosure agreements (NDAs), so DOE does not document these discussions in the same way that it does public comments and DOE's responses throughout the rest of this document. Manufacturers identified two major areas of concern regarding potential FLB standards: (1) Shift to SSL (*i.e.,* LEDs) and (2) limited investment in fluorescent lamp ballasts.

a. Shift to Solid-State Lighting

Manufacturers stated that the market is moving from fluorescent lighting to LED lighting. As a result, shipments for fluorescent lamp ballasts are declining. This trend is expected to continue in the future absent amended energy conservation standards. Some manufacturers expected sales in 2020 could decline by more than half compared to 2016. Given this market-driven move in the no-new-standards case from fluorescent lighting to LED lighting, manufacturers commented that an amended energy conservation would accelerate this transition. Specifically, manufacturers stated that consumers of fluorescent lamp ballasts are very price sensitive and any increase in consumer price as a result of potential amended energy conservation standards would significantly reduce FLB shipments.

DOE is aware that consumers of fluorescent lamp ballasts are shifting to purchase all-LED systems. DOE accounts for this in the Reference Case by adjusting shipments of fluorescent lamp ballasts downward during the analysis period. Amended energy conservation standards could accelerate the transition to LED lighting, and DOE accounts for this potential accelerated decline by analyzing an alternate shipment scenario in which there is a standards-induced shift to SSL. (See section IV.F for further information.)

b. Limited Investment in Fluorescent Lamp Ballasts

Manufacturers commented that fluorescent lamp ballasts are a mature technology and increases in efficiency can only be achieved at high expense to the industry. Under potential amended energy conservation standards, manufacturers stated that they might discontinue non-compliant products instead of redesigning them, because investments in fluorescent lamp ballasts would not be cost-effective. Therefore, any amended energy conservation standards could result in reduced product offerings. This would impact consumers in the replacement markets, particularly in those instances in which there is a preference to replace ballasts with exactly the same one. The LCC analysis takes into account such effects on consumers; see section IV.E for further details.

6. Discussion of MIA Comments

DOE received several comments related to assessing the manufacturer impacts of potential amended standards for fluorescent lamp ballasts. NEMA, Lutron, and ULT commented that manufacturers are unlikely to develop or redesign new fluorescent lamp ballasts if energy conservation standards result in the elimination of products from the market. They added that setting efficiency limits will only hasten the existing decline of this product category. (NEMA, No. 12 at p. 11; Lutron, No. 9 at p. 3; ULT, No. 6 at p. 10) Similarly, Philips commented that even though a new ballast could be designed and produced, DOE needs to be very cognizant of the costs associated with design, approbation, marketing, and implementation of that new, revised design into luminaires and there might not be a positive business case. (Philips, No. 8 at p. 15)

The MIA takes conversion costs and the shipment volumes into account when analyzing the impacts on manufacturers. Thus, the results of the MIA present the impacts of redesigning all non-compliant products to comply with the analyzed standard level even if that is not the path that manufacturers will choose.

In addition, NEMA pointed out that fluorescent lamp ballasts have been subject to four energy conservation standards since the early 1990s, including a rulemaking completed in 2011, which NEMA stated had a significant negative impact on manufacturers' INPV. NEMA commented that because of a declining demand for these products, another rulemaking could have a negative

impact on INPV. (NEMA, No. 12 at p. 8) Philips and ULT commented that they used to run five and four FLB factories, respectively, and now they are running one factory each as a result of declining sales. (Philips, Public Meeting Transcript, No. 5 at p. 55; ULT, Public Meeting Transcript, No. 5 at p. 56)

In those instances in which DOE proposes amended standards, it analyzes the benefits and burdens of each standard independently and weighs the potential burdens on the industry as one of the factors in determining a final standard. In this notice DOE is proposing a determination to not amend standards for fluorescent lamp ballasts. See section V.D for further details.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for fluorescent lamp ballasts. It addresses the ELs examined by DOE and the projected impacts of each of these levels. Additional details regarding DOE's analyses are contained in the NOPD TSD supporting this document.

A. Economic Impacts on Individual Consumers

DOE analyzed the cost effectiveness (*i.e.,* the savings in operating costs throughout the estimated average life of FLBs compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the FLBs which are likely to result from the imposition of a standard at the EL) by considering the LCC and PBP at each EL. These analyses are discussed in the following sections. DOE usually evaluates the LCC impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a national standard. However, given the tentative conclusion discussed in section V.D, DOE did not conduct a consumer subgroup analysis for this proposed determination.

1. Life-Cycle Cost and Payback Period

In general, higher-efficiency products can affect consumers in two ways: (1) Purchase price increases and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the NOPD TSD provides detailed information on the LCC and PBP analyses.

Table V.1 shows the average LCC and PBP results for the ELs considered for fluorescent lamp ballasts in this analysis.

TABLE V.1—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL

Efficiency level	LCC savings 2018$	Simple payback period *years*
EL 1	0	12
EL 2	1	10
EL 3	2	10

2. Rebuttable Presumption Payback

As discussed in section IV.E.9, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption PBP for each of the considered ELs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedure for fluorescent lamp ballasts. In contrast, the PBPs presented in section V.A.1 were calculated using distributions that reflect the range of energy use in the field. See chapter 8 of the NOPD TSD for more information on the rebuttable presumption payback analysis.

B. National Impact Analysis

This section presents DOE's estimates of the NES and the NPV of consumer benefits that would result from each of the ELs considered as potential amended standards.

1. Significance of Energy Savings

To estimate the energy savings attributable to potential amended standards for fluorescent lamp ballasts, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each EL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2023–2052). Table V.2 presents DOE's projections of the NES for each EL considered for fluorescent lamp ballasts. The savings were calculated using the approach described in section IV.G of this document.

TABLE V.2—CUMULATIVE NATIONAL ENERGY SAVINGS FOR FLUORESCENT LAMP BALLASTS; 30 YEARS OF SHIPMENTS

[2023–2052]

Shipment scenario	Energy type	Efficiency level		
		1	2	3
		quads		
1	Site Energy	0.000	0.000	0.000
	Source Energy	0.000	0.000	0.000
	FFC Energy	0.000	0.000	0.000
2	Site Energy	0.006	0.019	0.025
	Source Energy	0.017	0.051	0.066
	FFC Energy	0.018	0.054	0.069
3 (Reference Case)	Site Energy	0.018	0.055	0.069

TABLE V.2—CUMULATIVE NATIONAL ENERGY SAVINGS FOR FLUORESCENT LAMP BALLASTS; 30 YEARS OF SHIPMENTS—Continued

[2023–2052]

Shipment scenario	Energy type	Efficiency level		
		1	2	3
		quads		
	Source Energy	0.049	0.145	0.183
	FFC Energy	0.051	0.152	0.192
4	Site Energy	0.037	0.110	0.137
	Source Energy	0.098	0.292	0.365
	FFC Energy	0.102	0.306	0.382

OMB Circular A–4 [40] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this proposed determination, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[41] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to fluorescent lamp ballasts. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.3. The impacts are counted over the lifetime of fluorescent lamp ballasts purchased in 2023–2031.

TABLE V.3—CUMULATIVE NATIONAL ENERGY SAVINGS FOR FLUORESCENT LAMP BALLASTS; 9 YEARS OF SHIPMENTS

[2023–2031]

Shipment scenario	Energy type	Efficiency level		
		1	2	3
		quads		
1	Site Energy	0.000	0.000	0.000
	Source Energy	0.000	0.000	0.000
	FFC Energy	0.000	0.000	0.000
2	Site Energy	0.006	0.018	0.023
	Source Energy	0.016	0.047	0.061
	FFC Energy	0.017	0.049	0.064
3 (Reference Case)	Site Energy	0.012	0.036	0.047
	Source Energy	0.032	0.097	0.124
	FFC Energy	0.034	0.101	0.130
4	Site Energy	0.022	0.065	0.084
	Source Energy	0.058	0.175	0.224
	FFC Energy	0.061	0.183	0.235

2. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the ELs considered for fluorescent lamp ballasts. In accordance with OMB's guidelines on regulatory analysis,[42] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.4 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2023–2052.

[40] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Available at *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/.*

[41] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. If DOE makes a determination that amended standards are not needed, it must conduct a subsequent review within 3 years following such a determination. As DOE is evaluating the need to amend the standards, the sensitivity analysis is based on the review timeframe associated with amended standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

[42] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Available at *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/.*

TABLE V.4—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR FLUORESCENT LAMP BALLASTS; 30 YEARS OF SHIPMENTS

[2023–2052]

Shipment scenario	Discount rate (percent)	Efficiency level		
		1	2	3
		Billion 2018$		
1	3	(0.000)	0.000	0.000
	7	(0.000)	(0.000)	(0.000)
2	3	(0.050)	(0.013)	(0.031)
	7	(0.053)	(0.054)	(0.080)
3 (Reference Case)	3	(0.146)	(0.075)	(0.159)
	7	(0.133)	(0.149)	(0.228)
4	3	(0.293)	(0.165)	(0.350)
	7	(0.256)	(0.293)	(0.453)

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.5. The impacts are counted over the lifetime of products purchased in 2023–2031. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.5—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR FLUORESCENT LAMP BALLASTS; 9 YEARS OF SHIPMENTS

[2023–2031]

Shipment scenario	Discount rate (percent)	Efficiency level		
		1	2	3
		Billion 2018$		
1	3	(0.000)	0.000	0.000
	7	(0.000)	(0.000)	(0.000)
2	3	(0.046)	(0.010)	(0.025)
	7	(0.050)	(0.051)	(0.074)
3 (Reference Case)	3	(0.096)	(0.030)	(0.066)
	7	(0.101)	(0.106)	(0.157)
4	3	(0.173)	(0.058)	(0.128)
	7	(0.180)	(0.192)	(0.285)

C. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of analyzed energy conservation standards on manufacturers of fluorescent lamp ballasts. The following section describes the expected impacts on fluorescent lamp manufacturers at each EL. Chapter 11 of the NOPD TSD explains the analysis in further detail.

1. Industry Cash Flow Analysis Results

In this section, DOE provides the results from the MIA, which examines changes in the industry that would result from the analyzed standards. The following tables illustrate the estimated financial impacts (represented by changes in INPV) of potential amended energy conservation standards on manufacturers of fluorescent lamp ballasts, as well as the conversion costs that DOE estimates manufacturers of fluorescent lamp ballasts would incur at each EL.

To evaluate the range of cash-flow impacts on the FLB industry, DOE modeled two markup scenarios that correspond to the range of anticipated market responses to potential standards. Each scenario results in a unique set of cash flows and corresponding industry values at each EL. In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and the standards case that result from the sum of discounted cash flows from the reference year (2019) through the end of the analysis period (2052).

To assess the upper (less severe) end of the range of potential impacts on FLB manufacturers, DOE modeled a preservation of gross margin markup scenario. This scenario assumes that in the standards case, manufacturers would be able to pass along all the higher production costs required for more efficient products to their consumers. To assess the lower (more severe) end of the range of potential impacts, DOE modeled a preservation of operating profit markup scenario. The preservation of operating profit markup scenario assumes that in the standards cases, manufacturers would be able to earn the same operating margin in absolute dollars as they would in the no-new-standards case. This represents the lower bound of industry profitability in the standards cases.

Table V.6 and Table V.7 present the results of the industry cash flow analysis for FLB manufacturers under the preservation of gross margin and preservation of operating profit markup scenarios. See chapter 11 of the NOPD TSD for results of the complete industry cash flow analysis by product class.

TABLE V.6—MANUFACTURER IMPACT ANALYSIS FOR FLUORESCENT LAMP BALLAST—PRESERVATION OF GROSS MARGIN MARKUP SCENARIO

	Units	No-new-standards case	EL 1	EL 2	EL 3
INPV	*2018$ millions*	489.3	436.9	389.1	381.5
Change in INPV	*2018$ millions*		(52.4)	(100.2)	(107.8)
	%		(10.7)	(20.5)	(22.0)
Product Conversion Costs	*2018$ millions*		68.8	132.2	146.7
Capital Conversion Costs	*2018$ millions*		17.8	33.8	36.4
Total Conversion Costs	*2018$ millions*		86.6	166.0	183.1

TABLE V.7—MANUFACTURER IMPACT ANALYSIS FOR FLUORESCENT LAMP BALLAST—PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

	Units	No-new-standards case	EL 1	EL 2	EL 3
INPV	*2018$ millions*	489.3	430.9	375.6	363.3
Change in INPV	*2018$ millions*		(58.4)	(113.7)	(126.0)
	%		(11.9)	(23.2)	(25.8)
Product Conversion Costs	*2018$ millions*		68.8	132.2	146.7
Capital Conversion Costs	*2018$ millions*		17.8	33.8	36.4
Total Conversion Costs	*2018$ millions*		86.6	166.0	183.1

2. Direct Impacts on Employment

DOE typically presents quantitative estimates of the potential changes in production employment that could result from the analyzed energy conservation standard levels. However, for this proposed determination, DOE determined that no manufacturers have domestic FLB production. Further, DOE has tentatively determined that amended energy conservation standards are not needed. Therefore, the proposed determination would not have a significant impact on domestic employment in the FLB industry.

3. Impacts on Manufacturing Capacity

DOE does not anticipate any significant capacity constraints at any of the analyzed energy conservation standards. The more efficient components are currently being used in existing FLB models and worldwide supply would most likely be able to meet the increase in demand given the 3-year compliance period for any potential energy conservation standards.

4. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting cost structures substantially different from the industry average could be affected disproportionately. DOE only identified one manufacturer subgroup for fluorescent lamp ballasts, small manufacturers. Given the tentative conclusion discussed in section V.D, DOE did not conduct a manufacturer subgroup analysis on small business manufacturers for this proposed determination.

5. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE typically conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency. However, given the tentative conclusion discussed in section V.D, DOE did not conduct a cumulative regulatory burden analysis.

D. Proposed Determination

As required by EPCA, this notice analyzes whether amended standards for fluorescent lamp ballasts would result in significant conservation of energy, be technologically feasible, and be cost effective. (42 U.S.C. 6295(m)(1)(A) and (n)(2)) In addition to these criteria, DOE also estimated the impact on manufacturers. The criteria considered under 42 U.S.C. 6295(m)(1)(A) and the additional analysis are discussed below. Because an analysis of potential cost effectiveness and energy savings first require an evaluation of the relevant technology, DOE first discusses the technological feasibility of amended standards. DOE then addresses the cost effectiveness and energy savings associated with potential amended standards.

1. Technological Feasibility

EPCA mandates that DOE consider whether amended energy conservation standards for fluorescent lamp ballasts would be technologically feasible. (42 U.S.C. 6295(m)(1)(A) and (n)(2)(B)) DOE has tentatively determined that there are technology options that would improve the efficiency of fluorescent lamp ballasts. These technology options are being used in commercially available fluorescent lamp ballasts and therefore are technologically feasible. (See section IV.A.3 for further information.) Hence, DOE has tentatively determined that

amended energy conservation standards for fluorescent lamp ballasts are technologically feasible.

2. Cost Effectiveness

EPCA requires DOE to consider whether energy conservation standards for fluorescent lamp ballasts would be cost effective through an evaluation of the savings in operating costs throughout the estimated average life of the covered product compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard. (42 U.S.C. 6295(m)(1)(A), (n)(2)(C), and (o)(2)(B)(i)(II)) DOE conducted an LCC analysis to estimate the net costs/benefits to users from increased efficiency in the considered fluorescent lamp ballasts. (See results in Table V.1.) DOE then aggregated the results from the LCC analysis to estimate the NPV of the total costs and benefits experienced by the Nation. (See results in Table V.4 and Table V.5.) As noted, the inputs for determining the NPV are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings.

DOE first considered the most efficient level, EL 3 (max tech), which would result in negative NPV at the 3-percent and 7-percent discount rates. On the basis of negative NPV, DOE tentatively determined that EL 3 is not cost effective.

DOE then considered the next most efficient level, EL 2, which would result in negative NPV at a 3-percent and 7-percent discount rate. On the basis of negative NPV, DOE tentatively determined that EL 2 is not cost effective.

DOE then considered the next most efficient level, EL 1, which would result in negative NPV at both a 3-percent and 7-percent discount rate. On the basis of negative NPV, DOE tentatively determined that EL 1 is not cost effective.

3. Significant Conservation of Energy

EPCA also mandates that DOE consider whether amended energy conservation standards for fluorescent lamp ballasts would result in result in significant conservation of energy. (42 U.S.C. 6295(m)(1)(A) and (n)(2)(A)) DOE estimates that amended standards for fluorescent lamp ballasts would result in site energy savings of 0.018 quads at EL 1 and 0.069 quads at max tech levels over a 30-year analysis period (2023–2052). (See results in Table V.2.) However, as provided in the prior section, DOE has tentatively determined that amended standards at the evaluated ELs would not be cost effective.

4. Other Analysis

In this analysis, DOE also conducted an MIA to estimate the impact of potential energy conservation standards on manufacturers of fluorescent lamp ballasts. (See results in Table V.6 and Table V.7.) Each EL for all applicable product classes is estimated to result in FLB manufacturers experiencing a loss in INPV.

5. Summary

In this proposed determination, based on the consideration of cost effectiveness and the initial determination that amended standards would not be cost effective, DOE has tentatively determined that energy conservation standards for fluorescent lamp ballasts do not need to be amended. DOE will consider all comments received on this proposed determination in issuing any final determination.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This proposed determination has been determined to be not significant for purposes of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). As a result, the OMB did not review this proposed determination.

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued Executive Order (E.O.) 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' E.O. 13771 stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. E.O. 13771 stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued E.O. 13777, ''Enforcing the Regulatory Reform Agenda.'' E.O. 13777 required the head of each agency to designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

(1) Eliminate jobs, or inhibit job creation;

(2) Are outdated, unnecessary, or ineffective;

(3) Impose costs that exceed benefits;

(4) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(5) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(6) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

DOE initially concludes that this rulemaking is consistent with the directives set forth in these executive orders.

As discussed in this document, DOE is proposing not to amend energy conservation standards for fluorescent lamp ballasts. Therefore, if finalized as proposed, this proposed determination is expected to be an E.O. 13771 other action.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*http://energy.gov/gc/office-general-counsel*).

DOE reviewed this proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. Because DOE is

proposing not to amend standards for fluorescent lamp ballasts, if adopted, the determination would not amend any energy conservation standards. On the basis of the foregoing, DOE certifies that the proposed determination, if adopted, would have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an IRFA for this proposed determination. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

Manufacturers of fluorescent lamp ballasts 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 fluorescent lamp ballasts, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including fluorescent lamp ballasts. 76 FR 12422 (March 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed action in accordance with the National Environmental Policy Act (NEPA) and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for actions which are interpretations or rulings with respect to existing regulations. 10 CFR part 1021, subpart D, Appendix A4. DOE anticipates that this action qualifies for categorical exclusion A4 because it is an interpretation or ruling in regards to an existing regulation and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final action.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed determination 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed determination. 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) Therefore, no further action is required by Executive Order 13132.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). 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 section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed determination 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) and (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. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

This proposed determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by the private sector. As a result, the analytical requirements of UMRA do not apply.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed determination 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 15, 1988), DOE has determined that this proposed determination 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 NOPD under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor Executive 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.

Because this proposed determination does not propose amended energy conservation standards for fluorescent lamp ballasts, it is not a significant energy action, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

M. Information Quality

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 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a report describing that peer review.[43] 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. DOE has determined that the peer-reviewed analytical process continues to reflect current practice, and the Department followed that process for developing its determination in the case of the present action.

[43] ''Energy Conservation Standards Rulemaking Peer Review Report.'' 2007. Available at *http://energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0.*

VII. Public Participation

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. If no participants register for the webinar then it will be cancelled. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=3.* Participants are responsible for ensuring their systems are compatible with the webinar software.

Additionally, you may request an in-person meeting to be held prior to the close of the request period provided in the **DATES** section of this document. Requests for an in-person meeting may be made by contacting Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *Appliance_Standards_Public_Meetings@ee.doe.gov.*

B. Submission of Comments

DOE will accept comments, data, and information regarding this proposed determination no later than the date provided in the **DATES** section at the beginning of this proposed determination. 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.

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).

C. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE seeks comment on its evaluation of the efficiency of dimming ballasts as BLE at full light output. See section IV.A.2.

(2) DOE seeks comment on the ELs under consideration for the representative and non-representative product classes, including the max tech levels. See section IV.B.5 and IV.B.6.

(3) DOE seeks comment on the methodology and results for estimating end-user prices for fluorescent lamp ballasts in this analysis. See section IV.C.

(4) DOE seeks comment on the methods to improve DOE's energy-use analysis, as well as any data supporting alternate operating hour estimates or assumptions regarding dimming of fluorescent lamp ballasts. See section IV.E.

(5) DOE seeks comment on the type, prevalence, and operating hour reductions related to the use of lighting controls used separately in commercial, industrial, and residential sectors. See section IV.E.

(6) DOE seeks comment on the assumptions and methodology for estimating annual operating hours. See section IV.E.

(7) DOE seeks comment whether the shipment scenarios under various policy scenarios are reasonable and likely to occur. See section IV.F.

(8) DOE seeks comment and information on whether dimming ballasts should have a different rate of decline than the similar non-dimming fluorescent lamp ballasts. See section IV.F.

(9) DOE seeks comments on which shipment scenario accurately characterizes future dimming FLB shipments. See section IV.F.

(10) DOE seeks comments on which of the four scenarios best characterize future shipments of fluorescent lamp ballasts. See section IV.F.

(11) DOE seeks comment on the percentage of customers to model in a standards-induced shift that would migrate away from FLB technology. See section IV.G.1.

(12) DOE seeks comments on the specific incremental cost in fluorescent lamp ballasts that could trigger a standards-induced shift away from fluorescent lamp ballasts. See section IV.G.1.

(13) DOE seeks comment on the approach for determining input power and price for LED devices considered in a standards-induced shift. See section IV.G.1.

(14) DOE seeks comment on the impediments that prevent users of fluorescent lamp ballasts from switching to LED lighting. See section IV.G.

(15) DOE seeks comment on the expected effect of potential standards on

the rate at which FLB consumers transition to non-FLB technology. See section IV.G.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed determination.

Signed in Washington, DC, on October 1, 2019.

Daniel R Simmons,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2019–22537 Filed 10–21–19; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 136

Clean Water Act Methods Update Rule for the Analysis of Effluent; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[EPA–HQ–OW–2018–0826; FRL–9995–22–OW]

RIN 2040–AF84

Clean Water Act Methods Update Rule for the Analysis of Effluent

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing changes to its test procedures required to be used by industries and municipalities when analyzing the chemical, physical, and biological properties of wastewater and other environmental samples for reporting under the EPA's National Pollutant Discharge Elimination System (NPDES) permit program. The Clean Water Act requires the EPA to promulgate these test procedures (analytical methods) for analysis of pollutants. The EPA anticipates that these proposed changes will provide increased flexibility for the regulated community in meeting monitoring requirements while improving data quality. In addition, this proposed update to the CWA methods would incorporate technological advances in analytical technology. As such, the EPA expects that there will be no negative economic impacts resulting from these proposed changes.

DATES: Comments on this proposed rule must be received on or before December 23, 2019.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2018–0826, by any of the following means:

- *Federal eRulemaking Portal: https://www.regulations.gov/_* (preferred way of receiving comments): Follow the online instructions for submitting comments.
- *Email: OW-Docket@epa.gov.* Include Docket ID No. EPA–HQ–OW–2018–0826 in the subject line of the message.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery/Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see Section I.B ''What Should I Consider as I Prepare My Comments for the EPA'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information in the docket is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Water Docket in EPA Docket Center, EPA/DC, EPA West William J. Clinton Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

FOR FURTHER INFORMATION CONTACT: Meghan Hessenauer, Engineering and Analysis Division (4303T), Office of Water, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460–0001; telephone: 202–566–1040; email: *Hessenauer.Meghan@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
II. Overview
III. Statutory Authority
IV. Purpose and Summary of Proposed Rule
V. Statutory and Executive Order Reviews

I. General Information

A. Does this action apply to me?

Entities potentially affected by the requirements of this proposed action include:

Category	Examples of potentially affected entities
State, Territorial, and Indian Tribal Governments.	States, territories, and tribes authorized to administer the National Pollutant Discharge Elimination System (NPDES) permitting program; states, territories, and tribes providing certification under CWA section 401; state, territorial, and tribal-owned facilities that must conduct monitoring to comply with NPDES permits.
Industry	Facilities that must conduct monitoring to comply with NPDES permits.
Municipalities	Publicly Owned Treatment Works (POTWs) or other municipality-owned facilities that must conduct monitoring to comply with NPDES permits.

This table is not exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists types of entities that the EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability language at 40 CFR 122.1 (NPDES purpose and scope), 40 CFR 136.1 (NPDES permits and CWA) and 40 CFR 403.1 (pretreatment standards purpose and applicability). If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments for the EPA?

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2018–0826, at *https://www.regulations.gov* (preferred way of receiving comments), or the other means identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute. Do not submit CBI to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk that you mail to the EPA, mark the outside

of the disk as CBI and then identify electronically within the disk the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures for handling and protection of CBI set forth in 40 CFR part 2.

Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission means or methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Overview

This preamble describes the reasons for the proposed rule; the legal authority for the proposed rule; a summary of the proposed changes and clarifications; and explanation of the abbreviations and acronyms used in this document. In addition, this preamble solicits comment and data from the public.

Abbreviations and Acronyms Used in the Preamble and Proposed Rule Text

2-CEVE: 2-Chloroethylvinyl ether
AA: Atomic Absorption
ADMI: American Dye Manufacturers Institute
ASTM: ASTM International [1]
ATP: Alternate Test Procedure
BHI: Brain heart infusion
BOD_5: 5-day Biochemical Oxygen Demand
CAS: Chemical Abstract Services
CATC: Cyanide Amenable to Chlorination
CCB: Continuing calibration blank
CCV: Continuing calibration verification
CFR: Code of Federal Regulations
COD: Chemical Oxygen Demand
CWA: Clean Water Act
EC-MUG: EC broth with 4-methylumbelliferyl-β-D-glucuronide
EDTA: Ethylenediaminetetraacetic acid
ELAB: Environmental Laboratory Advisory Board
EPA: Environmental Protection Agency
FLAA: Flame Atomic Absorption Spectroscopy
GC: Gas Chromatography
GFAA: Graphite Furnace Atomic Absorption Spectroscopy
ICP/AES: Inductively Coupled Plasma-Atomic Emission Spectroscopy
ICP/MS: Inductively Coupled Plasma-Mass Spectrometry
ILI: Independent Laboratories Institute
IPR: Initial Precision and Recovery
LCS: Laboratory Control Sample
MDL: Method Detection Limit
MF: Membrane Filtration
$MgCl_2$: Magnesium Chloride
MPN: Most Probable Number
MS/MSD: Matrix Spike/Matrix Spike Duplicate
MS: Mass Spectrometry
NA-MUG: Nutrient Agar with 4-methylumbelliferyl-β-D-glucuronide
NECi: A shortened name used by the Nitrate Elimination Company, Inc.
NPDES: National Pollutant Discharge Elimination System
NTTAA: National Technology Transfer and Advancement Act
OPR: Ongoing Precision and Recovery
QC: Quality Control
STGFAA: Stabilized Temperature Graphite Furnace Atomic Absorption Spectroscopy
TKN: Total Kjeldahl Nitrogen
TOC: Total Organic Carbon
USGS: United States Geological Survey
VCSB: Voluntary Consensus Standards Body

III. Statutory Authority

The EPA is proposing this regulation under the authorities of sections 301(a), 304(h), and 501(a) of the CWA; 33 U.S.C. 1311(a), 1314(h), and 1361(a). Section 301(a) of the CWA prohibits the discharge of any pollutant into navigable waters unless the discharge complies with, among other provisions, an NPDES permit issued under section 402 of the CWA. Section 304(h) of the CWA requires the Administrator of the EPA to ''. . . promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to [section 401 of the CWA] or permit application pursuant to [section 402 of the CWA].'' Section 501(a) of the CWA authorizes the Administrator to ''. . . prescribe such regulations as are necessary to carry out this function under [the CWA].'' The EPA generally has codified its test procedure regulations (including analysis and sampling requirements) for CWA programs at 40 CFR part 136, though some requirements are codified in other parts (*e.g.,* 40 CFR Chapter I, Subchapters N and O).

IV. Purpose and Summary of Proposed Rule

NPDES permits must include conditions designed to ensure compliance with the technology-based and water quality-based requirements of the CWA, including in many cases, restrictions on the quantity of specific pollutants that can be discharged as well as pollutant measurement and reporting requirements. Often, entities have a choice in deciding which approved test procedure they will use for a specific pollutant because the EPA has approved the use of more than one method.[2]

The procedures for the analysis of pollutants required by CWA section 304(h) are a central element of the NPDES permit program. Examples of where these EPA-approved analytical methods must be used include the following: (1) Applications for NPDES permits, (2) sampling or other reports required under NPDES permits, (3) other requests for quantitative or qualitative effluent data under the NPDES regulations, (4) State CWA 401 certifications and (5) sampling and analysis required under the EPA's General Pretreatment Regulations for Existing and New Sources of Pollution, 40 CFR 136.1 and 40 CFR 403.12(b)(5)(v).

Periodically, the EPA proposes to update the approved methods in 40 CFR part 136. In general, the changes proposed in this action fall into the following categories. The first is new or revised methods published by the VCSBs or the USGS that are similar to methods previously adopted as EPA-approved methods in 40 CFR part 136. The second category is methods the EPA has reviewed under the Agency's national ATP program and preliminarily concluded are appropriate for nationwide use. Finally, the EPA is proposing certain corrections or amendments to the text and tables of 40 CFR part 136. The EPA is proposing adoption of these revisions to improve data quality, update methods to keep current with technology advances, and provide the regulated community with greater flexibility. The following paragraphs provide details on the proposed revisions.

A. Changes to 40 CFR 136.3 To Include New Versions of Previously Approved EPA Methods

The EPA proposes to add the latest version of EPA Method 1623 to Table IH. The latest version of Method 1623 (labeled 1623.1) includes updated acceptance criteria for IPR, OPR, and MS/MSD, and clarifications and revisions based on user questions and feedback about Method 1623 over the past 19 years.

[1] Formerly known as the American Society for Testing and Materials (ASTM).

[2] NPDES permit regulations also specify that the approved method needs to be sufficiently sensitive. See 40 CFR 122.21.e.3.

B. Methods Incorporated by Reference

Currently, hundreds of methods and ATPs are incorporated by reference within 40 CFR part 136. In most cases, 40 CFR part 136 contains multiple approved methods for a single pollutant, and regulated entities often have a choice in selecting a method. The proposed rule contains revisions to VCSB methods that are currently incorporated by reference. Two VCSBs have made such revisions, Standard Methods and ASTM. The proposed VCSB methods are consistent with the requirements of the National Technology Transfer and Advancement Act (NTTAA), under which federal agencies use technical standards developed or adopted by the VCSBs if compliance would not be inconsistent with applicable law or otherwise impracticable (see Section V.I below). The proposed VCSB methods are available on their respective websites (*www.standardmethods.org/* and *www.astm.org*) to everyone at a cost determined by the VCSB, generally from $40 to $80. Both organizations also offer memberships or subscriptions that allow unlimited access to their methods. The cost of obtaining these methods is not a significant financial burden for a discharger or environmental laboratory, making the methods reasonably available. Finally, this proposal also includes USGS methods and vendor ATPs, all of which the EPA proposes to incorporate by reference. The ATPs and USGS methods are available free of charge on their respective websites (*flowinjection.com*, *mn-net.com*, *micrologylabs.com*, and *USGS.gov*), enabling the EPA to conclude that the USGS methods and ATPs incorporated by reference are reasonably available.

C. Changes to 40 CFR 136.3 To Include New Versions of Approved Standard Methods

The EPA is proposing to approve new versions of Standard Methods methods previously approved in 40 CFR part 136. The newer versions provide clarifications or make editorial corrections. As was the case with the previous methods update rule (82 FR 40836–40941, August 28, 2017), the EPA generally proposes to approve and include in 40 CFR part 136 only the most recent version of a method published by the Standard Methods Committee. The EPA is proposing to list only one version of the method with the year of publication designated by the last four digits in the method number (*e.g.,* Standard Methods Method 3111 B–2011). The date indicates the date of the specific revision to the method. This allows use of a specific method in any edition of the hard copy publication of *Standard Methods for the Examination of Water & Wastewater* (Standard Methods) that includes a method with the same method number and year of publication.

The proposed revisions to Standard Methods methods previously approved in 40 CFR part 136 will not affect the performance of the method. Below is a list of the Standard Methods methods the EPA is proposing to include in 40 CFR part 136. Each entry contains the proposed Standard Methods number and date, the parameter, and a brief description of the analytical method. The methods listed below are organized according to the table at 40 CFR part 136 in which they appear.

The EPA proposes to make the following changes to Tables IA and IH at 40 CFR part 136:

1. Standard Methods Method 9221 (B, E, F)–2014: Method 9221B–2014 Coliform (total); analyzes for total coliforms in non-potable waters using lauryl tryptose broth (LTB), all presumptive growth LTB tubes are confirmed in brilliant green lactose bile broth (BGLB). Method 9221E–2014 Coliform (fecal); analyzes all presumptive growth LTB tubes for fecal coliform using EC broth. Method 9221F–2014 *E. coli;* analyzes all presumptive growth LTB tubes for *E. coli* using EC–MUG. The number of positive tubes (BGLB, EC broth or EC–MUG) is used to determine the most probable number (MPN).

2. Standard Methods Method 9222 (B, D, I)–2015: Method 9222B–2015 Coliform (total); analyzes for total coliforms in non-potable waters by filtration through a 0.45-µm membrane filter and plated on mEndo or LES Endo agar. Method 9222D–2015 Coliform (fecal); analyzes for fecal coliforms in non-potable waters by filtration through a 0.45-µm membrane filter plated on mFC medium. Method 9222 I–2015 *E. coli;* membrane filtration (MF), analyzes presumptive positive filters from Method 9222B and 9222D using nutrient agar plates with MUG (NA–MUG) which are examined under a longwave UV lamp.

3. Standard Methods Method 9223B–2016, *E. coli,* multiple tube/multiple well. This method analyzes non-potable waters for *E. coli* using commercially available enzyme substrate media that is mixed with the sample and placed in multiple tubes or multiple well trays, incubated and examined under ambient light for Coliform (total) and under a longwave UV lamp for *E. coli.*

4. Standard Methods Method 9230 (B, C)–2013: Method 9230B–2013 Fecal Streptococci; analyzes non-potable waters for streptococci using azide dextrose broth (ADB), Presumptive positive ADB tubes are confirmed by streaking onto bile esculin azide agar (BEA). Method 9230C–2013 Enterococci; analyzes non-potable waters by filtration through a 0.45-µm membrane filter and plated on mE agar.

The EPA proposes to make the following changes to Table IB at 40 CFR part 136:

1. Standard Methods Methods: Method 2540B–2015, total solids; a sample aliquot is evaporated in a pre-weighed evaporating dish at 103–105 °C. Method 2540C–2015 filterable residue (total dissolved solids); a sample aliquot is filtered through a glass fiber filter and the filtrate is evaporated on a pre-weighed dish to constant weight at 180 °C. Method 2540D–2015 non-filterable residue (total suspended solids); a sample aliquot is filtered through a pre-weighed glass fiber filter which is then dried to constant weight at 103–105 °C. Method 2540E–2015 volatile residue (fixed and volatile solids); the residue obtained from the determination of total (Method 2540B), filterable (Method 2540C) or non-filterable residue (Method 2540D) is ignited at 550 °C in a muffle furnace. Method 2540E–2015 settleable residue (settleable solids); settleable matter is measured with an Imhoff cone either volumetrically or gravimetrically.

2. Standard Methods Method 4500–CN^- (B–G)–2016, cyanide: Cyanides are measured after preliminary treatment of samples to remove interferences (4500–CN^- B) and manual distillation with magnesium chloride ($MgCl_2$) (4500–CN^- C) followed by: Titration with silver nitrate (4500–CN^- D), spectrophotometric measurement after cyanide in the alkaline distillate is converted to CNCl (4500–CN^- E), potentiometric measurement using an ion selective electrode (4500–CN^- F), and cyanide amenable to chlorination (CATC) in which a portion of the sample is chlorinated at high pH and cyanide levels in the chlorinated sample are determined after manual distillation followed by titrimetric or spectrophotometric measurement. Amenable cyanide is calculated by the difference between the results for cyanide in the unchlorinated sample and the results for the chlorinated sample (4500–CN^- G).

3. Standard Methods Method 4500–NO_3^- D–2016, nitrate (as nitrogen), measured using an ion-selective electrode (ISE) that develops a potential across a thin, inert membrane holding in place a water-immiscible liquid ion exchanger.

4. Standard Methods Method 4500–NO_3^- (E, F, and H)–2016, nitrate-nitrite (as nitrogen): Nitrate is reduced to nitrite using a cadmium-copper column, followed by diazotization to form a colored azo dye, which is measured by colorimetry either manually (4500 NO_3^- E) or automated (4500 NO_3^- F); or by reduction of nitrate to nitrite using hydrazine followed by automated colorimetric measurement of nitrite after diazotization (4500 NO_3^- H).

5. Standard Methods Method 4500–NO_3^- (E and F)–2016, nitrite (as nitrogen), colorimetric: Bypasses the cadmium reduction step and measures nitrite after diazotization either by manual or automated colorimetric analysis.

6. Standard Methods Method 4500–O (B–F, and G)–2016, measurement of oxygen (dissolved), using the Winkler iodometric titration procedure with modifications to eliminate or minimize certain interferences if necessary based on sample type (4500–O B through F), or by use of polarographic or galvanic membrane electrodes (4500–O G).

7. Standard Methods Method 5210 B–2016, biochemical oxygen demand (BOD_5), dissolved oxygen depletion. The BOD_5 test is an indirect measurement of organic matter; it measures the change in DO concentration caused by microorganisms as they degrade organic matter in a sample held in a stoppered bottle incubated for 5 days in the dark at 20 °C.

8. Standard Methods Method 5310 (B, C)–2014, total organic carbon (TOC), combustion, heated persulfate or UV persulfate oxidation: Method 5310B–2014, high-temperature combustion; a sample aliquot is combusted, transported in a carrier gas stream and measured via a nondispersive infrared analyzer, or titrated coulometrically Method 5310C–2014, persulfate–ultraviolet or heated-persulfate oxidation method; persulfate oxidizes organic carbon, the produced CO_2 is then purged and measured by either nondispersive infrared (NDIR) analyzer, be coulometrically titrated, or separated from the liquid stream by a membrane that specifically allows CO_2 to pass into high-purity water where the change in the high-purity water's conductivity corresponds to the amount of CO_2 passing the membrane.

The EPA is also proposing one revision to a previously approved Standard Methods method for which the Standard Methods Committee has adopted updates. This modification includes minor procedural changes that do not affect the performance of the method.

The EPA proposes to make the following change to Table IA and Table IH at 40 CFR part 136:

1. The EPA proposes that the MPN method Standard Methods Method 9221 F.2–2014 be approved as an acceptable method for detecting thermotolerant coliforms and *E. coli* simultaneously. This method analyzes Coliform (fecal) and *E. coli* using EC broth with 4-methylumbelliferyl-β-D-glucuronide (EC–MUG) with inverted vials.

D. Changes to 40 CFR 136.3 To Include New Standard Methods Methods Based on Previously Approved Technologies

The EPA is proposing these changes based on the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, which states that federal agencies and departments shall use technical standards developed or adopted by the VCSBs if compliance would not be inconsistent with applicable law or otherwise impracticable. These methods submitted by the Standard Methods Committee are consistent with other methods already approved at 40 CFR part 136.

1. The EPA proposes to add Standard Methods Method 4500–CN^- N–2016 to Table IB for Cyanide, total. Cyanide is measured after preliminary treatment of samples and manual distillation with magnesium chloride ($MgCl_2$) followed by automated spectrophotometric measurement after conversion to CNCl. This method is similar to the currently approved EPA Method 335.4, USGS Method I–4302–85, and Lachat Method 10–204–00–1–X, and uses semi-automated spectrophotometric measurement of cyanide.

2. The EPA proposes to add Standard Methods Method 4500–NO_3^- I–2016 to Table IB for combined nitrate-nitrite, nitrite (bypass the reduction column) and nitrate by subtraction. Nitrate is reduced to nitrite using a cadmium-copper column followed by diazotization to form an azo dye which is measured by colorimetry. The cadmium reduction column may be by-passed for measurement of nitrite only. The value obtained for nitrite may be subtracted from the value obtained for combined nitrate-nitrite to calculate the concentration of nitrate. This method is similar to the currently approved EPA Method 353.2, Standard Methods Method 4500–NO_3^- F–2011, ASTM Method D3867–04 (A), and USGS Method I–2545–90, and uses automated cadmium reduction and spectrophotometric measurement of nitrite.

3. The EPA proposes to add Standard Methods Method 4500–NO_3^- J–2018 to Table IB for measurement of combined nitrate-nitrite, for measurement of nitrite when bypassing the enzymatic reduction step, and for measurement of nitrate by subtraction. Nitrate is reduced to nitrite by an enzymatic reaction. The nitrite is diazotized to yield an azo dye which is measured colorimetrically. The enzyme reduction step may be by-passed for measurement of nitrite singly. The value obtained for nitrite may be subtracted from the value obtained for combined nitrate-nitrite to calculate the concentration of nitrate. This method is similar to the currently approved NECi Method N07–0003, USGS Method I–2547–11, and USGS Method I–2548–11.

4. The EPA proposes to add Standard Methods Method 4500–O H–2016 to Table IB for dissolved oxygen. This method uses a luminescent-based sensor for measurement of dissolved oxygen. The method is similar to the currently approved Hach Method 10360, In-Situ Method 1002–8–2009, and ASTM Method D888–09 (C).

E. Changes to 40 CFR 136.3 To Include New Versions of Approved ASTM Methods

The EPA is proposing to approve new versions of ASTM methods previously approved in 40 CFR part 136 for the same reasons outlined in the first paragraph of Section IV.C above. These changes to currently approved ASTM methods in 40 CFR part 136 include minor clarifications and editorial changes, and in some instances, minor procedural changes. None of these proposed changes will affect the performance of the method. The following describes the changes to current ASTM methods that the EPA proposes to include in 40 CFR part 136. Each entry contains (in the following order): Proposed ASTM method number (the last two digits in the method number represent the year ASTM published), the parameter, a brief description of the analytical technique, and a brief description of any procedural changes in this revision from the last approved version of the method. The methods listed below are organized according to the table at 40 CFR part 136 in which they appear.

The EPA proposes the following changes to Table IB at 40 CFR part 136:

1. ASTM Method D511–14 (A, B), calcium and magnesium, titrimetric, (EDTA), AA direct aspiration: Method D511–14 A, titrimetric; the pH of the sample is adjusted to 10 (for calcium), then to 12–13 (for magnesium) and titrated with ethylenediamine tetraacetic acid (EDTA) to form complexes with calcium and

magnesium ions which react with an indicator to form a colored product. The volume of titrant used to affect the color change is proportional to the concentrations of calcium and magnesium in the sample. Method D511–14 B, AA direct aspiration; the sample is acidified and analyzed by atomic absorption. The concentrations of calcium and magnesium in the samples are proportional to the amount of light absorbed during the analysis, and are determined in comparison to a standard curve.

This version adds specifications for filter paper.

2. ASTM Method D512–12 chloride ion (A, B), titrimetric (mercuric nitrate), titration (silver nitrate): Method D512–12A, titrimetric mercuric nitrate; the sample is acidified and titrated with mercuric nitrate in the presence of a diphenylcarbazonebromophenol blue indicator. Method D512–12B, titrimetric silver nitrate; sample pH is adjusted to phenolphthalein endpoint and titrated with silver nitrate in the presence of potassium chromate. The volume of titrant used to affect the color change in either method is proportional to the concentration of chloride in the sample. This version corrects one term in the calculation of the chloride calculation.

3. ASTM Method D516–16, sulfate ion, turbidimetric. In this method, sulfate ions are converted to barium sulfate to form a suspension. The turbidity of the suspension is measured with a nephelometer, spectrophotometer, or photoelectric colorimeter, and compared to a standard curve to determine the sulfate concentration in the sample. This version adds specifications for filter paper.

4. ASTM Method D858–17 (A–C), manganese, atomic absorption (AA) direct aspiration, AA furnace. The sample is acid digested and analyzed by direct aspiration atomic absorption or graphite furnace atomic absorption. The concentration of manganese in the sample is proportional to the amount of light absorbed and is determined in comparison to a standard curve. There are no procedural changes.

5. ASTM Method D859–16, silica, colorimetric, manual. In this method, soluble silica in the sample is reacted with molybdate then reduced to form a blue complex in solution. The intensity of the blue complex is determined with a spectrophotometer or filter photometer and the concentration of silica is determined by comparison with a standard curve. There are no procedural changes.

6. ASTM Method D888–12 (A–C) dissolved oxygen, Winkler, electrode, luminescent-based sensor: Method D888–12A measures dissolved oxygen using the Winkler iodometric titration procedure. The volume of titrant used is proportional to the concentration of dissolved oxygen in the sample. Method D888–12B measures dissolved oxygen in the sample with an electrochemical probe that produces an electrical potential which is logarithmically proportional to the concentration of dissolved oxygen in the sample. Method D888–12C measures dissolved oxygen with a luminescence-based sensor probe that employs frequency domain lifetime-based luminescence quenching and signal processing. This version adds information on a two-point calibration and updated performance information from an interlaboratory study to D888–12C.

7. ASTM Method D1067–16, acidity or alkalinity, electrometric endpoint or phenolphthalein endpoint; electrometric or colorimetric titration to pH 4.5, manual. The acidity or alkalinity of the sample is determined by titration to a specific pH endpoint which is determined by colorimetry or with a pH electrode. The acidity or alkalinity is proportional to the volume of titrant required to affect the pH change. There are no procedural changes.

8. ASTM Method D1068–15 (A–C), iron, AA direct aspiration; AA furnace; colorimetric (Phenanthroline): The sample is acid digested and analyzed by either direct aspiration atomic absorption, graphite furnace atomic absorption, or colorimetry. The concentration of iron in the sample is proportional to the amount of light absorbed and is determined in comparison to a standard curve. This version adds specifications for filter paper.

9. ASTM Method D1126–17, hardness, titrimetric (EDTA). The pH of the sample is adjusted and an indicator is added forming a red color. The mixture is titrated until the color changes from red to blue. The volume of titrant used to affect the color change is proportional to the hardness in the sample. There are no procedural changes.

10. ASTM Method D1179–16 (A, B); fluoride ion, manual distillation, electrode, manual: Method D1179A, manual distillation; the sample is distilled as hydrofluorosilic acid and determined by ion-selective electrode. Method D1179B, electrode; the fluoride ion is determined potentiometrically with an ion-selective electrode in conjunction without sample distillation. There are no procedural changes.

11. ASTM Method D1246–16, bromide ion, electrode. The bromide in the sample is determined potentiometrically with an ion-selective electrode, either through comparison to a standard curve or through a direct readout on the instrument. There are no procedural changes.

12. ASTM Method D1252–06 (A, B) (Reapproved 2012), chemical oxygen demand, titrimetric, spectrophotometric. This is the 2012 reapproval of the 2006 ASTM method: Method D1252–06A, titrimetric; measures the loss of the hexavalent dichromate ion by reflux digestion followed by titration. The chemical oxygen demand in the sample is determined by comparison to a standard curve. Method D1252–06B, spectrophotometric; uses a spectrophotometer to measure the loss of the hexavalent dichromate ion at 420 nm or the increase in the trivalent chromium ion at 600 nm, after closed digestion and determines the chemical oxygen demand by comparison to a standard curve. There are no procedural changes.

13. ASTM Method D1253–14, residual chlorine, amperometric direct. The concentration of chlorine in the sample is determined by titration with phenylarsine oxide, using an amperometric probe that responds to chlorine to determine when the titration is complete. The chlorine concentration in the sample is proportional to the volume of titrant used. There are no procedural changes.

14. ASTM Method D1426–15 (A, B), ammonia nitrogen, Nesslerization, electrode: Method D1426A, Nesslerization; an aliquot is Nesslerized and the ammonia content determined colormetrically. Method D1426B, electrode; ammonia is potentiometric determined using a gas-permeable ion-selective electrode, either through comparison to a standard curve or through a direct readout on the instrument using. A lengthy section of QC requirements was added to the Nesslerization procedure (D1426A) that parallels the QC discussion that was already in the B procedure. Both procedures added information on use of commercially prepared standards and filter paper.

15. ASTM Method D1687–17 (A–C), chromium (total) and dissolved hexavalent chromium, colorimetric (diphenyl–carbazide); AA direct aspiration; AA furnace: Method D1687–17A, chromium (dissolved); measures dissolved hexavalent chromium by reacting it with diphenyl-carbohydrazide to produce a reddish-purple color that is measured with a

spectrophotometer or filter photometer. The concentration in the sample is proportional to the intensity of the color. Method D1687–17B, chromium (total); the sample is acid digested and analyzed by direct aspiration atomic absorption. Method D1687–17C, chromium (total); the sample is acid digested and analyzed by graphite furnace atomic absorption. The concentration of total chromium in the sample is proportional to the amount of light absorbed during the analysis and is determined in comparison to a standard curve. The changes mirror those for the other metals methods. The QC frequencies for method blank, continuing calibration verification (CCV), continuing calibration blank (CCB), matrix spike, and duplicate analyses are now based on a laboratory-defined batch of up to 20 samples.

16. ASTM Method D1688–17 (A–C), copper, AA direct aspiration, AA furnace. The sample is acid digested and analyzed by direct aspiration atomic absorption (D1688–17A and B) or graphite furnace atomic absorption (D1688–17B). The concentration of copper in the sample is proportional to the amount of light absorbed and is determined in comparison to a standard curve. The changes mirror those for the other metals methods. The proposed changes also clarify the requirements for a multi-point calibration by discussing it in the calibration section as well as the QC section of all three procedures. The QC frequencies for method blank, CCV, CCB, matrix spike, and duplicate analyses are now based on a laboratory-defined batch of up to 20 samples.

17. ASTM Method D1691–17 (A, B), zinc, AA direct aspiration. Method D1691–17A; the sample is acid digested and analyzed by direct aspiration atomic absorption. Method D1691–17B; the sample is processed by chelation-extraction and analyzed by atomic absorption. The concentration of zinc in the sample is proportional to the amount of light absorbed and is determined in comparison to a standard curve. The changes mirror those for the other metals methods. The QC frequencies for method blank, CCV, CCB, matrix spike, and duplicate analyses are now based on a laboratory-defined batch of up to 20 samples.

18. ASTM Method D1783–01 (A, B) (Reapproved 2012), phenols, manual distillation followed by manual colorimetric (4AAP). The sample is distilled, the distillate pH is adjusted to 10.0, and reacted with 4-aminoantipyrine to form a colored product. In Method D1783–01A, the colored product is extracted from the sample with chloroform and measured with a photometer at 460 nm. In Method D1783–01B, the colored product is measured without extraction, using a photometer at 510 nm. The concentration of phenolics is determined in comparison to a standard curve. There are no procedural changes.

19. ASTM Method D1886–14 (A–C), nickel AA direct aspiration, chelation extraction AA and AA furnace. Method D1886–14A, the sample is acid digested and analyzed by direct aspiration atomic absorption. Method D1886–14B, the sample is acid digested and the nickel chelated and extracted. The extract is analyzed by direct aspiration atomic absorption. Method D1886–14C, the sample is acid digested and analyzed by graphite furnace atomic absorption. The concentration of nickel in the sample is proportional to the amount of light absorbed during the analysis and is determined in comparison to a standard curve. The changes mirror those for the other metals methods. The QC frequencies for method blank, CCV, CCB, matrix spike, and duplicate analyses are now based on a laboratory-defined batch of up to 20 samples.

20. ASTM Method D2036–09 (A, B) (Reapproved 2015), A, total cyanide, manual distillation followed by gas diffusion amperometry, titrimetric, spectrophotometric, ion chromatography, ion selective electrode, B, available (amenable) cyanide, manual distillation followed by titrimetric or spectrophotometric. The cyanide in the sample is distilled and trapped in a sodium hydroxide solution. Method D2036–09A, the cyanide is treated with strong acid and a catalyst during distillation and measured by titration, gas diffusion amperometry, spectrophotometry, ion-selective electrode, ion chromatography, or flow injection analysis. Method D2036–09B, cyanide amenable to chlorination is determined by comparing the results for one sample aliquot analyzed for total cyanide and a second aliquot that is treated with calcium hypochlorite prior to analysis by Method D2036–09A. There are no procedural changes.

21. ASTM Method D2972–15 (A–C), arsenic, colorimetric, AA gaseous hydride, AA furnace. The sample is digested with nitric and sulfuric acids. Method D2972–15A, arsenic is trapped in a solution of silver diethyldithiocarbamate in pyridine which produces a red-colored product that is analyzed photometrically by comparison to a standard curve. Method D2972–15B, arsenic in the digested sample is determined by hydride generation atomic absorption. Method D2972–15C, arsenic in the digested sample is determined by graphite furnace atomic absorption. The changes mirror those for the other metals methods. The QC frequencies for method blank, CCV, CCB, matrix spike, and duplicate analyses are now based on a laboratory-defined batch of up to 20 samples.

22. ASTM Method D3223–17, total mercury, cold vapor, manual. Mercury in the sample is converted to the mercuric ion which is reduced to elemental mercury, purged from the sample, and analyzed by cold vapor atomic absorption. The changes mirror those for the other metals methods, but this version changes the acceptance limit for the CCV from 10% to 15% and adds a requirement for a CCB. Given that the most comparable EPA procedure, Method 245.1, does not include a CCV requirement or an acceptance limit, the change of the acceptance limit from 10% to 15% in the revised ASTM method represents a requirement that is more stringent than that required in the EPA's procedure and therefore, the change to the ASTM method is not an impediment to its approval.

23. ASTM Method D3373–17, vanadium, AA furnace. The sample is digested with nitric acid and analyzed by graphite furnace atomic absorption. The concentration of vanadium in the sample is proportional to the amount of light absorbed during the graphite furnace atomic absorption analysis and is determined in comparison to a standard curve. The changes mirror those for the other metals methods. The proposed changes clarify the requirements for a multi-point calibration by discussing it in the calibration section as well as the QC section of all three procedures. The QC frequencies for method blank, CCV, CCB, matrix spike, and duplicate analyses are now based on a laboratory-defined batch of up to 20 samples.

24. ASTM Method D3557–17 (A–D), cadmium, AA direct aspiration, voltammetry, AA furnace. Method D3557–17A, the sample is acid digested and analyzed by direct aspiration atomic absorption. Method D3557–17B, the sample is acid digested, the digestate is chelated and extracted. The extract analyzed by direct aspiration atomic absorption. Method D3557–17C, the sample is acid digested and analyzed by differential pulse anodic stripping voltametry. Method D3557–17D, the sample is digested with nitric acid and analyzed by graphite furnace atomic absorption. The concentration of cadmium in the sample is determined in comparison to a standard curve. The changes mirror those for the other

metals methods. The proposed changes also clarify requirements for a multi-point calibration by discussing it in the calibration section as well as the QC section of all three procedures. The QC frequencies for method blank, CCV, CCB, matrix spike, and duplicate analyses are now based on a laboratory-defined batch of up to 20 samples, as opposed to 10 samples previously.

25. ASTM Method D3558–15 (A–C), cobalt, AA direct aspiration, chelation extraction AA, and AA furnace. Method D3558–15A, the sample is acid digested and analyzed by direct aspiration atomic absorption. Method D3558–15B, the sample is acid digested, chelated and extracted. The extract is analyzed by direct aspiration atomic absorption. Method D3558–15C, the sample is acid digested and analyzed by graphite furnace atomic absorption. The concentration of cobalt in the sample is proportional to the amount of light absorbed during the analysis and is determined in comparison to a standard curve. The changes mirror those for the other metals methods. The proposed changes also clarify the requirements for a multi-point calibration by discussing it in the calibration section as well as the QC section of all three procedures. The QC frequencies for method blank, CCV, CCB, matrix spike, and duplicate analyses are now based on a laboratory-defined batch of up to 20 samples, as opposed to 10 samples previously.

26. ASTM Method D3559–15 (A–D), lead, AA direct aspiration, voltammetry, AA furnace. Method D3559–15A, the sample is acid digested and analyzed by direct aspiration atomic absorption. Method D3559–15B, the sample is acid digested, chelated and extracted. The extract is analyzed by direct aspiration atomic absorption. Method D3559–15C, the sample is acid digested and analyzed by differential pulse anodic stripping voltametry. Method D3559–15D, the sample is digested with nitric acid and analyzed by graphite furnace atomic absorption. The changes mirror those for the other metals methods. The proposed changes also clarify the requirements for a multi-point calibration by discussing it in the calibration section as well as the QC section of all three procedures. It also adds a new section with the QC requirements to the direct AA procedure that was already present in the AA furnace portion of this procedure (D3559–15 [D]).

27. ASTM Method D3590–17 (A, B), total Kjeldahl nitrogen, manual digestion and distillation or gas diffusion; semi-automated block digester colorimetric (distillation not required). Method D3590–17A, the sample is chemically processed to covert nitrogenous compounds to ammonia, then distilled or subjected to a gas diffusion system which releases the ammonia for analysis by colorimetry, titrimetry, or potentiometry. Method D3590–17B, the digestion and distillation are accomplished by a semi-automated system and the resulting ammonia is determined by colorimetry of the salicylate/nitroprusside Berthelot reaction product. This version changes the acceptance limit for the CCV from 10% to 15% and adds a requirement for a CCB. Given that neither the approved Standard Methods method for measuring ammonia after the TKN digestion, nor the comparable EPA Method 350.1, include a CCV requirement or an acceptance limit, the change of the acceptance limit from 10% to 15% in the revised ASTM method represents a requirement that is more stringent than that required in other approved procedures and therefore is not an impediment to its approval.

28. ASTM Method D3645–15, beryllium (A, B), AA direct aspiration AA furnace. Method D3645–15A, the sample is acid digested and analyzed by direct aspiration atomic absorption. Method D3645–15B, the sample is digested with nitric acid and analyzed by graphite furnace atomic absorption. This version adds specifications for filter paper. The proposed changes also clarify the requirements for a three-point calibration by discussing it in the calibration section as well as the QC section of both procedures. It also adds a new section with the QC requirements to the direct aspiration AA procedure that was already present in the AA furnace portion of this procedure (D3645–15B).

29. ASTM Method D3859–15 (A, B), selenium, AA gaseous hydride, AA furnace. In Method D3859–15A, the selenium in the sample is converted to gaseous selenium hydride, which is then analyzed by flame atomic absorption. Method D3859–15B, the selenium in the sample is converted to gaseous selenium hydride and analyzed by graphite furnace atomic absorption. The changes to the gaseous hydride portion of the method clarify the requirement for a 6-point calibration curve by discussing it in the calibration section as well as the QC section. The version adds an updated discussion of block digesters. The QC frequencies for method blank, CCV, CCB, matrix spike, and duplicate analyses are now based on a laboratory-defined batch, as opposed to an otherwise undefined ''batch.'' The GFAA portion contains similar editorial and technical changes. Technical changes also include specifications for filter paper. The calibration requirement for three standards has been clarified by discussing it in the calibration section as well as the QC section.

30. ASTM Method D3867–16 (A, B) nitrate-nitrite, nitrite and nitrate; automated cadmium reduction, manual cadmium reduction, bypass cadmium reduction and subtraction. The combination of nitrate and nitrite in the sample is determined by reducing the nitrate to nitrite using a cadmium-copper column, diazotizing and analyzing in either a manual or automated spectrophotometric system. A second aliquot of the sample can be analyzed without use of the cadmium reduction column to determine the concentration of nitrate by difference. The changes add more detailed QC requirements, including specifically calling out the laboratory control sample (LCS), method blank, and matrix spike analyses. The 2016 version adds specifications for filter paper. It also changes the LCS frequency from 10% of samples to once per batch (up to 20) and sets the CCB and CCV frequencies at 10%.

31. ASTM Method D4190–15, dissolved elements and total recoverable elements, direct current plasma. The concentrations of various metal elements are determined by acidifying an aliquot of the sample and analyzing it by direct current plasma spectrometry, monitoring a specific wavelength of light for each element. There is one change that adds a requirement to run at least four calibration standards for all metals, as opposed to running four standards for only lithium to demonstrate linearity.

32. ASTM Method D4282–15, free cyanide, manual micro-diffusion and colorimetry. The sample is treated and allow for free cyanide diffuse into a sodium hydroxide solution. An aliquot of that solution is treated to form a colored product that is measured with a spectrophotometer at 580 nm. There are no procedural changes.

33. ASTM Method D4327–17, inorganic anions (fluoride, bromide, chloride, nitrite, nitrate, orthophosphate, and sulfate), ion chromatography. An aliquot of the sample in injected into an ion chromatograph equipped with an anion exchange column and a conductivity detector. The anions are identified based on their retention times and concentrations are determined by comparison to a standard curve. Changes include updating the equipment and reagent descriptions to

reflect more modern instrumentation, such as the use of hydroxide eluents and eluent regeneration systems.

34. ASTM Method D4382–18, barium, AA furnace. The sample is digested with nitric acid and analyzed by graphite furnace atomic absorption. The only procedural change is to the description of the hot block digester equipment. The new version specifies the capability to heat samples between 65 and 95 degrees C, instead of ''approximately 95 degrees C.'' That change recognizes the operational characteristics of hot block digesters that will experience a temperature drop below 95 degrees when samples are added. This should not adversely affect use of this method for barium.

35. ASTM Method D4658–15, sulfide ion, ion selective electrode. The sample is treated with a sulfide antioxidant buffer to create a highly alkaline solution. Sulfide in the sample is measured potentiometrically with an ion-selective electrode. There are no procedural changes.

36. ASTM Method D4839–03 (Reapproved 2017), total organic carbon; heated persulfate or UV persulfate oxidation. The sample is sparged with an inert gas to remove dissolved inorganic carbon and then treated with persulfate and either heat or UV radiation to convert organic carbon to carbon dioxide. The carbon dioxide is measured with an infra-red detector. There are no procedural changes.

37. ASTM Method D5257–17, dissolved hexavalent chromium, ion chromatography. The sample is filtered and buffered and an aliquot injected into an ion chromatograph that separates hexavalent chromium from other ions. The eluent from the chromatograph is treated with an acidic solution of diphenylcarbohydrazide to form a violet-colored product that is measured with a photometric detector at 530 nm. The changes add a few additional warnings or recommendations.

38. ASTM Method D5673–16, dissolved elements and total-recoverable elements, ICP/MS. The sample is acid digested and analyzed by inductively coupled plasma/mass spectrometry. Gold was added to the list of target analytes. Some of the changes address the analysis of gold.

39. ASTM Method D6508–15, inorganic anions (fluoride, bromide, chloride, nitrite, nitrate, orthophosphate, and sulfate), capillary ion electrophoresis with indirect UV detection. An aliquot of the sample in injected into a capillary ion electrophoresis instrument where the anions are separated in an applied electric field through a fused silica capillary. The analytes are detected by a UV detector and their concentrations are determined by comparison to a standard curve. There are no procedural changes.

40. ASTM Method D6888–16, available cyanide, flow injection and ligand exchange, followed by gas diffusion amperometry. An aliquot of the sample is introduced into a flow injection analysis instrument, where available cyanide is acidified to form hydrogen cyanide which diffuses through a hydrophobic gas diffusion membrane into an alkaline solution and is detected amperometrically with a silver electrode. This version adds a new mixed ligand exchange reagent, but also retains the original two ligand reagents that had to be mixed together during the testing.

41. ASTM Method D6919–17, inorganic alkali and alkaline earth cations and ammonium (ammonium, calcium magnesium, potassium and sodium), ion chromatography. An aliquot of the sample in injected into an ion chromatograph equipped with a cation exchange column and a conductivity detector. The cations are identified based on their retention times and concentrations are determined by comparison to a standard curve. There are no procedural changes.

42. ASTM Method D7237–15 (A), free cyanide, flow injection, followed by gas diffusion amperometry. An aliquot of the sample is introduced into a flow injection analysis instrument, where it mixes with a phosphate buffer to release hydrogen cyanide which diffuses through a hydrophobic gas diffusion membrane into an alkaline solution and is detected amperometrically with a silver electrode. There are a few additions and changes to the newer version of note. The statement of the applicable range of the method in Section 1.4 has been changed at the low end, from 2 to 500 µg/L to 5 to 500 µg/L. New information about interferences from floatation reagents has been added to Section 6.3. New materials in Section 8 discuss alternative reagents or concentrations.

43. ASTM Method D7284–13 (Reapproved 2017), total cyanide, manual distillation with $MgCl_2$ followed by flow injection, gas diffusion amperometry. The sample is distilled with acid and a magnesium chloride catalyst to release cyanide to a sodium hydroxide solution. An aliquot of the sodium hydroxide solution is introduced into a flow injection analysis instrument, where it is acidified and the hydrogen cyanide diffuses through a hydrophobic gas diffusion membrane into an alkaline solution and is detected amperometrically with a silver electrode. There are no procedural changes.

44. ASTM Method D7511–12 (Reapproved 2017), total cyanide, segmented flow injection, in-line ultraviolet digestion, followed by gas diffusion amperometry. The sample is introduced into a segmented flow injection analysis instrument, where UV light releases cyanide from cyanide complexes. The sample is then acidified in the instrument and the produced cyanide gas is detected amperometrically with a silver electrode. There are no procedural changes.

45. ASTM Method D7573–09 (Reapproved 2017), total organic carbon, combustion. The sample is sparged with an inert gas to remove dissolved inorganic carbon, acidified, and then combusted at high temperature convert organic carbon to carbon dioxide. The carbon dioxide is measured with an infra-red detector. There are no procedural changes.

The EPA proposes the following changes to Table IC at 40 CFR part 136:

1. ASTM Method D7065–17, nonylphenol, bisphenol A, p-tert-octylphenol, nonylphenol monoethoxylate, nonylphenol diethoxylate, gas chromatography/mass spectrometry (GC/MS). The sample is extracted with methylene chloride and the extract is injected into a gas chromatograph-mass spectrometer. The target analytes are identified by retention time and mass spectra and quantified using internal standards and a calibration curve. There are a large number of editorial and structural changes in the document. A new QC section has been added.

F. Changes to 40 CFR 136.3 To Include a New ASTM Method Based on Previously Approved Technologies

The EPA is proposing these changes based on the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, which states that federal agencies and departments shall use technical standards developed or adopted by the VCSBs if compliance would not be inconsistent with applicable law or otherwise impracticable. This method submitted by ASTM is consistent with other already approved methods.

1. The EPA proposes to add ASTM Method D7781–14 to Table IB for nitrate-nitrite, nitrite (bypass the enzymatic reduction step) and nitrate by subtraction. Nitrate is reduced to nitrite by an enzymatic reaction. The nitrite is diazotized to yield an azo dye which is

measured colorimetrically. The enzyme reduction step may be by-passed for measurement of nitrite singly. The value obtained for nitrite may be subtracted from the value obtained for combined nitrate-nitrite to calculate the concentration of nitrate. This method is similar to the currently approved NECi Method N07–0003, USGS Method I–2547–11, and USGS Method I–2548–11.

G. Changes to 40 CFR 136.3 To Include New United States Geological Survey (USGS) Inorganic Methods Based on Previously Approved Technologies

1. The EPA proposes to add USGS Method I–2057–85 titled ''Anions, ion-exchange chromatographic, automated,'' to Table IB for bromide. Method I–2057–85 is an ion chromatography method that lists several target analytes: bromide, chloride, fluoride, nitrate, nitrite, orthophosphate, and sulfate. These are the same target analytes found in EPA Methods 300.0 (Part A) and 300.1 (Part A). Both EPA methods are approved in 40 CFR part 136 for the target analytes listed in the methods. USGS Method I–2057–85 is similar to EPA Method 300.0, in that it uses ion chromatography with a sodium bicarbonate/sodium carbonate eluent and has the same target analyte list. The two methods specify different columns and eluent concentrations, but rely on essentially the same underlying chemistry and determinative technique as other ion chromatography methods approved at 40 CFR part 136 for measurement of bromide. That is, the sample is introduced into an ion chromatograph. The anions of interest are separated and measured, using a system comprised of a guard column, analytical column, suppressor device, and conductivity detector.

2. The EPA proposes to add USGS Method I–2522–90 titled ''Nitrogen, ammonia, colorimetry, salicylate-hypochlorite, automated-segmented flow'' to Table IB for ammonia. USGS Method I–2522–90 uses the same underlying chemistry and determinative technique as other methods approved at 40 CFR part 136 for measurement of ammonia. The method is similar to other approved methods, such as EPA Method 350.1, Standard Methods Method 4500–NH3 G, and USGS Method I–4523–85, which rely on the Berthelot reaction. USGS Method I–2522–90 uses a modified version of the Berthelot reaction in which salicylate and hypochlorite react with ammonia in the presence of ferricyanide ions to form the salicylic analog of indophenol blue dye. The resulting color is directly proportional to the concentration of ammonia present and is measured using automated spectrophotometry. This is a well-documented modification to the Berthelot reaction used in EPA Method 351 and is specifically allowed in Table IB.

3. The EPA proposes to add USGS Method I–2540–90 titled ''Nitrogen, nitrite, colorimetry, diazotization, automated-segmented flow'' to Table IB for nitrite. USGS Method I–2540–90 employs the same underlying chemistry and determinative technique as other methods approved at 40 CFR part 136 for measurement of nitrite. The method is similar to other methods approved at 40 CFR part 136 for measurement of nitrite, including USGS Method I–4540–85, which uses an automated-segmented flow analyzer (Technicon AA II). Method I–2540–90, nitrite reacts with sulfanilamide under acidic conditions to form a diazo compound which is coupled with N–1-naphthylethylenediamine dihydrochloride to form a red compound, the absorbance of which is measured using an automated-segmented flow, spectrophotometry.

4. The EPA proposes to add USGS Method I–2601–90 titled ''Phosphorus, orthophosphate, colorimetry, phosphomolybdate, automated-segmented flow'' to Table IB for orthophosphate. USGS Method I–2601–90 employs the same underlying chemistry and determinative technique as other methods approved in 40 CFR part 136 for measurement of orthophosphate. Orthophosphate reacts with ammonium molybdate in acidic solution to form phosphomolybdic acid, which upon reduction with ascorbic acid produces an intensely blue complex the absorbance of which is measured using automated spectrophotometry. Antimony potassium tartrate is added to increase the rate of reduction. The method is similar to other approved methods, such as USGS Method I–4601–85 which uses an automated-segmented flow analyzer (Technicon AA II). The submitted USGS Method I–2601–90 also uses an automated-segmented flow analyzer (Alpkem rapid flow analyzer). It should be noted that the approved USGS Method I–4601–85 has two parameter codes listed:

a. Phosphorus, orthophosphate, dissolved, I–2601–85 (mg/L as P);

b. Phosphorus, orthophosphate, total, I–4601–85 (mg/L as P).

Although USGS Method I–4601–85 is listed in Table IB, samples to be used for measurement of orthophosphate are to be filtered upon collection per Table II. Therefore, the correct parameter code listed for the method should have been I–2601–85. I–2601–90 is just an updated version of that method (parameter code). In Section 3—Interferences, USGS Method I–2601–85 states: ''Because as phosphorus is easily adsorbed on sediment, the orthophosphate recovered from the supernatant solution above a water-suspended sediment after some time has elapsed may be less than the orthophosphate that would have been determined in the filtrate from a sample filtered at the time of collection. The amount recovered may also depend on the type of sediment (clay, sand, etc.).''

5. The EPA proposes USGS Method I–4472–97 titled ''Metals, Acid Digestion, Whole-Water Recoverable, inductively coupled plasma-mass spectrometry'' to be added to Table IB for certain metals by ICP/MS. USGS Method I–4472–97 is an ICP/MS method that was previously listed under the same method number as the USGS ICP/AES Method I–4471–97 and was split out and assigned a unique method number by USGS in 2003. The EPA proposes to add this to Table IB on the line for ICP/MS and replace USGS Method I–4471–97 as an approved method for measurement of the following 16 elements: aluminum, antimony, barium, beryllium, cadmium, chromium, cobalt, copper, lead, manganese, molybdenum, nickel, selenium, silver, thallium and zinc. USGS Method I–4472–97 relies on the same underlying chemistry and determinative technique as other ICP/MS methods approved at 40 CFR part 136 for measurement of the same 16 elements (*e.g.,* EPA Method 200.8 and Standard Methods Method 3125 B) where analytes in the sample are solubilized by gentle refluxing with acids and then measured using inductively coupled plasma-mass spectrometry.

H. Changes to 40 CFR 136.3 To Include New United States Geological Survey (USGS) Organic Methods Based on Previously Approved Technologies

1. The EPA proposes to add USGS Method O–4127–96 titled ''Determination of 86 Volatile Organic Compounds in Water by Gas Chromatography/Mass Spectrometry, Including Detections Less Than Reporting Limits'' to Table IC for certain organic compounds. USGS Method O–4127–96 relies on the same underlying chemistry and determinative technique as other methods approved at 40 CFR part 136 for measurement of the analytes for which the method is being proposed. Volatile organic compounds are extracted by purging with Helium, collecting onto a sorbent trap, thermally desorbed, separated by a gas chromatographic capillary column, and finally determined by a full-scan

quadrupole mass spectrometer. Compound identification is confirmed by the gas chromatographic retention time and by the resultant mass spectrum, typically identified by three unique ions.

2. The EPA Proposes to add USGS Method O–4436–16 titled ''Determination of Heat Purgeable and Ambient Purgeable Volatile Organic Compounds in Water by Gas Chromatography/Mass Spectrometry'' to Table IC for certain organic compounds. USGS Method O–4436–16 relies on the same underlying chemistry and determinative technique as other methods approved at 40 CFR part 136 for measurement of the analytes for which the method is being proposed. Volatile organic compounds are extracted from a water sample and compounds are trapped in a tube containing a suitable sorbent materials and then thermally desorbed into a capillary gas chromatographic column interfaced to a mass spectrometer system. Selected compounds are identified by using strict qualification criteria, which include analyzing standard reference materials and comparing retention times and relative ratios of the mass spectra. Compounds are quantitated using internal standard procedures.

I. Changes to 40 CFR 136.3 To Include Alternate Test Procedures (ATPs)

To promote method innovation, the EPA maintains a program that allows method developers to apply for EPA review and potential approval of an alternative method to an existing approved method. This ATP program is described for CWA applications at 40 CFR 136.4 and 136.5. The EPA is proposing three ATPs for nationwide use. Based on the EPA's review, the performance of these ATPs is equally effective as other methods already approved for measurement. The ATP applicants supplied EPA with study reports that contain the data from their validation studies. These study reports and the letters documenting EPA's review are contained as supporting documents within the docket for this proposed rule. These proposed new methods include: FIAlab Method 100, ''Determination of Inorganic Ammonia by Continuous Flow Gas Diffusion and Fluorescence Detector Analysis,'' MACHEREY-NAGEL GmbH and Co. Method 036/038 NANOCOLOR® COD LR/HR, ''Spectrophotometric Measurement of Chemical Oxygen Demand in Water and Wastewater,'' and Micrology Laboratories, LLC. KwikCount™ EC Medium *Escherichia coli* (*E. coli*) enzyme substrate test, ''Rapid Detection of *E. coli* in Beach Water by KwikCount™ EC Membrane Filtration.'' Descriptions of these new methods proposed for approval are as follows:

1. FIAlab Instruments, Inc. Method 100, ''Determination of Inorganic Ammonia by Continuous Flow Gas Diffusion and Fluorescence Detector Analysis,'' dated April 4, 2018 (FIAlab Instruments, Inc. 2018a). FIAlab Method 100 uses automated flow injection analysis with gas diffusion and fluorescence detector analysis to determine concentrations of ammonia in wastewater, ambient water, and Kjeldahl digestates. The method involves the following steps:

- The sample is introduced to the analyzer where it is made alkaline with sodium hydroxide;
- Ammonia is separated from the sample matrix by passage through a gas diffusion cell;
- After separation in the gas diffusion cell, ammonia is reacted with o-phthalaldehyde to form a fluorescent compound;
- The reaction product is detected by a fluorimeter and the response is directly proportional to the concentration of ammonia in the sample.

FIAlab Method 100 can be obtained from FIAlab Instruments, Inc., 334 2151 N Northlake Way, Seattle, WA 98103. Telephone: 425–376–0450.

2. MACHEREY-NAGEL GmbH and Co. Method 036/038 NANOCOLOR® COD LR/HR, ''Spectrophotometric Measurement of Chemical Oxygen Demand in Water and Wastewater,'' Revision 1.5, dated, May 2018 (MACHEREY-NAGEL GmbH and Co. 2018a). MACHEREY-NAGEL Method 036/038 NANOCOLOR® COD LR/HR is a manual method that uses spectrophotometry to measure chemical oxygen demand in wastewater. The method involves the following steps:

- Chemical Oxygen Demand (COD) is defined as the mg of oxygen (O_2) consumed per liter of sample following dichromate and sulfuric acid digestion;
- A sample is heated for two hours with a strong oxidizing agent, potassium dichromate. Oxidizable organic compounds react, reducing the dichromate ion ($Cr_2O_7^{2-}$) to the green chromic ion (Cr^{3+});
- When the COD LR 150 test kit is used, the amount of Cr^{6+} remaining after digestion is determined;
- When the COD HR 1500 test kit is used, the amount of Cr^{3+} produced is determined.

MACHEREY-NAGEL GmbH and Co. Method 036/038 NANOCOLOR® COD LR/HR, can be obtained from MACHEREY-NAGEL GmbH and Co., 2850 Emrick Blvd., Bethlehem, PA 18020. Telephone: 888–321–6224.

3. Micrology Laboratories LLC. KwikCount™ EC Medium *E. coli* enzyme substrate test, ''Rapid Detection of *E. coli* in Beach Water by KwikCount™ EC Membrane Filtration'' uses a membrane filtration procedure for rapid detection and enumeration of *E. coli* in ambient water. The method involves the following steps:

- A water sample is filtered through a 0.45-μm pore size, 47-mm diameter membrane filter;
- The filter is then placed into a 50-mm plate containing an absorbent pad containing KwikCount™ EC broth;
- Plates are incubated at 41 ± 0.5 °C for 8–10 hr. The plates are then viewed in the dark using a long-wave UV light and fluorescent colonies are counted as *E. coli.*

The KwikCount™ EC Medium *E. coli* enzyme substrate test can be obtained from Micrology Laboratories, LLC, 1303 Eisenhower Drive, Goshen, IN 46526. Telephone: 574–533–3351.

J. Changes to 40 CFR 136.3, Tables IA, IB, and IH

The EPA is proposing the following changes to 40 CFR 136.3, Tables IA and IH:

1. Table IA: Moving Colilert-18 from Parameter #1 Coliform (fecal), number per 100 mL or number per gram dry weight, to Parameter #2 Coliform (fecal), (number per 100 mL), to eliminate confusion as to whether it is approved for sewage sludge in addition to wastewater.

2. Table IA: Adding *E. coli,* number per 100 mL—MF, two-step, Standard Methods Method 9222 B/9222 I, to the table along with footnote 31 ''Subject coliform positive samples determined by 9222 B–2015 or other membrane filter procedure to 9222 I–2015 using NA–MUG media.'' The method was inadvertently omitted from Table IA when Table IA was split into two tables (IA and IH) in an earlier rulemaking; the addition corrects that error.

3. Table IA: Revising Parameter #2 Coliform (fecal), deleting ''in presence of chlorine,'' number per 100 mL. The phrase ''in the presence of chlorine'' caused confusion because the methods cited were the same for the analyte/matrix combination that did not state ''in the presence of chlorine.'' The approved methods did not change.

4. Table IA: Deleting Parameter #4 Coliform (total) in presence of chlorine, number per 100 mL. Except for ''MF with enrichment,'' all the methods were duplicative (*e.g.,* Parameters #3 and #4).

No approved methods for coliform (total) were removed from Table IA.

5. Table IH: Deleting Parameters #2 Coliform (fecal) in presence of chlorine, number per 100 mL and #4 Coliform (total) in presence of chlorine, number per 100 mL. Except for ''MF with enrichment'' for coliform (total), all the methods were duplicative (*e.g.,* Parameters #1 and #2). In addition to the methods being duplicative, Table IH is for ambient water which would not be expected to contain chlorine. No approved methods for coliform (fecal) or coliform (total) were removed from Table IH. The remaining parameters are renumbered.

6. Tables IA and IH: Revising footnote 13 to Table IA and footnote 12 to Table IH as follows ''These tests are collectively known as defined enzyme substrate tests.'' The remaining text, ''where, for example, a substrate is used to detect the enzyme β-glucuronidase produced by *E. coli*'' has been deleted because the example has caused some confusion to stakeholders.

7. Tables IA and IH: Adding Quanti-Tray®/2000 as an option to footnotes 13 (IH), 15 (IH), 16 (IA) and 18 (IA). The addition of Quanti-Tray®/2000 is to address matrices with high bacterial concentrations and to ensure Tables IA and IH are accurate and consistent.

8. Tables IA and IH: Adding footnote 30 to Table IA and footnote 27 to Table IH to specify a verification procedure. The footnotes contain the following language: ''On a monthly basis, at least ten sheen colonies from positive samples must be verified using Lauryl Tryptose Broth and brilliant green lactose bile broth, followed by count adjustment based on these results; and representative non-sheen colonies should be verified using Lauryl Tryptose Broth. Where possible, verifications should be done from randomized sample sources.'' Adding the footnotes address the change in Standard Methods Method 9222 B–2015 that stated that five typical and five atypical colonies should be verified per membrane, which could be burdensome to laboratories analyzing samples other than drinking water. In most cases, analysis of ambient waters and wastewaters could result in multiple plates per sample with typical and atypical colonies, whereas drinking water analyses would seldom result in any typical or atypical colonies. In addition, the language in footnotes 29 (IA) and 26 (IH), was revised as follows ''the medium'' was replaced with ''positive samples'' for clarity and consistency.

9. Tables IA and IH: Adding footnote 32 to Table IA and footnote 30 to Table IH. The footnotes contain the following language ''Verification of colonies by incubation of BHI agar at 10 ± 0.5 °C for 48 ± 3 h is optional.'' As per the Errata to the 23rd Edition of Standard Methods for the Examination of Water & Wastewater, ''Growth on a BHI agar plate incubated at 10 ± 0.5 °C for 48 ± 3 h is further verification that the colony belongs to the genus Enterococcus.''

10. Table IH: Deleting ''or number per gram dry weight'' from Parameter #1. Table IH is specifically for ambient waters, which does not require reporting results on a per gram dry weight basis.

11. Table IH: Adding the Alternate Test Procedure KwikCount™ EC for *E. coli,* number per 100 mL under ''Other.''

12. Table IH: Adding EPA Method 1623.1 for Parameters 6 and 7. EPA Method 1623.1 includes updated acceptance criteria for IPR, OPR, and MS/MSD, and clarifications and revisions based on the use of EPA Method 1623 and technical support questions over the past 19 years. Both methods 1623 and 1623.1 will be listed as approved in the MUR because use of either method is acceptable.

13. Table IH: Deleting footnote 5, ''Because the MF technique usually yields low and variable recovery from chlorinated wastewaters, the Most Probable Number method will be required to resolve any controversies.'' Table IH is specifically for ambient waters, so the footnote is not applicable. The remaining footnotes are renumbered accordingly.

14. Table IH: Revising footnote 20, to reference only EPA Method 1604. The literature reference was deleted from the footnote because it resulted in confusion as to whether EPA Method 1604 provided all the necessary information required by stakeholders to conduct analyses of ambient waters under the CWA.

K. Changes to Table II at 40 CFR 136.3(e) to Required Containers, Preservation Techniques, and Holding Times

The EPA is proposing to update footnote 6 to the preservation and holding time requirements for cyanide to cite the latest version of ASTM method D7365–09a that was reapproved in 2015. The recommended sampling and preservation procedures in the ASTM method have not changed since 2009, but the change to footnote 6 will simplify identification of the current method that is available from ASTM International.

The EPA is proposing to add footnote 9 to the preservation and holding time requirements to the purgeable halocarbons entry. This will allow the flexibility to collect a single sample with no acidification to be used for analysis of both purgeable halocarbons and purgeable aromatic hydrocarbons within seven days of collection, or to collect a single sample with acidification to be used for analysis of both purgeable halocarbons (except 2–CEVE) and purgeable aromatic hydrocarbons within the 14-day maximum holding time specified in Table II for both classes of compounds. The added flexibility is consistent with historical requirements for preservation in 40 CFR part 136 and holding time requirements in other EPA program methods, such as the SW–846 methods in the Office of Land and Emergency Management. This is part of the EPA's ongoing effort to harmonize methods between EPA programs, as requested by the Environmental Laboratory Advisory Board (ELAB).

Footnote 9 to Table II states: ''If the sample is not adjusted to pH 2, then the sample must be analyzed within seven days of sampling.''

L. Changes to 40 CFR 136.6 Method Modifications and Analytical Requirements

In response to requests from ELAB and the Independent Laboratories Institute (ILI), the EPA is proposing to add a new paragraph (b)(4)(xviii) to 40 CFR 136.6 that explicitly allows the use of closed-vessel microwave digestion as a modification to the approved metals digestion procedure that does not require prior approval. Microwave digestion has the same fundamental chemistry as a hot plate digestion, both the microwave and hot plate serve the same function as heat sources.

V. Statutory and Executive Order Reviews

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

This rule is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for interagency review under this E.O.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the Paperwork Reduction Act. This rule does not impose any information collection, reporting, or recordkeeping requirements. This proposal would merely add or revise CWA test procedures.

C. Regulatory Flexibility Act

I certify that this action would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. This action will not impose any requirements on small entities. This action would approve new and revised versions of CWA testing procedures. Generally, these changes would have a positive impact on small entities by increasing method flexibility, thereby allowing entities to reduce costs by choosing more cost-effective methods. In general, the EPA expects the proposed revisions would lead to few, if any, increased costs. As explained previously, most of the proposed changes clarify or improve the instructions in the method, update the technology used in the method, improve the QC instructions, make editorial corrections, or reflect the most recent approval year of an already approved method. In some cases, the proposal would add alternatives to currently approved methods for a particular analyte (*e.g.,* Method N07–0003 for Nitrate Reductase Nitrate-Nitrogen Analysis). Because these methods would be alternatives rather than requirements, there are no direct costs associated with this proposal. The EPA proposes methods that would be incorporated by reference. If a permittee elected to use these methods, they could incur a small cost associated with obtaining these methods from the listed sources. See Section IV.B.

D. Unfunded Mandates Reform Act

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

E. Executive Order 13132: Federalism

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

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

This proposed rule does not have tribal implications as specified in Executive Order 13175. This rule would merely approve new and revised versions of test procedures. The EPA does not expect the proposal would lead to any costs to any tribal governments, and if incurred, projects they would be minimal. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

This action involves technical standards. The EPA proposes to approve the use of technical standards developed and recommended by the Standard Methods Committee and ASTM International for use in compliance monitoring where the EPA determined that those standards meet the needs of CWA programs. As described above, this proposal is consistent with the NTTAA.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

List of Subjects in 40 CFR Part 136

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Test procedures, Water pollution control.

Dated: June 11, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

■ 1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307 and 501(a), Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

■ 2. Amend § 136.3 by:

■ a. In paragraph (a), seventh sentence, removing the word ''year'' and adding in its place the word ''date'' in its place, and removing from the last sentence the text ''(paragraph (c) of this section, in § 136.5(a) through (d) or 40 CFR 401.13)'' and adding in its place the text ''paragraph (c) of this section, § 136.5(a) through (d) or 40 CFR 401.13,'' respectively;

■ b. Revising tables IA, IB, IC, and IH;

■ c. Revising paragraph (b) by:

■ i. Revising the introductory text; paragraph (b)(8) introductory text, and paragraphs (b)(8)(ix) through (b)(xv);

■ ii. Adding paragraph (b)(8)(xvi);

■ iii. Revising paragraphs (b)(10)(xiv), (b)(10)(xxxix), (b)(10)(xliv), (b)(10)(xlvi), (b)(10)(lii), (b)(10)(liv), (b)(10)(lxvii), (b)(10)(lxviii), (b)(10)(lxix), (b)(10)(lxx), b)(15)(v), (b)(15)(vi), (b)(15)(viii) through (xiii), (b)(15)(xv) through (xix), (b)(15)(xxi) through (xxvi), (b)(15)(xxxi), (b)(15)(xxxiv) and (xxxv), (b)(15)(xxxvii), (b)(15)(xxxix) through (xliii), (b)(15)(xlv) through (l), (b)(15)(lii), (b)(15)(liv) and (b)(15)(lv), (b)(15)(lviii), (b)(15)(lxi) through (lxvi), and (b)(15)(lxviii) through (lxix); and

■ iv. Adding paragraph (b)(15)(lxx);

■ v. Redesignating paragraphs (b)(25) through (b)(36) as paragraphs (b)(28) through (b)(39);

■ vi. Redesignating paragraphs (b)(19) through (24) as paragraphs (b)(20) through (25);

■ vii. Adding new paragraphs (b)(19), (26), and (27); and

■ viii. Revising the newly redesignated paragraphs (b)(38)(ii) through (xxi);

■ ix. Adding paragraphs (b)(38)(xxii) and (xxiii); and

■ c. Revising paragraph (e) Table II.

The revisions and additions read as follows:

§ 136.3 Identification of test procedures.

* * * * *

TABLE IA—LIST OF APPROVED BIOLOGICAL METHODS FOR WASTEWATER AND SEWAGE SLUDGE

Parameter and units	Method [1]	EPA	Standard methods	AOAC, ASTM, USGS	Other
Bacteria					
1. Coliform (fecal), number per 100 mL or number per gram dry weight.	Most Probable Number (MPN), 5 tube, 3 dilution, or.	p. 132,[3] 1680,[11 15] 1681,[11 20].	9221 E–2014.		
	Membrane filter (MF) [2 5], single step	p. 124 [3]	9222 D–2015 [29]	B–0050–85 [4].	
2. Coliform (fecal), number per 100 mL	MPN, 5 tube, 3 dilution, or	p. 132 [3]	9221 E–2014; 9221 F.2–2014 [33].		
	Multiple tube/multiple well, or				Colilert-18®.[13 18 28]
	MF [2 5], single step [5]	p. 124 [3]	9222 D–2015 [29].		
3. Coliform (total), number per 100 mL	MPN, 5 tube, 3 dilution, or	p. 114 [3]	9221 B–2014.		
	MF [2 5], single step or two step	p. 108 [3]	9222 B–2015 [30]	B–0025–85 [4].	
	MF [2 5], with enrichment	p. 111 [3]	9222 (B+B.4e) – 2015 [30].		
4. *E. coli,* number per 100 mL	MPN [6 8 16] multiple tube, or		9221 B.3–2014/9221 F–2014 [12 14 33].		
	multiple tube/multiple well, or		9223 B–2016 [13]	991.15 [10]	Colilert®.[13 18] Colilert-18®.[13 17 18]
	MF [2 5 6 7 8], two step, or		9222 B–2015/9222 I–2015 [31].		
	Single step	1603 [21]			m-ColiBlue24®.[19]
5. Fecal streptococci, number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 139 [3]	9230 B–2013.		
	MF [2], or	p. 136 [3]	9230 C–2013 [32]	B–0055–85 [4].	
	Plate count	p. 143 [3].			
6. Enterococci, number per 100 mL	MPN, 5 tube, 3 dilution, or	p. 139 [3]	9230 B–2013.		
	MPN [6 8], multiple tube/multiple well, or.		9230 D–2013	D6503–99 [9]	Enterolert®.[13 23]
	MF [2 5 6 7 8] single step or	1600 [24]	9230 C–2013 [32].		
	Plate count	p. 143 [3].			
7. *Salmonella,* number per gram dry weight [11].	MPN multiple tube	1682 [22].			
Aquatic Toxicity					
8. Toxicity, acute, fresh water organisms, LC_{50}, percent effluent.	*Ceriodaphnia dubia* acute	2002.0 [25].			
	Daphnia puplex and *Daphnia magna* acute.	2021.0 [25].			
	Fathead Minnow, *Pimephales promelas,* and Bannerfin shiner, *Cyprinella leedsi,* acute.	2000.0 [25].			
	Rainbow Trout, *Oncorhynchus mykiss,* and brook trout, *Salvelinus fontinalis,* acute.	2019.0 [25].			
9. Toxicity, acute, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, LC_{50}, percent effluent.	Mysid, *Mysidopsis bahia,* acute	2007.0 [25].			
	Sheepshead Minnow, *Cyprinodon variegatus,* acute.	2004.0 [25].			
	Silverside, *Menidia beryllina, Menidia menidia,* and *Menidia peninsulae,* acute.	2006.0 [25].			
10. Toxicity, chronic, fresh water organisms, NOEC or IC_{25}, percent effluent.	Fathead minnow, *Pimephales promelas,* larval survival and growth.	1000.0 [26].			
	Fathead minnow, *Pimephales promelas,* embryo-larval survival and teratogenicity.	1001.0 [26].			
	Daphnia, *Ceriodaphnia dubia,* survival and reproduction.	1002.0 [26].			
	Green alga, *Selenastrum capricornutum,* growth.	1003.0 [26].			
11. Toxicity, chronic, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, NOEC or IC_{25}, percent effluent.	Sheepshead minnow, *Cyprinodon variegatus,* larval survival and growth.	1004.0 [27].			
	Sheepshead minnow, *Cyprinodon variegatus,* embryo-larval survival and teratogenicity.	1005.0 [27].			
	Inland silverside, *Menidia beryllina,* larval survival and growth.	1006.0 [27].			
	Mysid, *Mysidopsis bahia,* survival, growth, and fecundity.	1007.0 [27].			
	Sea urchin, *Arbacia punctulata,* fertilization.	1008.0 [27].			

Table IA notes:
[1] The method must be specified when results are reported.

[2] A 0.45-µm membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated and to be free of extractables which could interfere with their growth.

[3] Microbiological Methods for Monitoring the Environment, Water and Wastes, EPA/600/8–78/017. 1978. US EPA.

[4] U.S. Geological Survey Techniques of Water-Resource Investigations, Book 5, Laboratory Analysis, Chapter A4, Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples. 1989. USGS.

[5] Because the MF technique usually yields low and variable recovery from chlorinated wastewaters, the Most Probable Number method will be required to resolve any controversies.

[6] Tests must be conducted to provide organism enumeration (density). Select the appropriate configuration of tubes/filtrations and dilutions/volumes to account for the quality, character, consistency, and anticipated organism density of the water sample.

[7] When the MF method has been used previously to test waters with high turbidity, large numbers of noncoliform bacteria, or samples that may contain organisms stressed by chlorine, a parallel test should be conducted with a multiple-tube technique to demonstrate applicability and comparability of results.

[8] To assess the comparability of results obtained with individual methods, it is suggested that side-by-side tests be conducted across seasons of the year with the water samples routinely tested in accordance with the most current *Standard Methods for the Examination of Water and Wastewater* or EPA alternate test procedure (ATP) guidelines.

[9] Annual Book of ASTM Standards-Water and Environmental Technology, Section 11.02. 2000, 1999, 1996. ASTM International.

[10] Official Methods of Analysis of AOAC International. 16th Edition, 4th Revision, 1998. AOAC International.

[11] Recommended for enumeration of target organism in sewage sludge.

[12] The multiple-tube fermentation test is used in 9221B.2–2014. Lactose broth may be used in lieu of lauryl tryptose broth (LTB), if at least 25 parallel tests are conducted between this broth and LTB using the water samples normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliform using lactose broth is less than 10 percent. No requirement exists to run the completed phase on 10 percent of all total coliform-positive tubes on a seasonal basis.

[13] These tests are collectively known as defined enzyme substrate tests.

[14] After prior enrichment in a presumptive medium for total coliform using 9221B.2–2014, all presumptive tubes or bottles showing any amount of gas, growth or acidity within 48 h ± 3 h of incubation shall be submitted to 9221F–2014. Commercially available EC–MUG media or EC media supplemented in the laboratory with 50 µg/mL of MUG may be used.

[15] Method 1680: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation Using Lauryl-Tryptose Broth (LTB) and EC Medium, EPA–821–R–14–009. September 2014. U.S. EPA.

[16] Samples shall be enumerated by the multiple-tube or multiple-well procedure. Using multiple-tube procedures, employ an appropriate tube and dilution configuration of the sample as needed and report the Most Probable Number (MPN). Samples tested with Colilert® may be enumerated with the multiple-well procedures, Quanti-Tray® or Quanti-Tray®/2000 and the MPN calculated from the table provided by the manufacturer.

[17] Colilert-18® is an optimized formulation of the Colilert® for the determination of total coliforms and *E. coli* that provides results within 18 h of incubation at 35°C rather than the 24 h required for the Colilert® test and is recommended for marine water samples.

[18] Descriptions of the Colilert®, Colilert-18®, Quanti-Tray®, and Quanti-Tray®/2000 may be obtained from IDEXX Laboratories, Inc.

[19] A description of the mColiBlue24® test is available from Hach Company.

[20] Method 1681: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation Using A–1 Medium, EPA–821–R–06–013. July 2006. U.S. EPA.

[21] Method 1603: *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using Modified Membrane-Thermotolerant *Escherichia coli* Agar (modified mTEC), EPA–821–R–14–010. September 2014. U.S. EPA.

[22] Method 1682: *Salmonella* in Sewage Sludge (Biosolids) by Modified Semisolid Rappaport-Vassiliadis (MSRV) Medium, EPA–821–R–14–012. September 2014. U.S. EPA.

[23] A description of the Enterolert® test may be obtained from IDEXX Laboratories Inc.

[24] Method 1600: Enterococci in Water by Membrane Filtration Using membrane-Enterococcus Indoxyl-β-D-Glucoside Agar (mEI), EPA–821–R–14–011. September 2014. U.S. EPA.

[25] Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, EPA–821–R–02–012. Fifth Edition, October 2002. U.S. EPA.

[26] Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, EPA–821–R–02–013. Fourth Edition, October 2002. U.S. EPA.

[27] Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, EPA–821–R–02–014. Third Edition, October 2002. U.S. EPA.

[28] To use Colilert-18® to assay for fecal coliforms, the incubation temperature is 44.5 ± 0.2 °C, and a water bath incubator is used.

[29] On a monthly basis, at least ten blue colonies from positive samples must be verified using Lauryl Tryptose Broth and EC broth, followed by count adjustment based on these results; and representative non-blue colonies should be verified using Lauryl Tryptose Broth. Where possible, verifications should be done from randomized sample sources.

[30] On a monthly basis, at least ten sheen colonies from positive samples must be verified using lauryl tryptose broth and brilliant green lactose bile broth, followed by count adjustment based on these results; and representative non-sheen colonies should be verified using lauryl tryptose broth. Where possible, verifications should be done from randomized sample sources.

[31] Subject coliform positive samples determined by 9222 B–2015 or other membrane filter procedure to 9222 I–2015 using NA–MUG media.

[32] Verification of colonies by incubation of BHI agar at 10 ± 0.5 °C for 48 ± 3 h is optional. As per the Errata to the 23rd Edition of *Standard Methods for the Examination of Water and Wastewater* ''Growth on a BHI agar plate incubated at 10 ± 0.5 °C for 48 ± 3 h is further verification that the colony belongs to the genus *Enterococcus*.''

[33] 9221 F. 2–2014 This procedure allows for simultaneous detection of *E. coli* and thermotolerant coliforms by adding inverted vials to EC–MUG; the inverted vials collect gas produced by thermotolerant coliforms.

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/other
1. Acidity, as $CaCO_3$, mg/L.	Electrometric endpoint or phenolphthalein endpoint.	.....	2310 B–2011	D1067–16	I–1020–85.[2]
2. Alkalinity, as $CaCO_3$, mg/L.	Electrometric or Colorimetric titration to pH 4.5, Manual.	.....	2320 B–2011	D1067–16	973.43[3], I–1030–85.[2]
	Automatic	310.2 (Rev. 1974)[1] ..	.....	.....	I–2030–85.[2]
3. Aluminum—Total,[4] mg/L.	Digestion[4], followed by any of the following:				
	AA direct aspiration[36]	.....	3111 D–2011 or 3111 E–2011.	.....	I–3051–85.[2]
	AA furnace	.....	3113 B–2010.		
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES[36]	200.5, Rev 4.2 (2003)[68]; 200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14[3], I–4472–97.[81]
	Direct Current Plasma (DCP)[36]	.....	.....	D4190–15	See footnote.[34]
	Colorimetric (Eriochrome cyanine R)	.....	3500–Al B–2011.		
4. Ammonia (as N), mg/L.	Manual distillation[6] or gas diffusion (pH >11), followed by any of the following:	350.1, Rev. 2.0 (1993).	4500–NH_3 B–2011 ...	.....	973.49.[3]
	Nesslerization	.....	.....	D1426–15 (A)	973.49[3], I–3520–85.[2]
	Titration	.....	4500–NH_3 C–2011.		
	Electrode	.....	4500–NH_3 D–2011 or E–2011.	D1426–15 (B).	

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/other
	Manual phenate, salicylate, or other substituted phenols in Berthelot reaction-based methods.	.....	4500–NH_3 F–2011	.....	See footnote.[60]
	Automated phenate, salicylate, or other substituted phenols in Berthelot reaction-based methods.	350.1 [30], Rev. 2.0 (1993).	4500–NH_3 G–2011 ... 4500–NH_3 H–2011 ...	.....	I–4523–85 [2], I–2522–90.[80]
	Automated electrode	.....	.....	.....	See footnote.[7]
	Ion Chromatography	.....	.....	D6919–17.	
	Automated gas diffusion, followed by conductivity cell analysis.	.....	.....	.....	Timberline Ammonia–001.[74]
	Automated gas diffusion followed by fluorescence detector analysis.	.....	.....	.....	FIAlab100.[82]
5. Antimony—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration [36]	.....	3111 B–2011.		
	AA furnace	.....	3113 B–2010.		
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12.	
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14 [3], I–4472–97.[81]
6. Arsenic-Total,[4] mg/L	Digestion [4], followed by any of the following:.	206.5 (Issued 1978) [1].			
	AA gaseous hydride	.....	3114 B–2011 or 3114 C–2011.	D2972–15 (B)	I–3062–85.[2]
	AA furnace	.....	3113 B–2010	D2972–15 (C)	I–4063–98.[49]
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12.	
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14 [3], I–4020–05.[70]
	Colorimetric (SDDC)	.....	3500–As B–2011	D2972–15 (A)	I–3060–85.[2]
7. Barium-Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration [36]	.....	3111 D–2011	.....	I–3084–85.[2]
	AA furnace	.....	3113 B–2010	D4382–18.	
	ICP/AES [36]	200.5, Rev 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011	.....	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14 [3], I–4472–97.[81]
	DCP [36]	.....	.....	.....	See footnote.[34]
8. Beryllium—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration	.....	3111 D–2011 or 3111 E–2011.	D3645–15 (A)	I–3095–85.[2]
	AA furnace	.....	3113 B–2010	D3645–15 (B).	
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES	200.5, Rev 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14 [3], I–4472–97.[81]
	DCP	.....	.....	D4190–15	See footnote.[34]
	Colorimetric (aluminon)	.....	See footnote [61].		
9. Biochemical oxygen demand (BOD_5), mg/L.	Dissolved Oxygen Depletion	.....	5210 B–2016	.....	973.44 [3], p. 17 [9], I–1578–78 [8], See footnote.[10, 63]
10. Boron—Total,[37] mg/L.	Colorimetric (curcumin)	.....	4500–B B–2011	.....	I–3112–85.[2]
	ICP/AES	200.5, Rev 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14.[3]
	DCP	.....	.....	D4190–15	See footnote.[34]
11. Bromide, mg/L	Electrode	.....	.....	D1246–16	I–1125–85.[2]
	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997).	4110 B–2011, C–2011, D–2011.	D4327–17	993.30 [3], I–2057–85.[79]
	CIE/UV	.....	4140 B–2011	D6508–15	D6508, Rev. 2.[54]
12. Cadmium—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration [36]	.....	3111 B–2011 or 3111 C–2011.	D3557–17 (A or B)	974.27 [3], p. 37 [9], I–3135–85 [2] or I–3136–85.[2]

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/other
	AA furnace		3113 B–2010	D3557–17 (D)	I–4138–89.[51]
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12	I–1472–85 [2] or I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14 [3], I–4472–97.[81]
	DCP [36]			D4190–15	See footnote.[34]
	Voltametry [11]			D3557–17 (C).	
	Colorimetric (Dithizone)		3500–Cd–D–1990.		
13. Calcium—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B–2011	D511–14 (B)	I–3152–85.[2]
	ICP/AES	200.5, Rev 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011		I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14.[3]
	DCP				See footnote.[34]
	Titrimetric (EDTA)		3500–Ca B–2011	D511–14 (A).	
	Ion Chromatography			D6919–17.	
14. Carbonaceous biochemical oxygen demand ($CBOD_5$), mg/L [12].	Dissolved Oxygen Depletion with nitrification inhibitor.		5210 B–2016		See footnote.[35, 63]
15. Chemical oxygen demand (COD), mg/L.	Titrimetric	410.3 (Rev. 1978)[1]	5220 B–2011 or C–2011.	D1252–06(12) (A)	973.46 [3], p. 17 [9], I–3560–85.[2]
	Spectrophotometric, manual or automatic	410.4, Rev. 2.0 (1993).	5220 D–2011	D1252–06(12) (B)	See footnotes [13, 14, 83], I–3561–85.[2]
16. Chloride, mg/L	Titrimetric: (silver nitrate)		4500–Cl^- B–2011	D512–12 (B)	I–1183–85.[2]
	(Mercuric nitrate)		4500–Cl^- C–2011	D512–12 (A)	973.51 [3], I–1184–85.[2]
	Colorimetric: manual				I–1187–85.[2]
	Automated (ferricyanide)		4500–Cl^- E–2011		I–2187–85.[2]
	Potentiometric Titration		4500–Cl^- D–2011.		
	Ion Selective Electrode			D512–12 (C).	
	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997).	4110 B–2011 or 4110 C–2011.	D4327–17	993.30 [3], I–2057–90.[51]
	CIE/UV		4140 B–2011	D6508–15	D6508, Rev. 2.[54]
17. Chlorine-Total residual, mg/L.	Amperometric direct		4500–Cl D–2011	D1253–14.	
	Amperometric direct (low level)		4500–Cl E–2011.		
	Iodometric direct		4500–Cl B–2011.		
	Back titration ether end-point [15]		4500–Cl C–2011.		
	DPD–FAS		4500–Cl F–2011.		
	Spectrophotometric, DPD		4500–Cl G–2011.		
	Electrode				See footnote.[16]
17A. Chlorine-Free Available, mg/L.	Amperometric direct		4500–Cl D–2011	D1253–14.	
	Amperometric direct (low level)		4500–Cl E–2011.		
	DPD–FAS		4500–Cl F–2011.		
	Spectrophotometric, DPD		4500–Cl G–2011.		
18. Chromium VI dissolved, mg/L.	0.45-micron filtration followed by any of the following:				
	AA chelation-extraction		3111 C–2011		I–1232–85.[2]
	Ion Chromatography	218.6, Rev. 3.3 (1994).	3500–Cr C–2011	D5257–17	993.23.[3]
	Colorimetric (diphenyl-carbazide)		3500–Cr B–2011	D1687–17 (A)	I–1230–85.[2]
19. Chromium—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration [36]		3111 B–2011	D1687–17 (B)	974.27 [3], I–3236–85.[2]
	AA chelation-extraction		3111 C–2011.		
	AA furnace		3113 B–2010	D1687–17 (C)	I–3233–93.[46]
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev 4.2 (2003) [68], 200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12.	
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14 [3], I–4020–05 [70] I–4472–97.[81]
	DCP [36]			D4190–15	See footnote.[34]
	Colorimetric (diphenyl-carbazide)		3500–Cr B–2011.		
20. Cobalt—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B–2011 or 3111 C–2011.	D3558–15 (A or B)	p. 37 [9], I–3239–85.[2]
	AA furnace		3113 B–2010	D3558–15 (C)	I–4243–89.[51]
	STGFAA	200.9, Rev. 2.2 (1994).			

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/other
	ICP/AES	200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14 [3], I–4020–05 [70] I–4472–97.[81]
	DCP			D4190–15	See footnote.[34]
21. Color, platinum cobalt units or dominant wavelength, hue, luminance purity.	Colorimetric (ADMI)		2120 F–2011 [78].		
	Platinum cobalt visual comparison		2120 B–2011		I–1250–85.[2]
	Spectrophotometric				See footnote.[18]
22. Copper—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration [36]		3111 B–2011 or 3111 C–2011.	D1688–17 (A or B)	974.27 [3], p. 37 [9], I–3270–85 [2] or I–3271–85.[2]
	AA furnace		3113 B–2010	D1688–17 (C)	I–4274–89.[51]
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14 [3], I–4020–05 [70], I–4472–97.[81]
	DCP [36]			D4190–15	See footnote.[34]
	Colorimetric (Neocuproine)		3500–Cu B–2011.		
	Colorimetric (Bathocuproine)		3500–Cu C–2011		See footnote.[19]
23. Cyanide—Total, mg/L.	Automated UV digestion/distillation and Colorimetry.				Kelada-01.[55]
	Segmented Flow Injection, In-Line Ultraviolet Digestion, followed by gas diffusion amperometry.			D7511–12(17).	
	Manual distillation with $MgCl_2$, followed by any of the following:	335.4, Rev. 1.0 (1993) [57].	4500–CN^- B–2016 and C–2016.	D2036–09(15)(A), D7284–13(17).	10–204–00–1–X.[56]
	Flow Injection, gas diffusion amperometry			D2036–09(15)(A) D7284–13(17).	
	Titrimetric		4500–CN^- D–2016	D2036–09(15)(A)	p. 22.[9]
	Spectrophotometric, manual		4500–CN^- E–2016	D2036–09(15)(A)	I–3300–85.[2]
	Semi-Automated [20]	335.4, Rev. 1.0 (1993) [57].	4500–CN^- N–2016		10–204–00–1–X [56], I–4302–85.[2]
	Ion Chromatography			D2036–09(15)(A).	
	Ion Selective Electrode		4500–CN^- F–2016	D2036–09(15)(A).	
24. Cyanide-Available, mg/L.	Cyanide Amenable to Chlorination (CATC); Manual distillation with $MgCl_2$, followed by Titrimetric or Spectrophotometric.		4500–CN^- G–2016	D2036–09(15)(B).	
	Flow injection and ligand exchange, followed by gas diffusion amperometry.[59]			D6888–16	OIA–1677–09.[44]
	Automated Distillation and Colorimetry (no UV digestion).				Kelada-01.[55]
24.A Cyanide-Free, mg/L.	Flow Injection, followed by gas diffusion amperometry.			D7237–15 (A)	OIA–1677–09.[44]
	Manual micro-diffusion and colorimetry			D4282–15.	
25. Fluoride—Total, mg/L.	Manual distillation [6], followed by any of the following:.		4500–F^- B–2011.		
	Electrode, manual		4500–F^- C–2011	D1179–16 (B).	
	Electrode, automated				I–4327–85.[2]
	Colorimetric, (SPADNS)		4500–F^- D–2011	D1179–16 (A).	
	Automated complexone		4500–F^- E–2011.		
	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997).	4110 B–2011 or C–2011.	D4327–17	993.30.[3]
	CIE/UV		4140 B–2011	D6508–15	D6508, Rev. 2.[54]
26. Gold—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B–2011.		
	AA furnace	231.2 (Issued 1978) [1]	3113 B–2010.		
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14.[3]
	DCP				See footnote.[34]
27. Hardness—Total, as $CaCO_3$, mg/L.	Automated colorimetric	130.1 (Issued 1971) [1].			
	Titrimetric (EDTA)		2340 C–2011	D1126–17	973.52B [3], I–1338–85.[2]
	Ca plus Mg as their carbonates, by any approved method for Ca and Mg (See Parameters 13 and 33), provided that the sum of the lowest point of quantitation for Ca and Mg is below the NPDES permit requirement for Hardness.		2340 B–2011.		
28. Hydrogen ion (pH), pH units.	Electrometric measurement		4500–H^+ B–2011	D1293–99 (A or B)	973.41 [3], I–1586–85.[2]

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/other
	Automated electrode	150.2 (Dec. 1982) [1]			See footnote [21], I–2587–85.[2]
29. Iridium—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B–2011.		
	AA furnace	235.2 (Issued 1978) [1].			
	ICP/MS		3125 B–2011.		
30. Iron—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration [36]		3111 B–2011 or 3111 C–2011.	D1068–15 (A)	974.27 [3], I–3381–85.[2]
	AA furnace		3113 B–2010	D1068–15 (B).	
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev. 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14.[3]
	DCP [36]			D4190–15	See footnote.[34]
	Colorimetric (Phenanthroline)		3500-Fe B–2011	D1068–15 (C)	See footnote.[22]
31. Kjeldahl Nitrogen [5]—Total, (as N), mg/L.	Manual digestion [20] and distillation or gas diffusion, followed by any of the following:		4500–N_{org} B–2011 or C–2011 and 4500–NH_3 B–2011.	D3590–17 (A)	I–4515–91.[45]
	Titration		4500–NH_3 C–2011		973.48.[3]
	Nesslerization			D1426–15 (A).	
	Electrode		4500–NH_3 D–2011 or E–2011.	D1426–15 (B).	
	Semi-automated phenate	350.1, Rev. 2.0 (1993).	4500–NH_3 G–2011 4500–NH_3 H–2011.		
	Manual phenate, salicylate, or other substituted phenols in Berthelot reaction based methods.		4500–NH_3 F–2011		See footnote.[60]
	Automated gas diffusion, followed by conductivity cell analysis.				Timberline Ammonia-001.[74]
	Automated gas diffusion followed by fluorescence detector analysis.				FIAlab 100.[82]
	Automated Methods for TKN that do not require manual distillation.				
	Automated phenate, salicylate, or other substituted phenols in Berthelot reaction based methods colorimetric (auto digestion and distillation).	351.1 (Rev. 1978) [1]			I–4551–78.[8]
	Semi-automated block digestor colorimetric (distillation not required).	351.2, Rev. 2.0 (1993).	4500–N_{org} D–2011	D3590–17 (B)	I–4515–91.[45]
	Block digester, followed by Auto distillation and Titration.				See footnote.[39]
	Block digester, followed by Auto distillation and Nesslerization.				See footnote.[40]
	Block Digester, followed by Flow injection gas diffusion (distillation not required).				See footnote.[41]
	Digestion with peroxdisulfate, followed by Spectrophotometric (2,6-dimethyl phenol).				Hach 10242.[76]
	Digestion with persulfate, followed by Colorimetric.				NCASI TNTP W10900.[77]
32. Lead—Total,[4] mg/L	Digestion [4], followed by any of the following:				
	AA direct aspiration [36]		3111 B–2011 or 3111 C–2011..	D3559–15 (A or B)	974.27 [3], I–3399–85.[2]
	AA furnace		3113 B–2010	D3559–15 (D)	I–4403–89.[51]
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev. 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14 [3], I–4472–97.[81]
	DCP [36]			D4190–15	See footnote.[34]
	Voltametry [11]			D3559–15 (C).	
	Colorimetric (Dithizone)		3500-Pb B–2011		
33. Magnesium—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B–2011	D511–14 (B)	974.27 [3], I–3447–85.[2]
	ICP/AES	200.5, Rev. 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14.[3]
	DCP				See footnote.[34]
	Ion Chromatography			D6919–17.	

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/other
34. Manganese—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration [36]		3111 B–2011	D858–17 (A or B)	974.27 [3], I–3454–85.[2]
	AA furnace		3113 B–2010	D858–17 (C).	
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev. 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14 [3], I–4472–97.[81]
	DCP [36]			D4190–15	See footnote.[34]
	Colorimetric (Persulfate)		3500-Mn B–2011		920.203.[3]
	Colorimetric (Periodate)				See footnote.[23]
35. Mercury—Total, mg/L.	Cold vapor, Manual	245.1, Rev. 3.0 (1994).	3112 B–2011	D3223–17	977.22 [3], I–3462–85.[2]
	Cold vapor, Automated	245.2 (Issued 1974) [1].			
	Cold vapor atomic fluorescence spectrometry (CVAFS).	245.7 Rev. 2.0 (2005) [17].			I–4464–01.[71]
	Purge and Trap CVAFS	1631E [43].			
36. Molybdenum—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 D–2011		I–3490–85.[2]
	AA furnace		3113 B–2010		I–3492–96.[47]
	ICP/AES	200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14 [3], I–4472–97.[81]
	DCP				See footnote.[34]
37. Nickel—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration [36]		3111 B–2011 or 3111 C–2011	D1886–14 (A or B)	I–3499–85.[2]
	AA furnace		3113 B–2010	D1886–14 (C)	I–4503–89.[51]
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev. 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14 [3], I–4020–05 [70] I–4472–97.[81]
	DCP [36]			D4190–15	See footnote.[34]
38. Nitrate (as N), mg/L	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997).	4110 B–2011 or C–2011.	D4327–17	993.30.[3]
	CIE/UV		4140 B–2011	D6508–15	D6508, Rev. 2.[54]
	Ion Selective Electrode		4500–NO_3^- D–2016.		
	Colorimetric (Brucine sulfate)	352.1 (Issued 1971) [1]			973.50 [3], 419D [1 7], p. 28.[9]
	Spectrophotometric (2,6-dimethylphenol)				Hach 10206.[75]
	Nitrate-nitrite N minus Nitrite N (See parameters 39 and 40)				
39. Nitrate-nitrite (as N), mg/L.	Cadmium reduction, Manual		4500–NO_3^- E–2016	D3867–16 (B).	
	Cadmium reduction, Automated	353.2, Rev. 2.0 (1993).	4500–NO_3^- F–2016 4500–NO_3^- I–2016	D3867–16 (A)	I–2545–90.[51]
	Automated hydrazine		4500–NO_3^- H–2016.		
	Reduction/Colorimetric				See footnote.[62]
	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997).	4110 B–2011 or C–2011.	D4327–17	993.30.[3]
	CIE/UV		4140 B–2011	D6508–15	D6508, Rev. 2.[54]
	Enzymatic reduction, followed by automated colorimetric determination.			D7781–14	I–2547–11 [72] I–2548–11 [72] N07–0003.[73]
	Enzymatic reduction, followed by manual colorimetric determination.		4500–NO_3^- J–2018.		
	Spectrophotometric (2,6-dimethylphenol)				Hach 10206.[75]
40. Nitrite (as N), mg/L	Spectrophotometric: Manual		4500–NO_2^- B–2011		See footnote.[25]
	Automated (Diazotization)				I–4540–85 [2], See footnote [62] I–2540–90.[80]
	Automated (*bypass cadmium reduction)	353.2, Rev. 2.0 (1993).	4500–NO_3^- F–2016 4500–NO_3^- I–2016	D3867–16 (A)	I–4545–85.[2]
	Manual (*bypass cadmium or enzymatic reduction).		4500–NO_3^- E–2016, 4500–NO_3 J–2018.	D3867–16 (B).	
	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997).	4110 B–2011 or C–2011.	D4327–17	993.30.[3]
	CIE/UV		4140 B–2011	D6508–15	D6508, Rev. 2.[54]

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/other
	Automated (* bypass Enzymatic reduction)			D7781–14	I–2547–11 [72] I–2548–11 [72] N07–0003.[73]
41. Oil and grease—Total recoverable, mg/L.	Hexane extractable material (HEM): *n*-Hexane extraction and gravimetry.	1664 Rev. A; 1664 Rev. B [42].	5520 B–2011 [38].		
	Silica gel treated HEM (SGT–HEM): Silica gel treatment and gravimetry.	1664 Rev. A; 1664 Rev. B [42].	5520 B–2011 [38] and 5520 F–2011 [38].		
42. Organic carbon—Total (TOC), mg/L.	Combustion		5310 B–2014	D7573–09(17)	973.47 [3], p. 14.[24]
	Heated persulfate or UV persulfate oxidation.		5310 C–2014 5310 D–2011	D4839–03(17)	973.47 [3], p. 14.[24]
43. Organic nitrogen (as N), mg/L.	Total Kjeldahl N (Parameter 31) minus ammonia N (Parameter 4)				
44. Ortho-phosphate (as P), mg/L.	Ascorbic acid method:				
	Automated	365.1, Rev. 2.0 (1993).	4500–P F–2011 or G–2011.		973.56 [3], I–4601–85 [2], I–2601–90.[80]
	Manual, single-reagent		4500–P E–2011	D515–88 (A)	973.55.[3]
	Manual, two-reagent	365.3 (Issued 1978) [1].			
	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997).	4110 B–2011 or C–2011.	D4327–17	993.30.[3]
	CIE/UV		4140 B–2011	D6508–15	D6508, Rev. 2.[54]
45. Osmium—Total [4], mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 D–2011.		
	AA furnace	252.2 (Issued 1978) [1].			
46. Oxygen, dissolved, mg/L.	Winkler (Azide modification)		4500–O (B–F)-2016	D888–12 (A)	973.45B [3], I–1575–78.[8]
	Electrode		4500–O G–2016	D888–12 (B)	I–1576–78.[8]
	Luminescence-Based Sensor		4500–O H–2016	D888–12 (C)	See footnote.[63] See footnote.[64]
47. Palladium—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B–2011.		
	AA furnace	253.2 (Issued 1978) [1].			
	ICP/MS		3125 B–2011.		
	DCP				See footnote.[34]
48. Phenols, mg/L	Manual distillation [26], followed by any of the following:	420.1 (Rev. 1978) [1]	5530 B–2010	D1783–01(12)	
	Colorimetric (4AAP) manual	420.1 (Rev. 1978) [1]	5530 D–2010 [27]	D1783–01(12) (A or B)	
	Automated colorimetric (4AAP)	420.4 Rev. 1.0 (1993).			
49. Phosphorus (elemental), mg/L.	Gas-liquid chromatography				See footnote.[28]
50. Phosphorus—Total, mg/L.	Digestion [20], followed by any of the following:		4500–P B(5)–2011		973.55.[3]
	Manual	365.3 (Issued 1978) [1]	4500–P E–2011	D515–88 (A)	
	Automated ascorbic acid reduction	365.1 Rev. 2.0 (1993).	4500–P (F–H)–2011		973.56 [3], I–4600–85.[2]
	ICP/AES [4 36]	200.7, Rev. 4.4 (1994).	3120 B–2011		I–4471–97.[50]
	Semi-automated block digestor (TKP digestion).	365.4 (Issued 1974) [1]		D515–88 (B)	I–4610–91.[48]
	Digestion with persulfate, followed by Colorimetric.				NCASI TNTP W10900.[77]
51. Platinum—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B–2011.		
	AA furnace	255.2 (Issued 1978) [1].			
	ICP/MS		3125 B–2011.		
	DCP				See footnote.[34]
52. Potassium—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B–2011		973.53 [3], I–3630–85.[2]
	ICP/AES	200.7, Rev. 4.4 (1994).	3120 B–2011.		
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14.[3]
	Flame photometric		3500–K B–2011.		
	Electrode		3500–K C–2011.		
	Ion Chromatography			D6919–17.	
53. Residue—Total, mg/L.	Gravimetric, 103–105°		2540 B–2015		I–3750–85.[2]
54. Residue—filterable, mg/L.	Gravimetric, 180°		2540 C–2015	D5907–13	I–1750–85.[2]
55. Residue—non-filterable (TSS), mg/L.	Gravimetric, 103–105° post-washing of residue.		2540 D–2015	D5907–13	I–3765–85.[2]
56. Residue—settleable, ml/L.	Volumetric (Imhoff cone), or gravimetric		2540 F–2015.		

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/other
57. Residue—Volatile, mg/L.	Gravimetric, 550°	160.4 (Issued 1971) [1]	2540 E–2015		I–3753–85.[2]
58. Rhodium—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration, or		3111 B–2011.		
	AA furnace	265.2 (Issued 1978) [1].			
	ICP/MS		3125 B–2011.		
59. Ruthenium—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration, or		3111 B–2011.		
	AA furnace	267.2 [1].			
	ICP/MS		3125 B–2011.		
60. Selenium—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA furnace		3113 B–2010	D3859–15 (B)	I–4668–98.[49]
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12	
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14 [3], I–4020–05 [70] I–4472–97.[81]
	AA gaseous hydride		3114 B–2011, or 3114 C–2011.	D3859–15 (A)	I–3667–85.[2]
61. Silica—Dissolved,[37] mg/L.	0.45-micron filtration followed by any of the following:				
	Colorimetric, Manual		4500-SiO_2 C–2011	D859–16	I–1700–85.[2]
	Automated (Molybdosilicate)		4500-SiO_2 E–2011 or F–2011.		I–2700–85.[2]
	ICP/AES	200.5, Rev. 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011		I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14.[3]
62. Silver—Total,[4, 31] mg/L.	Digestion [4 29], followed by any of the following:				
	AA direct aspiration		3111 B–2011 or 3111 C–2011.		974.27 [3], p. 37 [9], I–3720–85.[2]
	AA furnace		3113 B–2010		I–4724–89.[51]
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES	200.5, Rev. 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14 [3], I–4472–97.[81]
	DCP				See footnote.[34]
63. Sodium—Total,[4] mg/L.	Digestion [4], followed by any of the following:				
	AA direct aspiration		3111 B–2011		973.54 [3], I–3735–85.[2]
	ICP/AES	200.5, Rev. 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011		I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14.[3]
	DCP				See footnote.[34]
	Flame photometric		3500-Na B–2011.		
	Ion Chromatography			D6919–17.	
64. Specific conductance, micromhos/cm at 25 °C.	Wheatstone bridge	120.1 (Rev. 1982) [1]	2510 B–2011	D1125–95(99) (A)	973.40,[3] I–2781–85.[2]
65. Sulfate (as SO_4), mg/L.	Automated colorimetric	375.2, Rev. 2.0 (1993).	4500–SO_4^2 F–2011 or G–2011.		
	Gravimetric		4500–SO_4^2 C–2011 or D–2011.		925.54.[3]
	Turbidimetric		4500–SO_4^2 E–2011.	D516–16.	
	Ion Chromatography	300.0, Rev. 2.1 (1993) and 300.1, Rev. 1.0 (1997).	4110 B–2011 or C–2011.	D4327–17	993, I–4020–05 [70].30[3]
	CIE/UV		4140 B–2011	D6508–15	D6508, Rev. 2.[54]
66. Sulfide (as S), mg/L	Sample Pretreatment		4500–S^{2-} B, C–2011.		
	Titrimetric (iodine)		4500–S^{2-} F–2011		I–3840–85.[2]
	Colorimetric (methylene blue)		4500–S^{2-} D–2011.		
	Ion Selective Electrode		4500–S^{2-} G–2011	D4658–15.	
67. Sulfite (as SO_3), mg/L.	Titrimetric (iodine-iodate)		4500–SO_3^{2-} B–2011.		
68. Surfactants, mg/L	Colorimetric (methylene blue)		5540 C–2011	D2330–02.	
69. Temperature, °C	Thermometric		2550 B–2010		See footnote.[32]
70. Thallium-Total,[4] mg/L.	Digestion,[4] followed by any of the following:				

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/other
	AA direct aspiration		3111 B–2011.		
	AA furnace	279.2 (Issued 1978) [1].	3113 B–2010.		
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES	200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12.	
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14,[3] I–4471–97 [50] I–4472–97.[81]
71. Tin-Total,[4] mg/L	Digestion,[4] followed by any of the following:				
	AA direct aspiration		3111 B–2011		I–3850–78.[8]
	AA furnace		3113 B–2010.		
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES	200.5, Rev. 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).			
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14.[3]
72. Titanium-Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration		3111 D–2011.		
	AA furnace	283.2 (Issued 1978) [1].			
	ICP/AES	200.7, Rev. 4.4 (1994).			
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14.[3]
	DCP				See footnote.[34]
73. Turbidity, NTU [53]	Nephelometric	180.1, Rev. 2.0 (1993).	2130 B–2011	D1889–00	I–3860–85 [2] See footnote [65] See footnote [66] See footnote.[67]
74. Vanadium-Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration		3111 D–2011.		
	AA furnace		3113 B–2010	D3373–17.	
	ICP/AES	200.5, Rev. 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14,[3] I–4020–05.[70]
	DCP			D4190–15	See footnote.[34]
	Colorimetric (Gallic Acid)		3500–V B–2011.		
75. Zinc-Total[4], mg/L	Digestion,[4] followed by any of the following:				
	AA direct aspiration [36]		3111 B–2011 or 3111 C–2011.	D1691–17 (A or B)	974.27,[3] p. 37,[9] I–3900–85.[2]
	AA furnace	289.2 (Issued 1978) [1].			
	ICP/AES [36]	200.5, Rev. 4.2 (2003) [68]; 200.7, Rev. 4.4 (1994).	3120 B–2011	D1976–12	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2011	D5673–16	993.14,[3] I–4020–05 [70] I–4472–97.[81]
	DCP [36]			D4190–15	See footnote.[34]
	Colorimetric (Zincon)		3500 Zn B–2011		See footnote.[33]
76. Acid Mine Drainage		1627 [69].			

Table IB Notes:

[1] Methods for Chemical Analysis of Water and Wastes, EPA–600/4–79–020. Revised March 1983 and 1979, where applicable. U.S. EPA.

[2] Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments, Techniques of Water-Resource Investigations of the U.S. Geological Survey, Book 5, Chapter A1., unless otherwise stated. 1989. USGS.

[3] Official Methods of Analysis of the Association of Official Analytical Chemists, Methods Manual, Sixteenth Edition, 4th Revision, 1998. AOAC International.

[4] For the determination of total metals (which are equivalent to total recoverable metals) the sample is not filtered before processing. A digestion procedure is required to solubilize analytes in suspended material and to break down organic-metal complexes (to convert the analyte to a detectable form for colorimetric analysis). For non-platform graphite furnace atomic absorption determinations, a digestion using nitric acid (as specified in Section 4.1.3 of Methods for Chemical Analysis of Water and Wastes) is required prior to analysis. The procedure used should subject the sample to gentle acid refluxing, and at no time should the sample be taken to dryness. For direct aspiration flame atomic absorption (FLAA) determinations, a combination acid (nitric and hydrochloric acids) digestion is preferred, prior to analysis. The approved total recoverable digestion is described as Method 200.2 in Supplement I of ''Methods for the Determination of Metals in Environmental Samples'' EPA/600R–94/111, May, 1994, and is reproduced in EPA Methods 200.7, 200.8, and 200.9 from the same Supplement. However, when using the gaseous hydride technique or for the determination of certain elements such as antimony, arsenic, selenium, silver, and tin by non-EPA graphite furnace atomic absorption methods, mercury by cold vapor atomic absorption, the noble metals and titanium by FLAA, a specific or modified sample digestion procedure may be required, and, in all cases the referenced method write-up should be consulted for specific instruction and/or cautions. For analyses using inductively coupled plasma-atomic emission spectrometry (ICP–AES), the direct current plasma (DCP) technique or EPA spectrochemical techniques (platform furnace AA, ICP–AES, and ICP–MS), use EPA Method 200.2 or an approved alternate procedure (*e.g.,* CEM microwave digestion, which may be used with certain analytes as indicated in Table IB); the total recoverable digestion procedures in EPA Methods 200.7, 200.8, and 200.9 may be used for those respective methods. Regardless of the digestion procedure, the results of the analysis after digestion procedure are reported as ''total'' metals.

[5] Copper sulfate or other catalysts that have been found suitable may be used in place of mercuric sulfate.

[6] Manual distillation is not required if comparability data on representative effluent samples are on file to show that this preliminary distillation step is not necessary; however, manual distillation will be required to resolve any controversies. In general, the analytical method should be consulted regarding the need for distillation. If the method is not clear, the laboratory may compare a minimum of 9 different sample matrices to evaluate the need for distillation. For each matrix, a matrix spike and matrix spike duplicate are analyzed both with and without the distillation step (for a total of 36 samples, assuming 9 matrices). If results are comparable, the laboratory may dispense with the distillation step for future analysis. Comparable is defined as <20% RPD for all tested matrices). Alternatively, the two populations of spike recovery percentages may be compared using a recognized statistical test.

[7] Industrial Method Number 379–75 WE Ammonia, Automated Electrode Method, Technicon Auto Analyzer II. February 19, 1976. Bran & Luebbe Analyzing Technologies Inc.

[8] The approved method is that cited in Methods for Determination of Inorganic Substances in Water and Fluvial Sediments, Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A1. 1979. USGS.

[9] American National Standard on Photographic Processing Effluents. April 2, 1975. American National Standards Institute.

[10] In-Situ Method 1003–8–2009, Biochemical Oxygen Demand (BOD) Measurement by Optical Probe. 2009. In-Situ Incorporated.

[11] The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

[12] Carbonaceous biochemical oxygen demand ($CBOD_5$) must not be confused with the traditional BOD_5 test method which measures ''total 5-day BOD.'' The addition of the nitrification inhibitor is not a procedural option but must be included to report the $CBOD_5$ parameter. A discharger whose permit requires reporting the traditional BOD_5 may not use a nitrification inhibitor in the procedure for reporting the results. Only when a discharger's permit specifically states $CBOD_5$ is required can the permittee report data using a nitrification inhibitor.

[13] OIC Chemical Oxygen Demand Method. 1978. Oceanography International Corporation.

[14] Method 8000, Chemical Oxygen Demand, Hach Handbook of Water Analysis, 1979. Hach Company.

[15] The back-titration method will be used to resolve controversy.

[16] Orion Research Instruction Manual, Residual Chlorine Electrode Model 97–70. 1977. Orion Research Incorporated. The calibration graph for the Orion residual chlorine method must be derived using a reagent blank and three standard solutions, containing 0.2, 1.0, and 5.0 mL 0.00281 N potassium iodate/100 mL solution, respectively.

[17] Method 245.7, Mercury in Water by Cold Vapor Atomic Fluorescence Spectrometry, EPA–821–R–05–001. Revision 2.0, February 2005. US EPA.

[18] National Council of the Paper Industry for Air and Stream Improvement (NCASI) Technical Bulletin 253 (1971) and Technical Bulletin 803, May 2000.

[19] Method 8506, Bicinchoninate Method for Copper, Hach Handbook of Water Analysis. 1979. Hach Company.

[20] When using a method with block digestion, this treatment is not required.

[21] Industrial Method Number 378–75WA, Hydrogen ion (pH) Automated Electrode Method, Bran & Luebbe (Technicon) Autoanalyzer II. October 1976. Bran & Luebbe Analyzing Technologies.

[22] Method 8008, 1,10-Phenanthroline Method using FerroVer Iron Reagent for Water. 1980. Hach Company.

[23] Method 8034, Periodate Oxidation Method for Manganese, Hach Handbook of Wastewater Analysis. 1979. Hach Company.

[24] Methods for Analysis of Organic Substances in Water and Fluvial Sediments, Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A3, (1972 Revised 1987). 1987. USGS.

[25] Method 8507, Nitrogen, Nitrite-Low Range, Diazotization Method for Water and Wastewater. 1979. Hach Company.

[26] Just prior to distillation, adjust the sulfuric-acid-preserved sample to pH 4 with 1 + 9 NaOH.

[27] The colorimetric reaction must be conducted at a pH of 10.0 ± 0.2.

[28] Addison, R.F., and R.G. Ackman. 1970. Direct Determination of Elemental Phosphorus by Gas-Liquid Chromatography, *Journal of Chromatography,* 47(3):421–426.

[29] Approved methods for the analysis of silver in industrial wastewaters at concentrations of 1 mg/L and above are inadequate where silver exists as an inorganic halide. Silver halides such as the bromide and chloride are relatively insoluble in reagents such as nitric acid but are readily soluble in an aqueous buffer of sodium thiosulfate and sodium hydroxide to pH of 12. Therefore, for levels of silver above 1 mg/L, 20 mL of sample should be diluted to 100 mL by adding 40 mL each of 2 M $Na_2S_2O_3$and NaOH. Standards should be prepared in the same manner. For levels of silver below 1 mg/L the approved method is satisfactory.

[30] The use of EDTA decreases method sensitivity. Analysts may omit EDTA or replace with another suitable complexing reagent provided that all method-specified quality control acceptance criteria are met.

[31] For samples known or suspected to contain high levels of silver (*e.g.,* in excess of 4 mg/L), cyanogen iodide should be used to keep the silver in solution for analysis. Prepare a cyanogen iodide solution by adding 4.0 mL of concentrated NH_4OH, 6.5 g of KCN, and 5.0 mL of a 1.0 N solution of I_2 to 50 mL of reagent water in a volumetric flask and dilute to 100.0 mL. After digestion of the sample, adjust the pH of the digestate to >7 to prevent the formation of HCN under acidic conditions. Add 1 mL of the cyanogen iodide solution to the sample digestate and adjust the volume to 100 mL with reagent water (NOT acid). If cyanogen iodide is added to sample digestates, then silver standards must be prepared that contain cyanogen iodide as well. Prepare working standards by diluting a small volume of a silver stock solution with water and adjusting the pH >7 with NH_4OH. Add 1 mL of the cyanogen iodide solution and let stand 1 hour. Transfer to a 100-mL volumetric flask and dilute to volume with water.

[32] ''Water Temperature-Influential Factors, Field Measurement and Data Presentation,'' Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 1, Chapter D1. 1975. USGS.

[33] Method 8009, Zincon Method for Zinc, Hach Handbook of Water Analysis, 1979. Hach Company.

[34] Method AES0029, Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes. 1986-Revised 1991. Thermo Jarrell Ash Corporation.

[35] In-Situ Method 1004–8–2009, Carbonaceous Biochemical Oxygen Demand (CBOD) Measurement by Optical Probe. 2009. In-Situ Incorporated.

[36] Microwave-assisted digestion may be employed for this metal, when analyzed by this methodology. Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals. April 16, 1992. CEM Corporation

[37] When determining boron and silica, only plastic, PTFE, or quartz laboratory ware may be used from start until completion of analysis.

[38] Only use *n*-hexane (*n*-Hexane—85% minimum purity, 99.0% min. saturated C6 isomers, residue less than 1 mg/L) extraction solvent when determining Oil and Grease parameters—Hexane Extractable Material (HEM), or Silica Gel Treated HEM (analogous to EPA Methods 1664 Rev. A and 1664 Rev. B). Use of other extraction solvents is prohibited.

[39] Method PAI–DK01, Nitrogen, Total Kjeldahl, Block Digestion, Steam Distillation, Titrimetric Detection. Revised December 22, 1994. OI Analytical.

[40] Method PAI–DK02, Nitrogen, Total Kjeldahl, Block Digestion, Steam Distillation, Colorimetric Detection. Revised December 22, 1994. OI Analytical.

[41] Method PAI–DK03, Nitrogen, Total Kjeldahl, Block Digestion, Automated FIA Gas Diffusion. Revised December 22, 1994. OI Analytical.

[42] Method 1664 Rev. B is the revised version of EPA Method 1664 Rev. A. U.S. EPA. February 1999, Revision A. Method 1664, *n*-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated *n*-Hexane Extractable Material (SGT–HEM; Non-polar Material) by Extraction and Gravimetry. EPA–821–R–98–002. U.S. EPA. February 2010, Revision B. Method 1664, *n*-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated *n*-Hexane Extractable Material (SGT–HEM; Non-polar Material) by Extraction and Gravimetry. EPA–821–R–10–001.

[43] Method 1631, Revision E, Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry, EPA–821–R–02–019. Revision E. August 2002, U.S. EPA. The application of clean techniques described in EPA's Method 1669: *Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels,* EPA–821–R–96–011, are recommended to preclude contamination at low-level, trace metal determinations.

[44] Method OIA–1677–09, Available Cyanide by Ligand Exchange and Flow Injection Analysis (FIA). 2010. OI Analytical.

[45] Open File Report 00–170, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Ammonium Plus Organic Nitrogen by a Kjeldahl Digestion Method and an Automated Photometric Finish that Includes Digest Cleanup by Gas Diffusion. 2000. USGS.

[46] Open File Report 93–449, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Chromium in Water by Graphite Furnace Atomic Absorption Spectrophotometry. 1993. USGS.

[47] Open File Report 97–198, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Molybdenum by Graphite Furnace Atomic Absorption Spectrophotometry. 1997. USGS.

[48] Open File Report 92–146, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Total Phosphorus by Kjeldahl Digestion Method and an Automated Colorimetric Finish That Includes Dialysis. 1992. USGS.

[49] Open File Report 98–639, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Arsenic and Selenium in Water and Sediment by Graphite Furnace-Atomic Absorption Spectrometry. 1999. USGS.

[50] Open File Report 98–165, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Elements in Whole-water Digests Using Inductively Coupled Plasma-Optical Emission Spectrometry and Inductively Coupled Plasma-Mass Spectrometry. 1998. USGS.

[51] Open File Report 93–125, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments. 1993. USGS.

[52] Unless otherwise indicated, all EPA methods, excluding EPA Method 300.1, are published in U.S. EPA. May 1994. Methods for the Determination of Metals in Environmental Samples, Supplement I, EPA/600/R–94/111; or U.S. EPA. August 1993. Methods for the Determination of Inorganic Substances in Environmental Samples, EPA/600/R–93/100. EPA Method 300.1 is U.S. EPA. Revision 1.0, 1997, including errata cover sheet April 27, 1999. Determination of Inorganic Ions in Drinking Water by Ion Chromatography.

[53] Styrene divinyl benzene beads (*e.g.,* AMCO–AEPA–1 or equivalent) and stabilized formazin (*e.g.,* Hach StablCal™ or equivalent) are acceptable substitutes for formazin.

[54] Method D6508–15, Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte. 2015. ASTM

[55] Kelada-01, Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate, EPA 821–B–01–009, Revision 1.2, August 2001. US EPA. Note: A 450–W UV lamp may be used in this method instead of the 550–W lamp specified if it provides performance within the quality control (QC) acceptance criteria of the method in a given instrument. Similarly, modified flow cell configurations and flow conditions may be used in the method, provided that the QC acceptance criteria are met.

[56] QuikChem Method 10–204–00–1–X, Digestion and Distillation of Total Cyanide in Drinking and Wastewaters using MICRO DIST and Determination of Cyanide by Flow Injection Analysis. Revision 2.2, March 2005. Lachat Instruments.

[57] When using sulfide removal test procedures described in EPA Method 335.4–1, reconstitute particulate that is filtered with the sample prior to distillation.

[58] Unless otherwise stated, if the language of this table specifies a sample digestion and/or distillation ''followed by'' analysis with a method, approved digestion and/or distillation are required prior to analysis.

[59] Samples analyzed for available cyanide using OI Analytical method OIA–1677–09 or ASTM method D6888–16 that contain particulate matter may be filtered only after the ligand exchange reagents have been added to the samples, because the ligand exchange process converts complexes containing available cyanide to free cyanide, which is not removed by filtration. Analysts are further cautioned to limit the time between the addition of the ligand exchange reagents and sample filtration to no more than 30 minutes to preclude settling of materials in samples.

[60] Analysts should be aware that pH optima and chromophore absorption maxima might differ when phenol is replaced by a substituted phenol as the color reagent in Berthelot Reaction (''phenol-hypochlorite reaction'') colorimetric ammonium determination methods. For example, when phenol is used as the color reagent, pH optimum and wavelength of maximum absorbance are about 11.5 and 635 nm, respectively—see, Patton, C.J. and S.R. Crouch. March 1977. *Anal. Chem.* 49:464–469. These reaction parameters increase to pH >12.6 and 665 nm when salicylate is used as the color reagent—see, Krom, M.D. April 1980. *The Analyst* 105:305–316.

[61] If atomic absorption or ICP instrumentation is not available, the aluminon colorimetric method detailed in the 19th Edition of *Standard Methods for the Examination of Water and Wastewater* may be used. This method has poorer precision and bias than the methods of choice.

[62] Easy (1-Reagent) Nitrate Method, Revision November 12, 2011. Craig Chinchilla.

[63] Hach Method 10360, Luminescence Measurement of Dissolved Oxygen in Water and Wastewater and for Use in the Determination of BOD_5 and $CBOD_5$. Revision 1.2, October 2011. Hach Company. This method may be used to measure dissolved oxygen when performing the methods approved in Table IB for measurement of biochemical oxygen demand (BOD) and carbonaceous biochemical oxygen demand (CBOD).

[64] In-Situ Method 1002–8–2009, Dissolved Oxygen (DO) Measurement by Optical Probe. 2009. In-Situ Incorporated.

[65] Mitchell Method M5331, Determination of Turbidity by Nephelometry. Revision 1.0, July 31, 2008. Leck Mitchell.

[66] Mitchell Method M5271, Determination of Turbidity by Nephelometry. Revision 1.0, July 31, 2008. Leck Mitchell.

[67] Orion Method AQ4500, Determination of Turbidity by Nephelometry. Revision 5, March 12, 2009. Thermo Scientific.

[68] EPA Method 200.5, Determination of Trace Elements in Drinking Water by Axially Viewed Inductively Coupled Plasma-Atomic Emission Spectrometry, EPA/600/R–06/115. Revision 4.2, October 2003. US EPA.

[69] Method 1627, Kinetic Test Method for the Prediction of Mine Drainage Quality, EPA–821–R–09–002. December 2011. US EPA.

[70] Techniques and Methods Book 5–B1, Determination of Elements in Natural-Water, Biota, Sediment and Soil Samples Using Collision/Reaction Cell Inductively Coupled Plasma-Mass Spectrometry, Chapter 1, Section B, Methods of the National Water Quality Laboratory, Book 5, Laboratory Analysis, 2006. USGS.

[71] Water-Resources Investigations Report 01–4132, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Organic Plus Inorganic Mercury in Filtered and Unfiltered Natural Water with Cold Vapor-Atomic Fluorescence Spectrometry, 2001. USGS.

[72] USGS Techniques and Methods 5–B8, Chapter 8, Section B, Methods of the National Water Quality Laboratory Book 5, Laboratory Analysis, 2011 USGS

[73] NECi Method N07–0003, ''Nitrate Reductase Nitrate-Nitrogen Analysis,'' Revision 9.0, March 2014, The Nitrate Elimination Co., Inc.

[74] Timberline Instruments, LLC Method Ammonia-001, ''Determination of Inorganic Ammonia by Continuous Flow Gas Diffusion and Conductivity Cell Analysis,'' June 2011, Timberline Instruments, LLC.

[75] Hach Company Method 10206, ''Spectrophotometric Measurement of Nitrate in Water and Wastewater,'' Revision 2.1, January 2013, Hach Company.

[76] Hach Company Method 10242, ''Simplified Spectrophotometric Measurement of Total Kjeldahl Nitrogen in Water and Wastewater,'' Revision 1.1, January 2013, Hach Company.

[77] National Council for Air and Stream Improvement (NCASI) Method TNTP–W10900, ''Total (Kjeldahl) Nitrogen and Total Phosphorus in Pulp and Paper Biologically Treated Effluent by Alkaline Persulfate Digestion,'' June 2011, National Council for Air and Stream Improvement, Inc.

[78] The pH adjusted sample is to be adjusted to 7.6 for NPDES reporting purposes.

[79] I–2057–85 U.S. Geological Survey Techniques of Water-Resources Investigations, Book 5, Chap. A11989, Methods for Determination of Inorganic Substances in Water and Fluvial Sediments, 1989.

[80] Methods I–2522–90, I–2540–90, and I–2601–90 U.S. Geological Survey Open-File Report 93–125, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory–Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments, 1993.

[81] Method I–1472–97, U.S. Geological Survey Open-File Report 98–165, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory–Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments, 1998.

[82] FIAlab Instruments, Inc. Method FIAlab 100, ''Determination of Inorganic Ammonia by Continuous Flow Gas Diffusion and Fluorescence Detector Analysis'', April 4, 2018, FIAlab Instruments, Inc.

[83] MACHEREY–NAGEL GmbH and Co. Method 036/038 NANOCOLOR® COD LR/HR, ''Spectrophotometric Measurement of Chemical Oxygen Demand in Water and Wastewater'', Revision 1.5, May 2008, MACHEREY–NAGEL GmbH and Co. KG.

[84] Please refer to the following applicable Quality Control Sections: Part 2000 Methods, Physical and Aggregate Properties 2020 (2017); Part 3000 Methods, Metals, 3020 (2017); Part 4000 Methods, Inorganic Nonmetallic Constituents, 4020 (2014); Part 5000 Methods, and Aggregate Organic Constituents, 5020 (2017). These Quality Control Standards are available for download at *www.standardmethods.org* at no charge.

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS

Parameter [1]	Method	EPA [2 7]	Standard methods	ASTM	Other
1. Acenaphthene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
	HPLC	610	6440 B–2005	D4657–92 (98).	
2. Acenaphthylene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
	HPLC	610	6440 B–2005	D4657–92 (98).	
3. Acrolein	GC	603.			
	GC/MS	624.1 [4], 1624B.			
4. Acrylonitrile	GC	603.			
	GC/MS	624.1 [4], 1624B			O–4127–96.[13]
5. Anthracene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
	HPLC	610	6440B–2005	D4657–92 (98).	
6. Benzene	GC	602	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
7. Benzidine	Spectro-photo-metric.				See footnote [3], p. 1.
	GC/MS	625.1 [5], 1625B	6410 B–2000.		
	HPLC	605.			
8. Benzo(a)anthracene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
	HPLC	610	6440 B–2005	D4657–92 (98).	
9. Benzo(a)pyrene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
	HPLC	610	6440 B–2005	D4657–92 (98).	
10. Benzo(b)fluoranthene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
	HPLC	610	6440 B–2005	D4657–92 (98).	
11. Benzo(g,h,i)perylene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
	HPLC	610	6440 B–2005	D4657–92 (98).	
12. Benzo(k)fluoranthene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
	HPLC	610	6440 B–2005	D4657–92 (98).	
13. Benzyl chloride	GC				See footnote [3], p. 130.
	GC/MS				See footnote [6], p. S102.

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	Method	EPA [2 7]	Standard methods	ASTM	Other
14. Butyl benzyl phthalate	GC	606.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
15. bis(2-Chloroethoxy) methane	GC	611.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
16. bis(2-Chloroethyl) ether	GC	611.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
17. bis(2-Ethylhexyl) phthalate	GC	606.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
18. Bromodichloromethane	GC	601	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
19. Bromoform	GC	601	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
20. Bromomethane	GC	601	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
21. 4-Bromophenyl phenyl ether	GC	611.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
22. Carbon tetrachloride	GC	601	6200 C–2011		See footnote [3], p. 130.
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
23. 4-Chloro-3-methyl phenol	GC	604	6420 B–2000.		
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
24. Chlorobenzene	GC	601, 602	6200 C–2011		See footnote [3], p. 130.
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
25. Chloroethane	GC	601	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96.[13]
26. 2-Chloroethylvinyl ether	GC	601.			
	GC/MS	624.1, 1624B.			
27. Chloroform	GC	601	6200 C–2011		See footnote [3], p. 130.
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
28. Chloromethane	GC	601	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
29. 2-Chloronaphthalene	GC	612.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
30. 2-Chlorophenol	GC	604	6420 B–2000.		
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
31. 4-Chlorophenyl phenyl ether	GC	611.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
32. Chrysene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
	HPLC	610	6440 B–2005	D4657–92 (98).	
33. Dibenzo(a,h)anthracene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
	HPLC	610	6440 B–2005	D4657–92 (98).	
34. Dibromochloromethane	GC	601	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
35. 1,2-Dichlorobenzene	GC	601, 602	6200 C–2011.		
	GC/MS	624.1, 1625B	6200 B–2011		See footnote [9], p. 27; O–4127–96 [13], O–4436–16.[14]
36. 1,3-Dichlorobenzene	GC	601, 602	6200 C–2011.		
	GC/MS	624.1, 1625B	6200 B–2011		See footnote [9], p. 27; O–4127–96.[13]
37. 1,4-Dichlorobenzene	GC	601, 602	6200 C–2011.		
	GC/MS	624.1, 1625B	6200 B–2011		See footnote [9], p. 27; O–4127–96 [13], O–4436–16.[14]
38. 3,3′-Dichlorobenzidine	GC/MS	625.1, 1625B	6410 B–2000.		
	HPLC	605.			
39. Dichlorodifluoromethane	GC	601.			
	GC/MS		6200 C–2011		O–4127–96 [13], O–4436–16.[14]
40. 1,1-Dichloroethane	GC	601	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
41. 1,2-Dichloroethane	GC	601	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
42. 1,1-Dichloroethene	GC	601	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
43. *trans*-1,2-Dichloroethene	GC	601	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
44. 2,4-Dichlorophenol	GC	604	6420 B–2000..		
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
45. 1,2-Dichloropropane	GC	601	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
46. *cis*-1,3-Dichloropropene	GC	601	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
47. *trans*-1,3-Dichloropropene	GC	601	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
48. Diethyl phthalate	GC	606.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
49. 2,4-Dimethylphenol	GC	604	6420 B–2000.		
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
50. Dimethyl phthalate	GC	606.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
51. Di-*n*-butyl phthalate	GC	606.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
52. Di-*n*-octyl phthalate	GC	606.			

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	Method	EPA [2 7]	Standard methods	ASTM	Other
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
53. 2,4-Dinitrophenol	GC	604	6420 B–2000		See footnote [9], p. 27.
	GC/MS	625.1, 1625B	6410 B–2000.		
54. 2,4-Dinitrotoluene	GC	609.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
55. 2,6-Dinitrotoluene	GC	609.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
56. Epichlorohydrin	GC				See footnote [3], p. 130.
	GC/MS				See footnote [6], p. S102.
57. Ethylbenzene	GC	602	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
58. Fluoranthene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
	HPLC	610	6440 B–2005	D4657–92 (98).	
59. Fluorene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
	HPLC	610	6440 B–2005	D4657–92 (98).	
60. 1,2,3,4,6,7,8-Heptachloro-dibenzofuran.	GC/MS	1613B.			
61. 1,2,3,4,7,8,9-Heptachloro-dibenzofuran.	GC/MS	1613B.			
62. 1,2,3,4,6,7,8-Heptachloro-dibenzo-*p*-dioxin.	GC/MS	1613B.			
63. Hexachlorobenzene	GC	612.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
64. Hexachlorobutadiene	GC	612.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27; O–4127–96.[13]
65. Hexachlorocyclopentadiene	GC	612.			
	GC/MS	625.1 [5], 1625B	6410 B–2000		See footnote [9], p. 27; O–4127–96.[13]
66. 1,2,3,4,7,8-Hexachloro-dibenzofuran.	GC/MS	1613B.			
67. 1,2,3,6,7,8-Hexachloro-dibenzofuran.	GC/MS	1613B.			
68. 1,2,3,7,8,9-Hexachloro-dibenzofuran.	GC/MS	1613B.			
69. 2,3,4,6,7,8-Hexachloro-dibenzofuran.	GC/MS	1613B.			
70. 1,2,3,4,7,8-Hexachloro-dibenzo-*p*-dioxin.	GC/MS	1613B.			
71. 1,2,3,6,7,8-Hexachloro-dibenzo-*p*-dioxin.	GC/MS	1613B.			
72. 1,2,3,7,8,9-Hexachloro-dibenzo-*p*-dioxin.	GC/MS	1613B.			
73. Hexachloroethane	GC	612.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27; O–4127–96.[13]
74. Indeno(1,2,3-c,d) pyrene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
	HPLC	610	6440 B–2005	D4657–92 (98).	
75. Isophorone	GC	609.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
76. Methylene chloride	GC	601	6200 C–2011		See footnote [3], p. 130.
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
77. 2-Methyl-4,6-dinitrophenol	GC	604	6420 B–2000.		
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
78. Naphthalene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
	HPLC	610	6440 B–2005.		
79. Nitrobenzene	GC	609.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
	HPLC			D4657–92 (98).	
80. 2-Nitrophenol	GC	604	6420 B–2000.		
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
81. 4-Nitrophenol	GC	604	6420 B–2000.		
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
82. N-Nitrosodimethylamine	GC	607.			
	GC/MS	625.1 [5], 1625B	6410 B–2000		See footnote [9], p. 27.
83. N-Nitrosodi-*n*-propylamine	GC	607.			
	GC/MS	625.1 [5], 1625B	6410 B–2000		See footnote [9], p. 27.
84. N-Nitrosodiphenylamine	GC	607.			
	GC/MS	625.1 [5], 1625B	6410 B–2000		See footnote [9], p. 27.
85. Octachlorodibenzofuran	GC/MS	1613B [10].			
86. Octachlorodibenzo-*p*-dioxin	GC/MS	1613B [10].			
87. 2,2′-oxybis(1-chloropropane) [12] [also known as bis(2-Chloro-1-methylethyl) ether].	GC	611.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
88. PCB–1016	GC	608.3			See footnote [3], p. 43; See footnote.[8]
	GC/MS	625.1	6410 B–2000.		
89. PCB–1221	GC	608.3			See footnote [3], p. 43; See footnote.[8]
	GC/MS	625.1	6410 B–2000.		
90. PCB–1232	GC	608.3			See footnote [3], p. 43; See footnote.[8]

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	Method	EPA [2 7]	Standard methods	ASTM	Other
	GC/MS	625.1	6410 B–2000.		
91. PCB–1242	GC	608.3			See footnote [3], p. 43; See footnote.[8]
	GC/MS	625.1	6410 B–2000.		
92. PCB–1248	GC	608.3			See footnote [3], p. 43; See footnote.[8]
	GC/MS	625.1	6410 B–2000.		
93. PCB–1254	GC	608.3			See footnote [3], p. 43; See footnote.[8]
	GC/MS	625.1	6410 B–2000.		
94. PCB–1260	GC	608.3			See footnote [3], p. 43; See footnote.[8]
	GC/MS	625.1	6410 B–2000.		
95. 1,2,3,7,8-Pentachloro-dibenzofuran.	GC/MS	1613B.			
96. 2,3,4,7,8-Pentachloro-dibenzofuran.	GC/MS	1613B.			
97. 1,2,3,7,8-Pentachloro-dibenzo-*p*-dioxin.	GC/MS	1613B.			
98. Pentachlorophenol	GC	604	6420 B–2000		See footnote [3], p. 140.
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
99. Phenanthrene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
	HPLC	610	6440 B–2005	D4657–92 (98).	
100. Phenol	GC	604	6420 B–2000.		
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
101. Pyrene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
	HPLC	610	6440 B–2005	D4657–92 (98).	
102. 2,3,7,8-Tetrachloro-dibenzofuran	GC/MS	1613B [10].			
103. 2,3,7,8-Tetrachloro-dibenzo-*p*-dioxin.	GC/MS	613, 625.1 [5a], 1613B.			
104. 1,1,2,2-Tetrachloroethane	GC	601	6200 C–2011		See footnote [3], p. 130.
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96.[13]
105. Tetrachloroethene	GC	601	6200 C–2011		See footnote [3], p. 130.
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
106. Toluene	GC	602	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
107. 1,2,4-Trichlorobenzene	GC	612			See footnote [3], p. 130.
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27; O–4127–96 [13], O–4436–16.[14]
108. 1,1,1-Trichloroethane	GC	601	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
109. 1,1,2-Trichloroethane	GC	601	6200 C–2011		See footnote [3], p. 130.
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
110. Trichloroethene	GC	601	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
111. Trichlorofluoromethane	GC	601	6200 C–2011.		
	GC/MS	624.1	6200 B–2011		O–4127–96.[13]
112. 2,4,6-Trichlorophenol	GC	604	6420 B–2000.		
	GC/MS	625.1, 1625B	6410 B–2000		See footnote [9], p. 27.
113. Vinyl chloride	GC	601	6200 C–2011.		
	GC/MS	624.1, 1624B	6200 B–2011		O–4127–96 [13], O–4436–16.[14]
114. Nonylphenol	GC/MS			D7065–17.	
115. Bisphenol A (BPA)	GC/MS			D7065–17.	
116. *p-tert*-Octylphenol (OP)	GC/MS			D7065–17.	
117. Nonylphenol Monoethoxylate (NP1EO).	GC/MS			D7065–17.	
118. Nonylphenol Diethoxylate (NP2EO).	GC/MS			D7065–17.	
119. Adsorbable Organic Halides (AOX).	Adsorption and Coulometric Titration.	1650 [11].			
120. Chlorinated Phenolics	In Situ Acetylation and GC/MS.	1653 [11].			

Table IC notes:

[1] All parameters are expressed in micrograms per liter (µg/L) except for Method 1613B, in which the parameters are expressed in picograms per liter (pg/L).

[2] The full text of Methods 601–613, 1613B, 1624B, and 1625B are provided at appendix A, Test Procedures for Analysis of Organic Pollutants. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at appendix B of this part, Definition and Procedure for the Determination of the Method Detection Limit. These methods are available at: *https://www.epa.gov/cwa-methods* as individual PDF files.

[3] Methods for Benzidine: Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater. September 1978. U.S. EPA.

[4] Method 624.1 may be used for quantitative determination of acrolein and acrylonitrile, provided that the laboratory has documentation to substantiate the ability to detect and quantify these analytes at levels necessary to comply with any associated regulations. In addition, the use of sample introduction techniques other than simple purge-and-trap may be required. QC acceptance criteria from Method 603 should be used when analyzing samples for acrolein and acrylonitrile in the absence of such criteria in Method 624.1.

[5] Method 625.1 may be extended to include benzidine, hexachlorocyclopentadiene, N-nitrosodimethylamine, N-nitrosodi-*n*-propylamine, and N-nitrosodiphenylamine. However, when they are known to be present, Methods 605, 607, and 612, or Method 1625B, are preferred methods for these compounds.

[5a] Method 625.1 screening only.

[6] Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency, Supplement to the 15th Edition of *Standard Methods for the Examination of Water and Wastewater.* 1981. American Public Health Association (APHA).

[7] Each analyst must make an initial, one-time demonstration of their ability to generate acceptable precision and accuracy with Methods 601–603, 1624B, and 1625B in accordance with procedures in Section 8.2 of each of these methods. Additionally, each laboratory, on an on-going basis must spike and analyze 10% (5% for Methods 624.1 and 625.1 and 100% for methods 1624B and 1625B) of all samples to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the quality control (QC) acceptance criteria in the pertinent method, analytical results for that parameter in the unspiked sample are suspect. The results should be reported but cannot be used to demonstrate regulatory compliance. If the method does not contain QC acceptance criteria, control limits of ± three standard deviations around the mean of a minimum of five replicate measurements must be used. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other methods cited.

[8] Organochlorine Pesticides and PCBs in Wastewater Using Empore™ Disk. Revised October 28, 1994. 3M Corporation.
[9] Method O–3116–87 is in Open File Report 93–125, Methods of Analysis by U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments. 1993. USGS.
[10] Analysts may use Fluid Management Systems, Inc. Power-Prep system in place of manual cleanup provided the analyst meets the requirements of Method 1613B (as specified in Section 9 of the method) and permitting authorities. Method 1613, Revision B, Tetra- through Octa-Chlorinated Dioxins and Furans by Isotope Dilution HRGC/HRMS. Revision B, 1994. U.S. EPA. The full text of this method is provided in appendix A to this part and at *https://www.epa.gov/cwa-methods/approved-cwa-test-methods-organic-compounds.*
[11] Method 1650, Adsorbable Organic Halides by Adsorption and Coulometric Titration. Revision C, 1997 U.S. EPA. Method 1653, Chlorinated Phenolics in Wastewater by In Situ Acetylation and GCMS. Revision A, 1997 U.S. EPA. The full text for both of these methods is provided at appendix A in part 430 of this chapter, The Pulp, Paper, and Paperboard Point Source Category.
[12] The compound was formerly inaccurately labeled as 2,2′-oxybis(2-chloropropane) and bis(2-chloroisopropyl) ether. Some versions of Methods 611, and 1625 inaccurately list the analyte as "bis(2-chloroisopropyl)ether," but use the correct CAS number of 108–60–1.
[13] Method O–4127–96, U.S. Geological Survey Open-File Report 97–829, Methods of analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of 86 volatile organic compounds in water by gas chromatography/mass spectrometry, including detections less than reporting limits,1998, USGS.
[14] Method O–4436–16 U.S. Geological Survey Techniques and Methods, book 5, chap. B12, Determination of heat purgeable and ambient purgeable volatile organic compounds in water by gas chromatography/mass spectrometry, 2016, USGS.

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TABLE IH—LIST OF APPROVED MICROBIOLOGICAL METHODS FOR AMBIENT WATER

Parameter and units	Method [1]	EPA	Standard methods	AOAC, ASTM, USGS	Other
Bacteria					
1. Coliform (fecal), number per 100 mL.	Most Probable Number (MPN), 5 tube, 3 dilution, or.	p. 132 [3]	9221 E–2014, 9221 F.2–2014 [32].		
	Membrane filter (MF) [2], single step.	p. 124 [3]	9222 D–2015 [26]	B–0050–85 [4].	
2. Coliform (total), number per 100 mL.	MPN, 5 tube, 3 dilution, or.	p. 114 [3]	9221 B–2014.		
	MF [2], single step or two step.	p. 108 [3]	9222 B–2015 [27]	B–0025–85 [4].	
	MF [2] with enrichment	p. 111 [3]	9222 (B + B.4e)—2015 [27].		
3. *E. coli,* number per 100 mL.	MPN [5 7 13], multiple tube, or.		9221 B.3–2014/9221 F–2014 [10 12 32].		
	Multiple tube/multiple well, or.		9223 B–2016 [11]	991.15 [9]	Colilert® [11 15], Colilert-18®.[11 14 15]
	MF [2 5 6 7], two step, or	1103.1 [18]	9222 B–2015/9222 I–2015 [17], 9213 D–2007.	D5392–93 [8].	
	Single step	1603 [19], 1604 [20]			m-ColiBlue24® [16], KwikCount™ EC.[28 29]
4. Fecal streptococci, number per 100 mL.	MPN, 5 tube, 3 dilution, or.	p. 139 [3]	9230 B–2013.		
	MF [2], or	p. 136 [3]	9230 C–2013 [30]	B–0055–85 [4].	
	Plate count	p. 143 [3].			
5. Enterococci, number per 100 mL.	MPN [5 7], multiple tube/multiple well, or.		9230 D–2013	D6503–99 [8]	Enterolert®.[11 21]
	MF [2 5 6 7] two step, or	1106.1 [22]	9230 C–2013 [30]	D5259–92 [8].	
	Single step, or	1600 [23]	9230 C–2013 [30].		
	Plate count	p. 143 [3].			
Protozoa					
6. *Cryptosporidium*	Filtration/IMS/FA	1622 [24], 1623 [25], 1623.1 [25 31].			
7. *Giardia*	Filtration/IMS/FA	1623 [25], 1623.1 [25 31].			

Table 1H notes:
[1] The method must be specified when results are reported.
[2] A 0.45-µm membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated and to be free of extractables which could interfere with their growth.
[3] Microbiological Methods for Monitoring the Environment, Water and Wastes. EPA/600/8–78/017. 1978. US EPA.
[4] U.S. Geological Survey Techniques of Water-Resource Investigations, Book 5, Laboratory Analysis, Chapter A4, Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples. 1989. USGS.
[5] Tests must be conducted to provide organism enumeration (density). Select the appropriate configuration of tubes/filtrations and dilutions/volumes to account for the quality, character, consistency, and anticipated organism density of the water sample.
[6] When the MF method has not been used previously to test waters with high turbidity, large numbers of noncoliform bacteria, or samples that may contain organisms stressed by chlorine, a parallel test should be conducted with a multiple-tube technique to demonstrate applicability and comparability of results.
[7] To assess the comparability of results obtained with individual methods, it is suggested that side-by-side tests be conducted across seasons of the year with the water samples routinely tested in accordance with the most current *Standard Methods for the Examination of Water and Wastewater* or EPA alternate test procedure (ATP) guidelines.
[8] Annual Book of ASTM Standards—Water and Environmental Technology. Section 11.02. 2000, 1999, 1996. ASTM International.
[9] Official Methods of Analysis of AOAC International, 16th Edition, Volume I, Chapter 17. 1995. AOAC International.
[10] The multiple-tube fermentation test is used in 9221B.3–2014. Lactose broth may be used in lieu of lauryl tryptose broth (LTB), if at least 25 parallel tests are conducted between this broth and LTB using the water samples normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliform using lactose broth is less than 10 percent. No requirement exists to run the completed phase on 10 percent of all total coliform-positive tubes on a seasonal basis.
[11] These tests are collectively known as defined enzyme substrate tests.
[12] After prior enrichment in a presumptive medium for total coliform using 9221B.3–2014, all presumptive tubes or bottles showing any amount of gas, growth or acidity within 48 h ± 3 h of incubation shall be submitted to 9221F–2014. Commercially available EC–MUG media or EC media supplemented in the laboratory with 50 µg/mL of MUG may be used.
[13] Samples shall be enumerated by the multiple-tube or multiple-well procedure. Using multiple-tube procedures, employ an appropriate tube and dilution configuration of the sample as needed and report the Most Probable Number (MPN). Samples tested with Colilert® may be enumerated with the multiple-well procedures, Quanti-Tray® or Quanti-Tray®/2000, and the MPN calculated from the table provided by the manufacturer.
[14] Colilert-18® is an optimized formulation of the Colilert® for the determination of total coliforms and *E. coli* that provides results within 18 h of incubation at 35 °C, rather than the 24 h required for the Colilert® test, and is recommended for marine water samples.

[15] Descriptions of the Colilert®, Colilert-18®, Quanti-Tray®, and Quanti-Tray®/2000 may be obtained from IDEXX Laboratories Inc.

[16] A description of the mColiBlue24® test may be obtained from Hach Company.

[17] Subject coliform positive samples determined by 9222B–2015 or other membrane filter procedure to 9222I–2015 using NA–MUG media.

[18] Method 1103.1: *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using membrane-Thermotolerant *Escherichia coli* Agar (mTEC), EPA–821–R–10–002. March 2010. US EPA.

[19] Method 1603: *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using Modified membrane-Thermotolerant *Escherichia coli* Agar (Modified mTEC), EPA–821–R–14–010. September 2014. US EPA.

[20] Method 1604: Total Coliforms and *Escherichia coli* (*E. coli*) in Water by Membrane Filtration by Using a Simultaneous Detection Technique (MI Medium), EPA 821–R–02–024. September 2002. US EPA.

[21] A description of the Enterolert® test may be obtained from IDEXX Laboratories Inc.

[22] Method 1106.1: Enterococci in Water by Membrane Filtration Using membrane-Enterococcus-Esculin Iron Agar (mE–EIA), EPA–821–R–09–015. December 2009. US EPA.

[23] Method 1600: Enterococci in Water by Membrane Filtration Using membrane-Enterococcus Indoxyl-β-D-Glucoside Agar (mEI), EPA–821–R–14–011. September 2014. US EPA.

[24] Method 1622 uses a filtration, concentration, immunomagnetic separation of oocysts from captured material, immunofluorescence assay to determine concentrations, and confirmation through vital dye staining and differential interference contrast microscopy for the detection of *Cryptosporidium*. Method 1622: *Cryptosporidium* in Water by Filtration/IMS/FA, EPA–821–R–05–001. December 2005. US EPA.

[25] Methods 1623 and 1623.1 use a filtration, concentration, immunomagnetic separation of oocysts and cysts from captured material, immunofluorescence assay to determine concentrations, and confirmation through vital dye staining and differential interference contrast microscopy for the simultaneous detection of *Cryptosporidium* and *Giardia* oocysts and cysts. Method 1623: *Cryptosporidium* and *Giardia* in Water by Filtration/IMS/FA. EPA–821–R–05–002. December 2005. US EPA. Method 1623.1: *Cryptosporidium* and *Giardia* in Water by Filtration/IMS/FA. EPA 816–R–12–001. January 2012. US EPA.

[26] On a monthly basis, at least ten blue colonies from positive samples must be verified using Lauryl Tryptose Broth and EC broth, followed by count adjustment based on these results; and representative non-blue colonies should be verified using Lauryl Tryptose Broth. Where possible, verifications should be done from randomized sample sources.

[27] On a monthly basis, at least ten sheen colonies from positive samples must be verified using Lauryl Tryptose Broth and brilliant green lactose bile broth, followed by count adjustment based on these results; and representative non-sheen colonies should be verified using Lauryl Tryptose Broth. Where possible, verifications should be done from randomized sample sources.

[28] A description of KwikCount™ EC may be obtained from Micrology Laboratories LLC.

[29] Approved for the analyses of *E. coli* in freshwater only.

[30] Verification of colonies by incubation of BHI agar at 10 ± 0.5 °C for 48 ± 3 h is optional. As per the Errata to the 23rd Edition of *Standard Methods for the Examination of Water and Wastewater* ''Growth on a BHI agar plate incubated at 10 ± 0.5 °C for 48 ± 3 h is further verification that the colony belongs to the genus Enterococcus.''

[31] Method 1623.1 includes updated acceptance criteria for IPR, OPR, and MS/MSD and clarifications and revisions based on the use of Method 1623 for years and technical support questions.

[32] 9221 F.2–2014 This procedure allows for simultaneous detection of *E. coli* and thermotolerant coliforms by adding inverted vials to EC–MUG; the inverted vials collect gas produced by thermotolerant coliforms.

* * * * *

(b) Certain material is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material may be inspected at EPA's Water Docket, EPA West, 1301 Constitution Avenue NW, Room 3334, Washington, DC 20004, (Telephone: 202–566–2426) and is available from the sources listed below. It is also available for inspection at National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

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(8) Office of Water, U.S. Environmental Protection Agency, Washington, DC (US EPA). Available at *https://www.epa.gov/cwa-methods*

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(ix) 1623.1: *Cryptosporidium* and *Giardia* in Water by Filtration/IMS/FA. EPA 816–R–12–001. January 2012. US EPA, Table IH, Note 25.

(x) Method 1627, Kinetic Test Method for the Prediction of Mine Drainage Quality. December 2011. EPA–821–R–09–002. Table IB, Note 69.

(xi) Method 1664, *n*-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated *n*-Hexane Extractable Material (SGT–HEM; Nonpolar Material) by Extraction and Gravimetry.

Revision A, February 1999. EPA–821–R–98–002. Table IB, Notes 38 and 42.

(xii) Method 1664, *n*-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated *n*-Hexane Extractable Material (SGT–HEM; Nonpolar Material) by Extraction and Gravimetry, Revision B, February 2010. EPA–821–R–10–001. Table IB, Notes 38 and 42.

(xiii) Method 1669, Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels. July 1996. Table IB, Note 43.

(xiv) Method 1680: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation using Lauryl Tryptose Broth (LTB) and EC Medium. September 2014. EPA–821–R–14–009.Table IA, Note 15.

(xv) Method 1681: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation using A–1 Medium. July 2006. EPA 821–R–06–013. Table IA, Note 20.

(xvi) Method 1682: *Salmonella* in Sewage Sludge (Biosolids) by Modified Semisolid Rappaport-Vassiliadis (MSRV) Medium. September 2014. EPA 821–R–14–012. Table IA, Note 23.

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(xiv) 2540, solids. 2015. Table IB.

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(xxxix) 4500-CN^-, Cyanide. 2016. Table IB.

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(xliv) 4500-NO_3^-, Nitrogen (Nitrate). 2016. Table IB.

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(xlvi) 4500-O, Oxygen (Dissolved). 2016. Table IB.

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(lii) 5210, Biochemical Oxygen Demand (BOD). 2016. Table IB.

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(liv) 5310, Total Organic Carbon (TOC). 2014. Table IB.

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(lxvii) 9221 Multiple-Tube Fermentation Technique for Members of the Coliform Group. 2014. Table IA, Notes 12 and 14; Table IH, Notes 10 and 12.

(lxviii) 9222, Membrane Filter Technique for Members of the Coliform Group. 2015. Table IA; Table IH, Note 17.

(lxix) 9223 Enzyme Substrate Coliform Test. 2016. Table IA; Table IH.

(lxx) 9230 Fecal Enterococcus/Streptococcus Groups. 2013. Table IA; Table IH.

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(v) ASTM D511–14, Standard Test Methods for Calcium and Magnesium in Water. November 2014. Table IB.

(vi) ASTM D512–12, Standard Test Methods for Chloride Ion in Water. July 2012. Table IB.

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(viii) ASTM D516–16, Standard Test Method for Sulfate Ion in Water, June 2016. Table IB.

(ix) ASTM D858–17, Standard Test Methods for Manganese in Water. June 2017. Table IB.

(x) ASTM D859–16, Standard Test Method for Silica in Water. June 2016. Table IB.

(xi) ASTM D888–12, Standard Test Methods for Dissolved Oxygen in Water. March 2012. Table IB.

(xii) ASTM D1067–16, Standard Test Methods for Acidity or Alkalinity of Water. June 2016. Table IB.

(xiii) ASTM D1068–15, Standard Test Methods for Iron in Water. October 2015. Table IB.

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(xvi) ASTM D1179–16, Standard Test Methods for Fluoride Ion in Water. June 2016. Table IB.

(xvii) ASTM D1246–16, Standard Test Method for Bromide Ion in Water. June 2016. Table IB.

(xviii) ASTM D1252–06 (Reapproved 2012), Standard Test Methods for Chemical Oxygen Demand (Dichromate Oxygen Demand) of Water. June 2012. Table IB.

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(xxii) ASTM D1687–17, Standard Test Methods for Chromium in Water. July 2017. Table IB.

(xxiii) ASTM D1688–17, Standard Test Methods for Copper in Water. July 2017. Table IB.

(xxiv) ASTM D1691–17, Standard Test Methods for Zinc in Water. June 2017. Table IB.

(xxv) ASTM D1783–01 (Reapproved 2012), Standard Test Methods for Phenolic Compounds in Water. August 2012. Table IB.

(xxvi) ASTM D1886–14, Standard Test Methods for Nickel in Water. November 2014. Table IB.

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(xxxi) ASTM D2036–09 (Reapproved 2015), Standard Test Methods for Cyanides in Water. July 2015. Table IB.

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(xxxiv) ASTM D2972–15, Standard Tests Method for Arsenic in Water. March 2015. Table IB.

(xxxv) ASTM D3223–17, Standard Test Method for Total Mercury in Water. June 2017. Table IB.

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(xxxvii) ASTM D3373–17, Standard Test Method for Vanadium in Water. June 2017. Table IB.

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(xxxix) ASTM D3557–17, Standard Test Method for Cadmium in Water. June 2017. Table IB.

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(xliii) ASTM D3645–15, Standard Test Methods for Beryllium in Water. March 2015. Table IB.

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(l) ASTM D4382–18, Standard Test Method for Barium in Water, Atomic Absorption Spectrophotometry, Graphite Furnace. May 2018. Table IB.

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(ii) [Reserved]

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(ix) OFR 93–125, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments. 1993. Table IB, Note 51 and 80; Table IC, Note 9.

(x) OFR 93–449, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Chromium in Water by Graphite Furnace Atomic Absorption Spectrophotometry. 1993. Table IB, Note 46.

(xi) OFR 94–37, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Triazine and Other Nitrogen-containing Compounds by Gas Chromatography with Nitrogen Phosphorus Detectors. 1994. Table ID, Note 9.

(xii) OFR 95–181, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Pesticides in Water by C–18 Solid-Phase Extraction and Capillary-Column Gas Chromatography/Mass Spectrometry With Selected-Ion Monitoring. 1995. Table ID, Note 11.

(xiii) OFR 97–198, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Molybdenum in Water by Graphite Furnace Atomic Absorption Spectrophotometry. 1997. Table IB, Note 47.

(xiv) OFR 97–829, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of 86 Volatile Organic Compounds in Water by Gas Chromatography/Mass Spectrometry, Including Detections Less Than Reporting Limits. 1999. Table IC, Note 13.

(xv) OFR 98–165, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Elements in Whole-Water Digests Using Inductively Coupled Plasma-Optical Emission Spectrometry and Inductively Coupled Plasma-Mass Spectrometry. 1998. Table IB, Notes 50 and 81.

(xvi) OFR 98–639, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Arsenic and Selenium in Water and Sediment by Graphite Furnace—Atomic Absorption Spectrometry. 1999. Table IB, Note 49.

(xvii) OFR 00–170, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Ammonium Plus Organic Nitrogen by a Kjeldahl Digestion Method and an Automated Photometric Finish that Includes Digest Cleanup by Gas Diffusion. 2000. Table IB, Note 45.

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(xxi) Water-Resources Investigations Report 01–4132, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Organic Plus Inorganic Mercury in Filtered and Unfiltered Natural Water With Cold Vapor-Atomic Fluorescence Spectrometry. 2001. Table IB, Note 71.

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TABLE II—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

Parameter No./name	Container [1]	Preservation [2 3]	Maximum holding time [4]
Table IA—Bacterial Tests			
1–5. Coliform, total, fecal, and *E. coli.*	PA, G	Cool, <10 °C, 0.008% $Na_2S_2O_3$ [5]	8 hours.[22 23]
6. Fecal streptococci	PA, G	Cool, <10 °C, 0.008% $Na_2S_2O_3$ [5]	8 hours.[22]
7. Enterococci	PA, G	Cool, <10 °C, 0.008% $Na_2S_2O_3$ [5]	8 hours.[22]

TABLE II—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES—Continued

Parameter No./name	Container [1]	Preservation [2 3]	Maximum holding time [4]
8. *Salmonella*	PA, G	Cool, <10 °C, 0.008% $Na_2S_2O_3$ [5]	8 hours.[22]
Table IA—Aquatic Toxicity Tests			
9–12. Toxicity, acute and chronic	P, FP, G	Cool, ≤6 °C [16]	36 hours.
Table IB—Inorganic Tests			
1. Acidity	P, FP, G	Cool, ≤6 °C [18]	14 days.
2. Alkalinity	P, FP, G	Cool, ≤6 °C [18]	14 days.
4. Ammonia	P, FP, G	Cool, ≤6 °C [18], H_2SO_4 to pH <2	28 days.
9. Biochemical oxygen demand	P, FP, G	Cool, ≤6 °C [18]	48 hours.
10. Boron	P, FP, or Quartz	HNO_3 to pH <2	6 months.
11. Bromide	P, FP, G	None required	28 days.
14. Biochemical oxygen demand, carbonaceous.	P, FP G	Cool, ≤6 °C [18]	48 hours.
15. Chemical oxygen demand	P, FP, G	Cool, ≤6 °C [18], H_2SO_4 to pH <2	28 days.
16. Chloride	P, FP, G	None required	28 days.
17. Chlorine, total residual	P, G	None required	Analyze within 15 minutes.
21. Color	P, FP, G	Cool, ≤6 °C [18]	48 hours.
23–24. Cyanide, total or available (or CATC) and free.	P, FP, G	Cool, ≤6 °C [18], NaOH to pH >10 [5 6], reducing agent if oxidizer present.	14 days.
25. Fluoride	P	None required	28 days.
27. Hardness	P, FP, G	HNO_3 or H_2SO_4 to pH <2	6 months.
28. Hydrogen ion (pH)	P, FP, G	None required	Analyze within 15 minutes.
31, 43. Kjeldahl and organic N	P, FP, G	Cool, ≤6 °C [18], H_2SO_4 to pH <2	28 days.
Table IB—Metals [7]			
18. Chromium VI	P, FP, G	Cool, ≤6 °C [18], pH = 9.3 – 9.7 [20]	28 days.
35. Mercury (CVAA)	P, FP, G	HNO_3 to pH <2	28 days.
35. Mercury (CVAFS)	FP, G; and FP-lined cap [17]	5 mL/L 12N HCl or 5 mL/L BrCl [17]	90 days.[17]
3, 5–8, 12, 13, 19, 20, 22, 26, 29, 30, 32–34, 36, 37, 45, 47, 51, 52, 58–60, 62, 63, 70–72, 74, 75. Metals, except boron, chromium VI, and mercury.	P, FP, G	HNO_3 to pH <2, or at least 24 hours prior to analysis [19].	6 months.
38. Nitrate	P, FP, G	Cool, ≤6 °C [18]	48 hours.
39. Nitrate-nitrite	P, FP, G	Cool, ≤6 °C [18], H_2SO_4 to pH <2	28 days.
40. Nitrite	P, FP, G	Cool, ≤6 °C [18]	48 hours.
41. Oil and grease	G	Cool to ≤6 °C [18], HCl or H_2SO_4 to pH <2.	28 days.
42. Organic Carbon	P, FP, G	Cool to ≤6 °C [18], HCl, H_2SO_4, or H_3PO_4 to pH <2.	28 days.
44. Orthophosphate	P, FP, G	Cool, to ≤6 °C [18 24]	Filter within 15 minutes; Analyze within 48 hours.
46. Oxygen, Dissolved Probe	G, Bottle and top	None required	Analyze within 15 minutes.
47. Winkler	G, Bottle and top	Fix on site and store in dark	8 hours.
48. Phenols	G	Cool, ≤6 °C [18], H_2SO_4 to pH <2	28 days.
49. Phosphorus (elemental)	G	Cool, ≤6 °C [18]	48 hours.
50. Phosphorus, total	P, FP, G	Cool, ≤6 °C [18], H_2SO_4 to pH <2	28 days.
53. Residue, total	P, FP, G	Cool, ≤6 °C [18]	7 days.
54. Residue, Filterable (TDS)	P, FP, G	Cool, ≤6 °C [18]	7 days.
55. Residue, Nonfilterable (TSS)	P, FP, G	Cool, ≤6 °C [18]	7 days.
56. Residue, Settleable	P, FP, G	Cool, ≤6 °C [18]	48 hours.
57. Residue, Volatile	P, FP, G	Cool, ≤6 °C [18]	7 days.
61. Silica	P or Quartz	Cool, ≤6 °C [18]	28 days.
64. Specific conductance	P, FP, G	Cool, ≤6 °C [18]	28 days.
65. Sulfate	P, FP, G	Cool, ≤6 °C [18]	28 days.
66. Sulfide	P, FP, G	Cool, ≤6 °C [18], add zinc acetate plus sodium hydroxide to pH >9.	7 days.
67. Sulfite	P, FP, G	None required	Analyze within 15 minutes.
68. Surfactants	P, FP, G	Cool, ≤6 °C [18]	48 hours.
69. Temperature	P, FP, G	None required	Analyze within 15 minutes.
73. Turbidity	P, FP, G	Cool, ≤6 °C [18]	48 hours.
Table IC—Organic Tests [8]			
13, 18–20, 22, 24, 25, 27, 28, 34–37, 39–43, 45–47, 56, 76, 104, 105, 108–111, 113. Purgeable Halocarbons.	G, FP-lined septum	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5], HCl to pH 2 [9].	14 days.[9]

TABLE II—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES—Continued

Parameter No./name	Container [1]	Preservation [2 3]	Maximum holding time [4]
26. 2-Chloroethylvinyl ether	G, FP-lined septum	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5]	14 days.
6, 57, 106. Purgeable aromatic hydrocarbons.	G, FP-lined septum	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5], HCl to pH 2 [9].	14 days.[9]
3, 4. Acrolein and acrylonitrile	G, FP-lined septum	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$, pH to 4–5 [10].	14 days [10]
23, 30, 44, 49, 53, 77, 80, 81, 98, 100, 112. Phenols [11].	G, FP-lined cap	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$	7 days until extraction, 40 days after extraction.
7, 38. Benzidines [11 12]	G, FP-lined cap	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5]	7 days until extraction.[13]
14, 17, 48, 50–52. Phthalate esters [11].	G, FP-lined cap	Cool, ≤6 °C [18]	7 days until extraction, 40 days after extraction.
82–84. Nitrosamines [11 14]	G, FP-lined cap	Cool, ≤6 °C [18], store in dark, 0.008% $Na_2S_2O_3$ [5].	7 days until extraction, 40 days after extraction.
88–94. PCBs [11]	G, FP-lined cap	Cool, ≤6 °C [18]	1 year until extraction, 1 year after extraction.
54, 55, 75, 79. Nitroaromatics and isophorone [11].	G, FP-lined cap	Cool, ≤6 °C [18], store in dark, 0.008% $Na_2S_2O_3$ [5].	7 days until extraction, 40 days after extraction.
1, 2, 5, 8–12, 32, 33, 58, 59, 74, 78, 99, 101. Polynuclear aromatic hydrocarbons [11].	G, FP-lined cap	Cool, ≤6 °C [18], store in dark, 0.008% $Na_2S_2O_3$ [5].	7 days until extraction, 40 days after extraction.
15, 16, 21, 31, 87. Haloethers [11]	G, FP-lined cap	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5]	7 days until extraction, 40 days after extraction.
29, 35–37, 63–65, 107. Chlorinated hydrocarbons [11].	G, FP-lined cap	Cool, ≤6 °C [18]	7 days until extraction, 40 days after extraction.
60–62, 66–72, 85, 86, 95–97, 102, 103. CDDs/CDFs [11].	G	See footnote 11	See footnote 11.
Aqueous Samples: Field and Lab Preservation.	G	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5], pH <9.	1 year.
Solids and Mixed-Phase Samples: Field Preservation.	G	Cool, ≤6 °C [18]	7 days.
Tissue Samples: Field Preservation.	G	Cool, ≤6 °C [18]	24 hours.
Solids, Mixed-Phase, and Tissue Samples: Lab Preservation.	G	Freeze, ≤ − 10 °C	1 year.
114–118. Alkylated phenols	G	Cool, <6 °C, H_2SO_4 to pH <2	28 days until extraction, 40 days after extraction.
119. Adsorbable Organic Halides (AOX).	G	Cool, <6 °C, 0.008% $Na_2S_2O_3$, HNO_3 to pH <2.	Hold *at least* 3 days, but not more than 6 months.
120. Chlorinated Phenolics	G, FP-lined cap	Cool, <6 °C, 0.008% $Na_2S_2O_3$, H_2SO_4 to pH <2.	30 days until acetylation, 30 days after acetylation.
Table ID—Pesticides Tests			
1–70. Pesticides [11]	G, FP-lined cap	Cool, ≤6 °C [18], pH 5–9 [15]	7 days until extraction, 40 days after extraction.
Table IE—Radiological Tests			
1–5. Alpha, beta, and radium	P, FP, G	HNO_3 to pH <2	6 months.
Table IH—Bacterial Tests			
1–4. Coliform, total, fecal	PA, G	Cool, <10 °C, 0.008% $Na_2S_2O_3$ [5]	8 hours.[22 23]
5. *E. coli*	PA, G	Cool, <10 °C, 0. 008% $Na_2S_2O_3$ [5]	8 hours.[22]
6. Fecal streptococci	PA, G	Cool, <10 °C, 0.008% $Na_2S_2O_3$ [5]	8 hours.[22]
7. Enterococci	PA, G	Cool, <10 °C, 0. 008% $Na_2S_2O_3$ [5]	8 hours.[22]
Table IH—Protozoan Tests			
8. *Cryptosporidium*	LDPE; field filtration	1–10 °C	96 hours.[21]
9. *Giardia*	LDPE; field filtration	1–10 °C	96 hours.[21]

[1] "P" is for polyethylene; "FP" is fluoropolymer (polytetrafluoroethylene [PTFE]; Teflon®), or other fluoropolymer, unless stated otherwise in this Table II; "G" is glass; "PA" is any plastic that is made of a sterilizable material (polypropylene or other autoclavable plastic); "LDPE" is low density polyethylene.

[2] Except where noted in this Table II and the method for the parameter, preserve each grab sample within 15 minutes of collection. For a composite sample collected with an automated sample (*e.g.,* using a 24-hour composite sample; see 40 CFR 122.21(g)(7)(i) or 40 CFR part 403, Appendix E), refrigerate the sample at ≤6 °C during collection unless specified otherwise in this Table II or in the method(s). For a composite sample to be split into separate aliquots for preservation and/or analysis, maintain the sample at ≤6 °C, unless specified otherwise in this Table II or in the method(s), until collection, splitting, and preservation is completed. Add the preservative to the sample container prior to sample collection when the preservative will not compromise the integrity of a grab sample, a composite sample, or aliquot split from a composite sample within 15 minutes of collection. If a composite measurement is required but a composite sample would compromise sample integrity, individual grab samples must be collected at prescribed time intervals (*e.g.,* 4 samples over the course of a day, at 6-hour intervals). Grab samples must be analyzed separately and the concentrations averaged. Alternatively, grab samples may be collected in the field and composited in the laboratory if the compositing procedure produces results equivalent to results produced by arithmetic averaging of results of analysis of individual grab samples. For examples of laboratory compositing procedures, see EPA Method 1664 Rev. A (oil and grease) and the procedures at 40 CFR 141.24(f)(14)(iv) and (v) (volatile organics).

[3] When any sample is to be shipped by common carrier or sent via the U.S. Postal Service, it must comply with the Department of Transportation Hazardous Materials Regulations (49 CFR part 172). The person offering such material for transportation is responsible for ensuring such compliance. For the preservation requirement of Table II, the Office of Hazardous Materials, Materials Transportation Bureau, Department of Transportation has determined that the Hazardous Materials Regulations do not apply to the following materials: Hydrochloric acid (HCl) in water solutions at concentrations of 0.04% by weight or less (pH about 1.96 or greater; Nitric acid (HNO_3) in water solutions at concentrations of 0.15% by weight or less (pH about 1.62 or greater); Sulfuric acid (H_2SO_4) in water solutions at concentrations of 0.35% by weight or less (pH about 1.15 or greater); and Sodium hydroxide (NaOH) in water solutions at concentrations of 0.080% by weight or less (pH about 12.30 or less).

[4] Samples should be analyzed as soon as possible after collection. The times listed are the maximum times that samples may be held before the start of analysis and still be considered valid. Samples may be held for longer periods only if the permittee or monitoring laboratory have data on file to show that, for the specific types of samples under study, the analytes are stable for the longer time, and has received a variance from the Regional ATP Coordinator under Sec. 136.3(e). For a grab sample, the holding time begins at the time of collection. For a composite sample collected with an automated sampler (*e.g.,* using a 24-hour composite sampler; see 40 CFR 122.21(g)(7)(i) or 40 CFR part 403, Appendix E), the holding time begins at the time of the end of collection of the composite sample. For a set of grab samples composited in the field or laboratory, the holding time begins at the time of collection of the last grab sample in the set. Some samples may not be stable for the maximum time period given in the table. A permittee or monitoring laboratory is obligated to hold the sample for a shorter time if it knows that a shorter time is necessary to maintain sample stability. See 136.3(e) for details. The date and time of collection of an individual grab sample is the date and time at which the sample is collected. For a set of grab samples to be composited, and that are all collected on the same calendar date, the date of collection is the date on which the samples are collected. For a set of grab samples to be composited, and that are collected across two calendar dates, the date of collection is the dates of the two days; *e.g.,* November 14–15. For a composite sample collected automatically on a given date, the date of collection is the date on which the sample is collected. For a composite sample collected automatically, and that is collected across two calendar dates, the date of collection is the dates of the two days; *e.g.,* November 14–15. For static-renewal toxicity tests, each grab or composite sample may also be used to prepare test solutions for renewal at 24 h, 48 h, and/or 72 h after first use, if stored at 0–6 °C, with minimum head space.

[5] ASTM D7365–09a specifies treatment options for samples containing oxidants (*e.g.,* chlorine) for cyanide analyses. Also, Section 9060A of Standard Methods for the Examination of Water and Wastewater (23rd edition) addresses dechlorination procedures for microbiological analyses.

[6] Sampling, preservation and mitigating interferences in water samples for analysis of cyanide are described in ASTM D7365–09a(15). There may be interferences that are not mitigated by the analytical test methods or D7365–09a(15). Any technique for removal or suppression of interference may be employed, provided the laboratory demonstrates that it more accurately measures cyanide through quality control measures described in the analytical test method. Any removal or suppression technique not described in D7365–09a(15) or the analytical test method must be documented along with supporting data.

[7] For dissolved metals, filter grab samples within 15 minutes of collection and before adding preservatives. For a composite sample collected with an automated sampler (*e.g.,* using a 24-hour composite sampler; see 40 CFR 122.21(g)(7)(i) or 40 CFR part 403, Appendix E), filter the sample within 15 minutes after completion of collection and before adding preservatives. If it is known or suspected that dissolved sample integrity will be compromised during collection of a composite sample collected automatically over time (*e.g.,* by interchange of a metal between dissolved and suspended forms), collect and filter grab samples to be composited (footnote 2) in place of a composite sample collected automatically.

[8] Guidance applies to samples to be analyzed by GC, LC, or GC/MS for specific compounds.

[9] If the sample is not adjusted to pH 2, then the sample must be analyzed within seven days of sampling.

[10] The pH adjustment is not required if acrolein will not be measured. Samples for acrolein receiving no pH adjustment must be analyzed within 3 days of sampling.

[11] When the extractable analytes of concern fall within a single chemical category, the specified preservative and maximum holding times should be observed for optimum safeguard of sample integrity (*i.e.,* use all necessary preservatives and hold for the shortest time listed). When the analytes of concern fall within two or more chemical categories, the sample may be preserved by cooling to ≤6 °C, reducing residual chlorine with 0.008% sodium thiosulfate, storing in the dark, and adjusting the pH to 6–9; samples preserved in this manner may be held for seven days before extraction and for forty days after extraction. Exceptions to this optional preservation and holding time procedure are noted in footnote 5 (regarding the requirement for thiosulfate reduction), and footnotes 12, 13 (regarding the analysis of benzidine).

[12] If 1,2-diphenylhydrazine is likely to be present, adjust the pH of the sample to 4.0 ± 0.2 to prevent rearrangement to benzidine.

[13] Extracts may be stored up to 30 days at <0 °C.

[14] For the analysis of diphenylnitrosamine, add 0.008% $Na_2S_2O_3$ and adjust pH to 7–10 with NaOH within 24 hours of sampling.

[15] The pH adjustment may be performed upon receipt at the laboratory and may be omitted if the samples are extracted within 72 hours of collection. For the analysis of aldrin, add 0.008% $Na_2S_2O_3$.

[16] Place sufficient ice with the samples in the shipping container to ensure that ice is still present when the samples arrive at the laboratory. However, even if ice is present when the samples arrive, immediately measure the temperature of the samples and confirm that the preservation temperature maximum has not been exceeded. In the isolated cases where it can be documented that this holding temperature cannot be met, the permittee can be given the option of on-site testing or can request a variance. The request for a variance should include supportive data which show that the toxicity of the effluent samples is not reduced because of the increased holding temperature. Aqueous samples must not be frozen. Hand-delivered samples used on the day of collection do not need to be cooled to 0 to 6 °C prior to test initiation.

[17] Samples collected for the determination of trace level mercury (<100 ng/L) using EPA Method 1631 must be collected in tightly-capped fluoropolymer or glass bottles and preserved with BrCl or HCl solution within 48 hours of sample collection. The time to preservation may be extended to 28 days if a sample is oxidized in the sample bottle. A sample collected for dissolved trace level mercury should be filtered in the laboratory within 24 hours of the time of collection. However, if circumstances preclude overnight shipment, the sample should be filtered in a designated clean area in the field in accordance with procedures given in Method 1669. If sample integrity will not be maintained by shipment to and filtration in the laboratory, the sample must be filtered in a designated clean area in the field within the time period necessary to maintain sample integrity. A sample that has been collected for determination of total or dissolved trace level mercury must be analyzed within 90 days of sample collection.

[18] Aqueous samples must be preserved at ≤6 °C, and should not be frozen unless data demonstrating that sample freezing does not adversely impact sample integrity is maintained on file and accepted as valid by the regulatory authority. Also, for purposes of NPDES monitoring, the specification of "≤ °C" is used in place of the "4 °C" and "<4 °C" sample temperature requirements listed in some methods. It is not necessary to measure the sample temperature to three significant figures (1/100th of 1 degree); rather, three significant figures are specified so that rounding down to 6 °C may not be used to meet the ≤6 °C requirement. The preservation temperature does not apply to samples that are analyzed immediately (less than 15 minutes).

[19] An aqueous sample may be collected and shipped without acid preservation. However, acid must be added at least 24 hours before analysis to dissolve any metals that adsorb to the container walls. If the sample must be analyzed within 24 hours of collection, add the acid immediately (see footnote 2). Soil and sediment samples do not need to be preserved with acid. The allowances in this footnote supersede the preservation and holding time requirements in the approved metals methods.

[20] To achieve the 28-day holding time, use the ammonium sulfate buffer solution specified in EPA Method 218.6. The allowance in this footnote supersedes preservation and holding time requirements in the approved hexavalent chromium methods, unless this supersession would compromise the measurement, in which case requirements in the method must be followed.

[21] Holding time is calculated from time of sample collection to elution for samples shipped to the laboratory in bulk and calculated from the time of sample filtration to elution for samples filtered in the field.

[22] Sample analysis should begin as soon as possible after receipt; sample incubation must be started no later than 8 hours from time of collection.

[23] For fecal coliform samples for sewage sludge (biosolids) only, the holding time is extended to 24 hours for the following sample types using either EPA Method 1680 (LTB–EC) or 1681 (A–1): Class A composted, Class B aerobically digested, and Class B anaerobically digested.

[24] The immediate filtration requirement in orthophosphate measurement is to assess the dissolved or bio-available form of orthophosphorus (*i.e.,* that which passes through a 0.45-micron filter), hence the requirement to filter the sample immediately upon collection (*i.e.,* within 15 minutes of collection).

■ 3. Amend § 136.6 by adding paragraph (b)(4)(xxiii) to read as follows:

§ 136.6 Method modifications and analytical requirements.

* * * * *

(b) * * *

(4) * * *

(xxiii) When analyzing metals by inductively coupled plasma-atomic emission spectroscopy, inductively coupled plasma-mass spectrometry, and stabilized temperature graphite furnace atomic absorption, closed-vessel microwave digestion of wastewater samples is allowed as alternative heating source for Method 200.2—''Sample Preparation Procedure for Spectrochemical Determination of Total Recoverable Elements'' for the following elements: Aluminum, antimony, arsenic, barium, beryllium, boron, cadmium, calcium, chromium, cobalt, copper, iron, lead, magnesium, manganese, molybdenum, nickel, potassium, selenium, silver, sodium, thallium, tin, titanium, vanadium, zinc, provided the performance specifications in the relevant determinative method are met. (Note that this list does not include Mercury.) Each laboratory determining total recoverable metals is required to operate a formal quality control (QC) program. The minimum requirements include initial demonstration of capability, method detection limit (MDL), analysis of reagent blanks, fortified blanks, matrix spike samples, and blind proficiency testing samples, as continuing quality control checks on performance. The laboratory is required to maintain performance records on file that define the quality of the data generated.

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Part IV

Department of Defense

Department of the Army, Corps of Engineers

33 CFR Part 328

Environmental Protection Agency

40 CFR Parts 110, 112, 116, et al.

Definition of ''Waters of the United States''—Recodification of Pre-Existing Rules; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 328

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, 302, and 401

[EPA–HQ–OW–2017–0203; FRL–10000–10–OW]

RIN 2040–AF74

Definition of ''Waters of the United States''—Recodification of Pre-Existing Rules

AGENCY: Department of Defense, Department of the Army, Corps of Engineers; Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) and the Department of the Army (''the agencies'') are publishing a final rule to repeal the 2015 Clean Water Rule: Definition of ''Waters of the United States'' (''2015 Rule''), which amended portions of the Code of Federal Regulations (CFR), and to restore the regulatory text that existed prior to the 2015 Rule. The agencies will implement the pre-2015 Rule regulations informed by applicable agency guidance documents and consistent with Supreme Court decisions and longstanding agency practice.

The agencies are repealing the 2015 Rule for four primary reasons. First, the agencies conclude that the 2015 Rule did not implement the legal limits on the scope of the agencies' authority under the Clean Water Act (CWA) as intended by Congress and reflected in Supreme Court cases, including Justice Kennedy's articulation of the significant nexus test in *Rapanos.* Second, the agencies conclude that in promulgating the 2015 Rule the agencies failed to adequately consider and accord due weight to the policy of the Congress in CWA section 101(b) to ''recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution'' and ''to plan the development and use . . . of land and water resources.'' 33 U.S.C. 1251(b). Third, the agencies repeal the 2015 Rule to avoid interpretations of the CWA that push the envelope of their constitutional and statutory authority absent a clear statement from Congress authorizing the encroachment of federal jurisdiction over traditional State land-use planning authority. Lastly, the agencies conclude that the 2015 Rule's distance-based limitations suffered from certain procedural errors and a lack of adequate record support. The agencies find that these reasons, collectively and individually, warrant repealing the 2015 Rule.

With this final rule, the regulations defining the scope of federal CWA jurisdiction will be those portions of the CFR as they existed before the amendments promulgated in the 2015 Rule.

DATES: This rule is effective on December 23, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2017–0203. 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.,* 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 electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Michael McDavit, Office of Water (4504–T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566–2428; email address: *CWAwotus@epa.gov;* or Jennifer Moyer, Regulatory Community of Practice (CECW–CO–R), U.S. Army Corps of Engineers, 441 G Street NW, Washington, DC 20314; telephone number: (202) 761–6903; email address: *USACE_CWA_Rule@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The agencies are taking this final action to repeal the Clean Water Rule: Definition of ''Waters of the United States,'' 80 FR 37054 (June 29, 2015), and to recodify the regulatory definitions of ''waters of the United States'' that existed prior to the August 28, 2015 effective date of the 2015 Rule. Those pre-existing regulatory definitions are the ones that the agencies are currently implementing in more than half the States in light of various judicial decisions currently enjoining the 2015 Rule. As of the effective date of this final rule, the agencies will administer the regulations promulgated in 1986 and 1988 in portions of 33 CFR part 328 and 40 CFR parts 110, 112, 116, 117, 122, 230, 232, 300, 302, and 401,[1] and will continue to interpret the statutory term ''waters of the United States'' to mean the waters covered by those regulations consistent with Supreme Court decisions and longstanding practice, as informed by applicable agency guidance documents, training, and experience.

State, tribal, and local governments have well-defined and established relationships with the Federal government in implementing CWA programs. This final rule returns the relationship between the Federal government, States, and Tribes to the longstanding and familiar distribution of power and responsibilities that existed under the CWA for many years prior to the 2015 Rule.

In issuing the July 27, 2017 notice of proposed rulemaking (NPRM) and the July 12, 2018 supplemental notice of proposed rulemaking (SNPRM), the agencies gave interested parties an opportunity to comment on important considerations and reasons for the agencies' proposal, including whether it is desirable and appropriate to recodify the pre-2015 regulations as an interim step pending a substantive rulemaking to reconsider the definition of ''waters of the United States.'' *See* 82 FR 34899, 34903 (July 27, 2017); 83 FR 32227 (July 12, 2018). The agencies received approximately 770,000 public comments on this rulemaking and carefully reviewed those comments in deciding whether to finalize this rule.

For the reasons discussed in Section III of this notice, the agencies conclude that the 2015 Rule exceeded the agencies' authority under the CWA by adopting an interpretation of Justice Kennedy's ''significant nexus'' standard articulated in *Rapanos* v. *United States and Carabell* v. *United States,* 547 U.S. 715 (2006) (''*Rapanos*'') that was inconsistent with important aspects of that opinion (as well as the opinion of the Court in *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers,* 531 U.S. 159 (2001) (''*SWANCC*'')) and which enabled federal regulation of waters outside the scope of the Act, even though Justice Kennedy's concurring opinion was identified as the basis for the significant nexus standard established in the 2015 Rule. The agencies also conclude that, contrary to reasons articulated in support of the 2015 Rule, the rule

[1] While the EPA administers most provisions in the CWA, the Department of the Army, Corps of Engineers administers the permitting program under section 404. During the 1980s, both agencies adopted substantially similar definitions of ''waters of the United States.'' *See* 51 FR 41206 (Nov. 13, 1986) (amending 33 CFR 328.3); 53 FR 20764 (June 6, 1988) (amending 40 CFR 232.2).

expanded the meaning of ''tributaries'' and ''adjacent'' wetlands to include waters beyond those regulated by the agencies under the pre-existing regulations, including certain isolated waters, as applied by the agencies following decisions of the Supreme Court in *Rapanos* and *SWANCC.* One of the agencies' stated goals in the 2015 Rule was to provide greater clarity in identifying the geographic scope of the CWA, believing that ''State, tribal, and local governments have well-defined and longstanding relationships with the Federal government in implementing CWA programs and these relationships are not altered by the final rule.'' 80 FR 37054. The agencies now believe that the 2015 Rule improperly altered the balance of authorities between the Federal and State governments, in contravention of CWA section 101(b), 33 U.S.C. 1251(b), and pushed the envelope of the agencies' constitutional and statutory authority, despite the absence of a clear indication that Congress intended to invoke the outer limits of its power. The agencies also conclude that the 2015 Rule's distance-based limitations in the (a)(6) and (a)(8) categories of waters were procedurally deficient and lacked adequate record support.

Additionally, since the agencies' publication of the SNPRM, the U.S. District Courts for the Southern District of Texas and the Southern District of Georgia have found that the rule suffered from certain procedural (both courts) and substantive (Southern District of Georgia) errors and issued orders remanding the 2015 Rule back to the agencies. *Texas* v. *EPA,* No. 3:15–cv–162, 2019 WL 2272464 (S.D. Tex. May 28, 2019); *Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922 (S.D. Ga. Aug. 21, 2019). As reflected below, a number of the agencies' conclusions regarding the validity of the 2015 Rule are consistent with and reinforced by the findings of these courts.

Further, for the reasons discussed in Section IV of this notice, the agencies conclude that regulatory certainty will be best served by repealing the 2015 Rule and recodifying the pre-2015 regulations currently in effect in those States where the 2015 Rule is enjoined. Though the agencies recognize that the pre-existing regulations pose certain implementation challenges, the agencies find that restoring the prior regulations is preferable to maintaining the 2015 Rule, including because returning to the pre-2015 regulations will reinstate nationwide a longstanding regulatory framework that is more familiar to and better-understood by the agencies, States, Tribes, local governments, regulated entities, and the public while the agencies consider public comments on the proposed revised definition of ''waters of the United States.'' *See* 84 FR 4154 (Feb. 14, 2019). In that separate rulemaking, as referenced in Section VII, the agencies are reconsidering the proper scope of federal CWA jurisdiction and seek to establish a clear and implementable regulatory definition that better effectuates the language, structure, and purposes of the CWA.

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I. General Information

A. Where can I find information related to this rulemaking?

1. *Docket.* An official public docket for this action has been established under Docket ID No. EPA–HQ–OW–2017–0203. The official public docket consists of the documents specifically referenced in this action, and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the OW Docket, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket telephone number is (202) 566–2426. A reasonable fee will be charged for copies.

2. *Electronic Access.* You may access this **Federal Register** document electronically under the ''**Federal Register**'' listings at *http://www.regulations.gov.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may access EPA Dockets at *http://www.regulations.gov* to view public comments as they are submitted and posted, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility.

B. What action are the agencies taking?

In this notice, the agencies are publishing a final rule repealing the 2015 amendments to the definition of ''waters of the United States'' in portions of 33 CFR part 328 and 40 CFR parts 110, 112, 116, 117, 122, 230, 232, 300, 302, and 401, and are restoring the pre-existing regulatory text.

C. What is the agencies' authority for taking this action?

The authority for this action is the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.,* including sections 301, 304, 311, 401, 402, 404, and 501.

II. Background

A. The 2015 Rule

On June 29, 2015, the agencies issued a final rule (80 FR 37054) amending various portions of the CFR that set forth a definition of ''waters of the United States,'' a term contained in the CWA section 502(7) definition of ''navigable waters,'' 33 U.S.C. 1362(7).

One of the stated purposes of the 2015 Rule was to ''increase CWA program predictability and consistency by clarifying the scope of 'waters of the United States' protected under the Act.'' 80 FR 37054. The 2015 Rule defined the geographic scope of the CWA by placing waters into three categories: (A) Waters that are categorically ''jurisdictional by rule'' in all instances (*i.e.,* without the need for any additional analysis); (B) waters that are subject to case-specific analysis to determine whether they are jurisdictional; and (C) waters that are categorically excluded from jurisdiction. Waters considered ''jurisdictional by rule'' included (1) waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (2) interstate waters, including interstate wetlands; (3) the territorial seas; (4) impoundments of

waters otherwise identified as jurisdictional; (5) tributaries of the first three categories of ''jurisdictional by rule'' waters; and (6) waters adjacent to a water identified in the first five categories of ''jurisdictional by rule'' waters, including ''wetlands, ponds, lakes, oxbows, impoundments, and similar waters.'' *See* 80 FR 37104.

The 2015 Rule added new definitions of key terms such as ''tributaries'' and revised previous definitions of terms such as ''adjacent'' (by adding a new definition of ''neighboring'' that is used in the definition of ''adjacent'') that would determine whether waters were ''jurisdictional by rule.'' *See id.* at 37105. Specifically, a ''tributary'' under the 2015 Rule is a water that contributes flow, either directly or through another water, to a water identified in the first three categories of ''jurisdictional by rule'' waters and that is characterized by the presence of the ''physical indicators'' of a bed and banks and an ordinary high water mark. ''These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary.'' *Id.*[2] Tributaries under the 2015 Rule could be natural, man-altered, or man-made, and do not lose their status as a tributary if, for any length, there is one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark could be identified upstream of the break. *Id.* at 37105–06.

In the 2015 Rule, the agencies did not expressly amend the longstanding definition of ''adjacent'' (defined as ''bordering, contiguous, or neighboring''), but the agencies added, for the first time, a definition of ''neighboring'' that affected the interpretation of ''adjacent.'' The 2015 Rule defined ''neighboring'' to encompass all waters located within 100 feet of the ordinary high water mark of a category (1) through (5) ''jurisdictional by rule'' water; all waters located within the 100-year floodplain of a category (1) through (5) ''jurisdictional by rule'' water and not more than 1,500 feet from the ordinary high water mark of such water; all waters located within 1,500 feet of the high tide line of a category (1) through (3) ''jurisdictional by rule'' water; and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. *Id.* at 37105. The entire water would be considered ''neighboring'' if any portion of it lies within one of these zones. *See id.* These quantitative measures did not appear in the proposed rule and were not sufficiently supported in the administrative record for the final rule.

In addition to the six categories of ''jurisdictional by rule'' waters, the 2015 Rule identified certain waters that would be subject to a case-specific analysis to determine if they had a ''significant nexus'' to a water that is jurisdictional. *Id.* at 37104–05. The first category consists of five specific types of waters in specific regions of the country: Prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands. *Id.* at 37105. The second category consists of all waters located within the 100-year floodplain of any category (1) through (3) ''jurisdictional by rule'' water and all waters located within 4,000 feet of the high tide line or ordinary high water mark of any category (1) through (5) ''jurisdictional by rule'' water. *Id.* These quantitative measures did not appear in the proposed rule and were not sufficiently supported in the administrative record for the final rule.

The 2015 Rule defined ''significant nexus'' to mean a water, including wetlands, that either alone or in combination with other similarly situated waters in the region, significantly affected the chemical, physical, or biological integrity of a category (1) through (3) ''jurisdictional by rule'' water. 80 FR 37106. ''For an effect to be significant, it must be more than speculative or insubstantial.'' *Id.* The term ''in the region'' meant ''the watershed that drains to the nearest'' primary water.[3] *Id.* This definition was different from the test articulated by the agencies in their 2008 *Rapanos* Guidance.[4] That guidance interpreted ''similarly situated'' to include all wetlands (not waters) adjacent to the same tributary.

Under the 2015 Rule, to determine whether a water, alone or in combination with similarly situated waters across the watershed of the nearest primary water, had a significant nexus, one had to consider nine functions such as sediment trapping, runoff storage, provision of life cycle dependent aquatic habitat, and other functions. It was sufficient for determining whether a water had a significant nexus under the 2015 Rule if any single function performed by the water, alone or together with similarly situated waters in the region, contributed significantly to the chemical, physical, or biological integrity of the nearest category (1) through (3) ''jurisdictional by rule'' water. *Id.* Taken together, the enumeration of the nine functions and the more expansive consideration of ''similarly situated waters in the region'' in the 2015 Rule means that the vast majority of water features in the United States may have come within the jurisdictional purview of the Federal government.[5]

The 2015 Rule also retained exclusions from the definition of ''waters of the United States'' for prior converted cropland and waste treatment systems. *Id.* at 37105. In addition, the agencies codified several exclusions that, in part, reflected longstanding agency practice and added others such as ''puddles'' and ''swimming pools'' in response to concerns raised by stakeholders during the public comment period on the proposed 2015 Rule. *Id.* at 37096–98, 37105.

B. Legal Challenges to the 2015 Rule

Following the 2015 Rule's publication, 31 States[6] and 53 non-state

[2] The 2015 Rule did not delineate jurisdiction specifically based on categories with established scientific meanings such as ephemeral, intermittent, and perennial waters that are based on the source of the water and nature of the flow. *See id.* at 37076 (''Under the rule, flow in the tributary may be perennial, intermittent, or ephemeral.''). Under the 2015 Rule, tributaries also did not need to possess any specific volume, frequency, or duration of flow, or to contribute flow to a traditional navigable water in any given year or specific time period.

[3] In this notice, a ''primary water'' is a category (1) through (3) ''jurisdictional by rule'' water as defined in the 2015 Rule.

[4] *See* U.S. EPA and U.S. Army Corps of Engineers. Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos* v. *United States & Carabell* v. *United States* at 1 (Dec. 2, 2008) (''*Rapanos* Guidance''), *available at https://www.epa.gov/sites/production/files/2016-02/documents/cwa_jurisdiction_following_rapanos120208.pdf.* The agencies acknowledge that the *Rapanos* Guidance does not impose legally binding requirements, *see id.* at 4 n.17, but believe that this guidance is relevant to the discussion in this notice.

[5] ''[T]he vast majority of the nation's water features are located within 4,000 feet of a covered tributary, traditional navigable water, interstate water, or territorial sea.'' U.S. EPA and Department of the Army, Economic Analysis of the EPA-Army Clean Water Rule at 11 (May 20, 2015) (''2015 Rule Economic Analysis'') (Docket ID: EPA–HQ–OW–2011–0880–20866), *available at https://www.regulations.gov/document?D=EPA-HQ-OW-2011-0880-20866.*

[6] Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico (Environment Department and State Engineer), North Carolina (Department of Environment and Natural Resources), North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin, and Wyoming. Iowa joined the legal challenge later in the process, bringing the total to 32 States. Colorado, New Mexico, and Wisconsin have since withdrawn from litigation against the 2015 Rule.

parties, including environmental groups and groups representing farming, recreational, forestry, and other interests, filed complaints and petitions for review in multiple federal district [7] and appellate [8] courts challenging the 2015 Rule. In those cases, the challengers alleged numerous procedural deficiencies in the development and promulgation of the 2015 Rule and substantive deficiencies in the 2015 Rule itself. Some challengers argued that the 2015 Rule was too expansive, while others argued that it excluded too many waters from federal jurisdiction.

The day before the 2015 Rule's August 28, 2015 effective date, the U.S. District Court for the District of North Dakota preliminarily enjoined the 2015 Rule in the 13 States that challenged the rule in that court.[9] The district court found those States were ''likely to succeed'' on the merits of their challenge to the 2015 Rule because, among other reasons, ''it appears likely that the EPA has violated its Congressional grant of authority in its promulgation of the Rule.'' *North Dakota* v. *EPA,* 127 F. Supp. 3d 1047, 1051 (D.N.D. 2015). In particular, the court noted concern that the 2015 Rule's definition of ''tributary'' ''includes vast numbers of waters that are unlikely to have a nexus to navigable waters.'' *Id.* at 1056. Further, the court found that ''it appears likely the EPA failed to comply with [Administrative Procedure Act (APA)] requirements when promulgating the Rule,'' suggesting that certain distance-based measures were not a logical outgrowth of the proposal to the 2015 Rule. *Id.* at 1058. No party sought an interlocutory appeal.

The numerous petitions for review filed in the courts of appeals were consolidated in the U.S. Court of Appeals for the Sixth Circuit. In that litigation, State and industry petitioners raised concerns about whether the 2015 Rule violated the Constitution and the CWA and whether its promulgation violated the APA and other statutes. Environmental petitioners also challenged the 2015 Rule, claiming that the 2015 Rule was too narrow because of the distance limitations and other issues. On October 9, 2015, approximately six weeks after the 2015 Rule took effect in the 37 States, the District of Columbia, and U.S. Territories that were not subject to the preliminary injunction issued by the District of North Dakota, the Sixth Circuit stayed the 2015 Rule nationwide after concluding, among other things, that State petitioners had demonstrated ''a substantial possibility of success on the merits of their claims.'' *In re EPA & Dep't of Def. Final Rule,* 803 F.3d 804, 807 (6th Cir. 2015) (''*In re EPA*'').

On January 13, 2017, the U.S. Supreme Court granted *certiorari* on the question of whether the courts of appeals have original jurisdiction to review challenges to the 2015 Rule. *See Nat'l Ass'n of Mfrs.* v. *Dep't of Def.,* 137 S. Ct. 811 (2017). The Sixth Circuit granted petitioners' motion to hold in abeyance the briefing schedule in the litigation challenging the 2015 Rule pending a Supreme Court decision on the question of the court of appeals' jurisdiction. On January 22, 2018, the Supreme Court, in a unanimous opinion, held that the 2015 Rule is subject to direct review in the district courts. *Nat'l Ass'n of Mfrs.* v. *Dep't of Def.,* 138 S. Ct. 617, 624 (2018). Throughout the pendency of the Supreme Court litigation (and for a short time thereafter), the Sixth Circuit's nationwide stay remained in effect. In response to the Supreme Court's decision, on February 28, 2018, the Sixth Circuit lifted the stay and dismissed the corresponding petitions for review. *See In re Dep't of Def. & EPA Final Rule,* 713 Fed. Appx. 489 (6th Cir. 2018).

Since the Supreme Court's jurisdictional ruling, district court litigation regarding the 2015 Rule has resumed. At this time, the 2015 Rule continues to be subject to a preliminary injunction issued by the District of North Dakota as to 12 States: Alaska, Arizona, Arkansas, Idaho, Iowa, Missouri, Montana, Nebraska, Nevada, North Dakota, South Dakota, and Wyoming.[10] The 2015 Rule also is subject to a preliminary injunction issued by the U.S. District Court for the Southern District of Georgia as to 11 more States: Georgia, Alabama, Florida, Indiana, Kansas, Kentucky, North Carolina, South Carolina, Utah, West Virginia, and Wisconsin. *Georgia* v. *Pruitt,* 326 F. Supp. 3d 1356, 1364 (S.D. Ga. 2018). The Southern District of Georgia has since issued an order remanding the 2015 Rule to the agencies, finding that the 2015 Rule exceeded the agencies' statutory authority under the CWA and was promulgated in violation of the APA. *Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922 (S.D. Ga. Aug. 21, 2019). ''[I]n light of the serious defects identified,'' the court retained its preliminary injunction against the 2015 Rule. *Id.* at *36.

In September 2018, the U.S. District Court for the Southern District of Texas issued a preliminary injunction against the 2015 Rule in response to motions filed by the States of Texas, Louisiana, and Mississippi and several business associations, finding that enjoining the rule would provide ''much needed governmental, administrative, and economic stability'' while the rule undergoes judicial review. *See Texas* v. *EPA,* No. 3:15–cv–162, 2018 WL 4518230, at *1 (S.D. Tex. Sept. 12, 2018). The court observed that if it did not temporarily enjoin the rule, ''it risks asking the states, their governmental subdivisions, and their citizens to expend valuable resources and time operationalizing a rule that may not survive judicial review.'' *Id.* In May 2019, the court remanded the 2015 Rule to the agencies on the grounds that the rule violated the APA. Specifically, the court found that the rule violated the APA's notice and comment requirements because: (1) The 2015 Rule's definition of ''adjacent'' waters (which relied on distance-based limitations) was not a ''logical outgrowth'' of the proposal's definition of ''adjacent'' waters (which relied on ecologic and hydrologic criteria); and (2) the agencies denied interested parties an opportunity to comment on the final version of the Connectivity Report,[11] which served as the technical basis for the final rule. *See Texas* v. *EPA,* No.

[7] U.S. District Courts for the Northern and Southern District of Georgia, District of Minnesota, District of North Dakota, Southern District of Ohio, Northern District of Oklahoma, Southern District of Texas, District of Arizona, Northern District of Florida, District of the District of Columbia, Western District of Washington, Northern District of California, and Northern District of West Virginia. In April 2019, an additional challenge against the 2015 Rule was filed in the U.S. District Court for the District of Oregon.

[8] U.S. Court of Appeals for the Second, Fifth, Sixth, Eighth, Ninth, Tenth, Eleventh, and District of Columbia Circuits.

[9] Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, and Wyoming. Iowa's motion to intervene in the case was granted after issuance of the preliminary injunction. In May 2019, the court granted motions from Colorado and New Mexico to withdraw from the litigation and lifted the preliminary injunction as to Colorado and New Mexico. Order, *North Dakota* v. *EPA,* No. 3:15–cv–00059 (D.N.D. May 14, 2019). At the same time, the court stated that the preliminary injunction would remain in effect as to a plaintiff-intervenor that represents ten counties in New Mexico. The agencies filed a motion seeking clarification of the applicability of the court's preliminary injunction to those ten counties in New Mexico. Defendants' Motion for Clarification Regarding the Scope of the Court's Preliminary Injunction, *North Dakota* v. *EPA,* No. 3:15–cv–00059 (D.N.D. May 24, 2019). As of the time of signature of this final rule, that motion is pending before the court.

[10] As of the date this final rule was signed, it is unclear whether the North Dakota district court's preliminary injunction also applies to New Mexico. *See supra* note 10.

[11] U.S. EPA. Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence (Jan. 2015) (EPA/600/R–14/475F).

3:15–cv–162, 2019 WL 2272464 (S.D. Tex. May 28, 2019).

Moreover, in July 2019, the U.S. District Court for the District of Oregon issued a preliminary injunction against the 2015 Rule in the State of Oregon. Order, *Or. Cattlemen's Ass'n* v. *EPA,* No. 19–00564 (D. Or. July 26, 2019). As a result, at this time, the 2015 Rule is enjoined in more than half of the States.[12]

Three additional States (Ohio, Michigan, and Tennessee) sought a preliminary injunction against the 2015 Rule in the U.S. District Court for the Southern District of Ohio. In March 2019, the court denied the States' motion, finding that the States had ''failed to demonstrate that they will suffer imminent and irreparable harm absent an injunction.'' *See Ohio* v. *EPA,* No. 2:15–cv–02467, 2019 WL 1368850 (S.D. Ohio Mar. 26, 2019). The court subsequently denied the States' motion for reconsideration of its order denying the preliminary injunction motion, and the States have since filed an appeal of the court's order in the Sixth Circuit. *See Ohio* v. *EPA,* No. 2:15–cv–02467, 2019 WL 1958650 (S.D. Ohio May 2, 2019); Plaintiffs' Notice of Appeal, *Ohio* v. *EPA,* No. 2:15–cv–02467 (S.D. Ohio May 28, 2019).

Parties challenging the 2015 Rule in the U.S. District Court for the Northern District of Oklahoma, including the State of Oklahoma and the U.S. Chamber of Commerce, also filed a motion for a preliminary injunction against the 2015 Rule. In May 2019, the court denied the parties' motion, finding that the parties had ''not shown that they will suffer irreparable harm if the 2015 Rule is permitted to remain in effect while this case is pending.'' *See Oklahoma* v. *EPA,* No. 4:15–cv–00381, slip. op. at 11–12 (N.D. Okla. May 29, 2019). Proceedings in this case are stayed pending the parties' appeal of the court's order denying a preliminary injunction to the Tenth Circuit. *See* Order, *Oklahoma* v. *EPA,* No. 4:15–cv–00381 (N.D. Okla. June 14, 2019).

Finally, an additional motion for a preliminary injunction against the 2015 Rule is pending in the U.S. District Court for the Western District of Washington. *See* Motion for Preliminary Injunction, *Wash. Cattlemen's Ass'n* v. *EPA,* No. 19–00569 (W.D. Wash. June 14, 2019).

[12] Prior to this final rule, the applicability of the 2015 Rule in New Mexico has been unclear. *See supra* note 10.

C. Executive Order 13778 and the ''Step One'' Notice of Proposed Rulemaking and Supplemental Notice of Proposed Rulemaking

On February 28, 2017, the President issued Executive Order 13778 entitled ''Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule.'' Section 1 of the Executive Order states, ''[i]t is in the national interest to ensure the Nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the States under the Constitution.'' The Executive Order directs the EPA and the Department of the Army to review the 2015 Rule for consistency with the policy outlined in Section 1 of the Order and to issue a proposed rule rescinding or revising the 2015 Rule as appropriate and consistent with law (Section 2). The Executive Order also directs the agencies to ''consider interpreting the term 'navigable waters' . . . in a manner consistent with'' Justice Scalia's plurality opinion in *Rapanos* v. *United States,* 547 U.S. 715 (2006) (Section 3).

On March 6, 2017, the agencies published a notice of intent to review the 2015 Rule and provide notice of a forthcoming proposed rulemaking consistent with the Executive Order. 82 FR 12532. Shortly thereafter, the agencies announced that they would implement the Executive Order in a two-step approach. On July 27, 2017, the agencies published the ''Step One'' NPRM (82 FR 34899) that proposed to repeal the 2015 Rule and recodify the regulatory text that governed prior to the promulgation of the 2015 Rule, consistent with Supreme Court decisions and informed by applicable guidance documents and longstanding agency practice. The agencies invited comment on the NPRM over a 62-day period. On July 12, 2018, the agencies published a supplemental notice of proposed rulemaking to clarify, supplement, and seek additional comment on the Step One notice of proposed rulemaking. 83 FR 32227. The agencies invited comment on the SNPRM over a 30-day period.

In developing this final rule, the agencies reviewed approximately 690,000 public comments received on the NPRM and approximately 80,000 comments received on the SNPRM from a broad spectrum of interested parties. With the NPRM and SNPRM the agencies sought comment on the repeal of the 2015 Rule, the recodification of the prior regulations, the considerations and agencies' reasons for the proposal, and proposed conclusions that the agencies exceeded their authority under the CWA. In addition, the public could comment on all aspects of the NPRM, the economic analysis for the NPRM, and the SNPRM. Some commenters expressed support for the agencies' proposal to repeal the 2015 Rule, stating, among other things, that the 2015 Rule exceeds the agencies' statutory authority. Other commenters opposed the proposal, stating, among other things, that repealing the 2015 Rule will increase regulatory uncertainty and adversely impact water quality. A complete response to comment document is available in the docket for this final rule at Docket ID No. EPA–HQ–OW–2017–0203.

D. The Applicability Date Rule

On November 22, 2017, the agencies published and solicited public comment on a proposal to establish an applicability date for the 2015 Rule that would be two years from the date of any final rule. 82 FR 55542. On February 6, 2018, the agencies issued a final rule, 83 FR 5200, adding an applicability date to the 2015 Rule. The applicability date was established as February 6, 2020. When adding an applicability date to the 2015 Rule, the agencies clarified that they would continue to implement nationwide the previous regulatory definition of ''waters of the United States,'' consistent with the practice and procedures the agencies implemented long before and immediately following the 2015 Rule pursuant to the preliminary injunction issued by the District of North Dakota and the nationwide stay issued by the Sixth Circuit. The agencies further explained that the final applicability date rule would ensure regulatory certainty and consistent implementation of the CWA nationwide while the agencies reconsider the 2015 Rule and pursue further rulemaking to develop a new definition of ''waters of the United States.''

The applicability date rule was challenged in a number of district courts by States and environmental organizations. On August 16, 2018, the U.S. District Court for the District of South Carolina granted summary judgment in favor of the plaintiffs and enjoined the applicability date rule nationwide. *South Carolina Coastal Conservation League, et al.,* v. *Pruitt,* 318 F. Supp. 3d 959 (D.S.C. Aug. 16, 2018). In addition, on November 26, 2018, the U.S. District Court for the Western District of Washington vacated the applicability date rule nationwide. *Puget Soundkeeper Alliance, et al.* v.

Andrew Wheeler, et al., No. C15–1342–JCC (W.D. Wash. Nov. 26, 2018). As a result, the 2015 Rule is now in effect in 22 States.[13] The 2015 Rule continues to be subject to preliminary injunctions issued by the U.S. District Court for the District of North Dakota, the U.S. District Court for the District of Oregon, the U.S. District Court for the Southern District of Georgia, and the U.S. District Court for the Southern District of Texas in a total of 27 States.[14]

III. Basis for Repealing the 2015 Rule

A. Legal Authority To Repeal

The agencies' ability to repeal an existing regulation through notice-and-comment rulemaking is well-grounded in the law. The APA defines ''rule making'' to mean ''agency process for formulating, amending, or repealing a rule.'' 5 U.S.C. 551(5). The CWA complements this authority by providing the Administrator with broad authority to ''prescribe such regulations as are necessary to carry out the functions under this Act.'' 33 U.S.C. 1361(a). This broad authority includes issuing regulations that repeal or revise CWA implementing regulations promulgated by a prior administration.

As discussed in the NPRM and SNPRM, ''agencies are free to change their existing policies as long as they provide a reasoned explanation for the change.'' *See Encino Motorcars, LLC* v. *Navarro,* 136 S. Ct. 2117, 2125 (2016) (citations omitted); *see also* 82 FR 34901; 83 FR 32231. Agencies may seek to revise or repeal regulations based on changes in circumstance or changes in statutory interpretation or policy judgments. *See, e.g., FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 514–15 (2009) (''*Fox*''); *Ctr. for Sci. in Pub. Interest* v. *Dep't of Treasury,* 797 F.2d 995, 998–99 & n.1 (D.C. Cir. 1986). Indeed, the agencies' interpretation of the statutes they administer, such as the CWA, are not ''instantly carved in stone''; quite the contrary, the agencies ''must consider varying interpretations and the wisdom of [their] policy on a continuing basis, . . . for example, in response to . . . a change in administrations.'' *Nat'l Cable & Telecommc'ns Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 981–82 (2005) (''*Brand X*'') (internal quotation marks omitted) (quoting *Chevron U.S.A., Inc.* v. *NRDC,* 467 U.S. 837, 863–64 (1984)) (citing *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 59 (1983) (Rehnquist, J., concurring in part and dissenting in part)). As such, a revised rulemaking based ''on a reevaluation of which policy would be better in light of the facts'' is ''well within an agency's discretion,'' and ''[a] change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency's reappraisal'' of its regulations and programs. *Nat'l Ass'n of Home Builders* v. *EPA,* 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012) (''*NAHB*'').

In providing a reasoned explanation for a change in position, ''an agency must also be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.'' *Encino Motorcars,* 136 S. Ct. at 2126 (internal quotation marks and citation omitted). In *Encino Motorcars,* the Supreme Court held that the Department of Labor issued a regulation without the necessary ''reasoned explanation'' where the Department ''offered barely any explanation'' for changing its position despite ''the significant reliance interests involved.'' *Id.* The Court found that the Department ''did not analyze or explain'' why the statute should be interpreted in the manner reflected in the new rule and ''said almost nothing'' to explain whether there were ''good reasons for the new policy.'' *Id.* at 2127. The Court explained that while a ''summary discussion may suffice in other circumstances,'' the Department's explanation was particularly inadequate given the ''decades of industry reliance on the Department's prior policy.'' *Id.* at 2126.

The 2015 Rule, unlike the decades-old regulation discussed in *Encino Motorcars,* has not engendered significant reliance interests. As explained in Section II.B, the 2015 Rule has never been in effect nationwide, and the applicability of the rule has remained in flux due to a shifting set of preliminary injunctions barring implementation of the rule in different States across the country. Indeed, over the past year alone, the number of States subject to the 2015 Rule has changed multiple times. Regardless, the agencies have provided ample justification for their change in position. As reflected in this preamble to the final rule, the agencies have carefully analyzed their statutory and constitutional authority, along with relevant case law, and have provided a detailed explanation of their reasons for deciding to repeal the 2015 Rule and restore the pre-existing regulations.

Some commenters found that the agencies provided a reasoned explanation to repeal the 2015 Rule given the agencies' concerns that the 2015 Rule was inconsistent with the agencies' statutory authority and Supreme Court precedent. Commenters also found that the agencies provided good reasons for the change in policy, such as the desire to balance the objective, goals, and policies of the CWA. Other commenters asserted that the agencies have not satisfied the legal requirements for revising an existing regulation. Some of these commenters stated that the agencies have failed to provide a reasoned explanation to support this action or the agencies' change in position and noted that a change in administrations is insufficient, in and of itself, to support this rule.

As referenced above, the Supreme Court and lower courts have acknowledged that an agency may repeal regulations promulgated by a prior administration based on changes in agency policy where ''the agency adequately explains the reasons for a reversal of policy.'' *Brand X,* 545 U.S. at 981. The agencies need not demonstrate that the reasons for a new policy are better than the reasons for the old one because ''it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates.'' *Fox,* 556 U.S. at 515. Further, ''[w]hen an agency changes its existing position, it need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate.'' *Encino Motorcars,* 136 S. Ct. at 2125 (citations and internal quotation marks omitted).

Consistent with the APA and applicable case law, the agencies have provided a reasoned explanation for repealing the 2015 Rule and recodifying the pre-existing regulations, including that the 2015 Rule exceeded the scope of statutory authority in certain respects. The agencies acknowledge, as some commenters observed, that certain legal interpretations and conclusions supporting the agencies' rationale for this rulemaking are inconsistent with the agencies' prior administrative findings and previous positions taken by the United States in legal briefs. However, so long as an agency ''adequately explains the reasons for a reversal of policy, change is not

[13] To assist the public in keeping up with the changing regulatory landscape of federal jurisdiction under the CWA, the EPA has posted a map of current effective regulation by state online at *https://www.epa.gov/wotus-rule/definition-waters-united-states-rule-status-and-litigation-update.*

[14] The agencies filed a motion seeking clarification of the applicability of the North Dakota district court's preliminary injunction to New Mexico. *See supra* note 10. That motion remains pending before the court as of the time of signature of this final rule.

invalidating.'' *Fox,* 545 U.S. at 981 (citation and internal quotation marks omitted). Indeed, departing from a prior position is proper where, as here, the agencies' change in position is based on a considered evaluation of the relevant factors following a thorough rulemaking process. Throughout this rulemaking process, the agencies have clearly identified the issues the agencies were considering in deciding whether to finalize this action, and the agencies solicited, received, and considered many comments on those issues. *See, e.g.,* 83 FR 32240–42, 32247–48. The agencies have also thoroughly explained their rationale in this preamble to the final rule and in the accompanying response to comments document.

B. Legal Background

1. The Clean Water Act

Congress amended the Federal Water Pollution Control Act (FWPCA), or Clean Water Act (CWA) as it is commonly called,[15] in 1972 to address longstanding concerns regarding the quality of the nation's waters and the Federal government's ability to address those concerns under existing law. Prior to 1972, the ability to control and redress water pollution in the nation's waters largely fell to the U.S. Army Corps of Engineers (''Corps'') under the Rivers and Harbors Act of 1899 (RHA). While much of that statute focused on restricting obstructions to navigation on the nation's major waterways, section 13 of the RHA made it unlawful to discharge refuse ''into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water.'' [16] 33 U.S.C. 407. Congress had also enacted the Water Pollution Control Act of 1948, Public Law 80–845, 62 Stat. 1155 (June 30, 1948), to address interstate water pollution, and subsequently amended that statute in 1956 (giving the statute its current formal name), 1961, and 1965. These early versions of the CWA promoted the development of pollution abatement programs, required States to develop water quality standards, and authorized the Federal government to bring enforcement actions to abate water pollution.

These early statutory efforts, however, proved inadequate to address the decline in the quality of the nation's waters, *see City of Milwaukee* v. *Illinois,* 451 U.S. 304, 310 (1981), so Congress performed a ''total restructuring'' and ''complete rewriting'' of the existing statutory framework in 1972. *Id.* at 317 (quoting legislative history of 1972 amendments). That restructuring resulted in the enactment of a comprehensive scheme designed to prevent, reduce, and eliminate pollution in the nation's waters generally, and to regulate the discharge of pollutants into navigable waters specifically. *See, e.g., S.D. Warren Co.* v. *Maine Bd. of Envtl. Prot.,* 547 U.S. 370, 385 (2006) (''[T]he Act does not stop at controlling the 'addition of pollutants,' but deals with 'pollution' generally[.]'').

The objective of the new statutory scheme was ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' 33 U.S.C. 1251(a). In order to meet that objective, Congress declared two national goals: (1) ''that the discharge of pollutants into the navigable waters be eliminated by 1985;'' and (2) ''that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983 . . . .'' *Id.* at 1251(a)(1)–(2).

Congress established several key policies that direct the work of the agencies to effectuate those goals. For example, Congress declared as a national policy ''that the discharge of toxic pollutants in toxic amounts be prohibited; . . . that Federal financial assistance be provided to construct publicly owned waste treatment works; . . . that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; . . . [and] that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.'' *Id.* at 1251(a)(3)–(7).

Congress provided a major role for the States in implementing the CWA, balancing the traditional power of States to regulate land and water resources within their borders with the need for a national water quality regulation. For example, the statute highlighted ''the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution'' and ''to plan the development and use . . . of land and water resources . . . .'' *Id.* at 1251(b). Congress also declared as a national policy that States manage the major construction grant program and implement the core permitting programs authorized by the statute, among other responsibilities. *Id.* Congress added that ''[e]xcept as expressly provided in this Act, nothing in this Act shall . . . be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.'' *Id.* at 1370.[17] Congress also pledged to provide technical support and financial aid to the States ''in connection with the prevention, reduction, and elimination of pollution.'' *Id.* at 1251(b).

To carry out these policies, Congress broadly defined ''pollution'' to mean ''the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water,'' *id.* at 1362(19), to parallel the broad objective of the Act ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' *Id.* at 1251(a). Congress then crafted a non-regulatory statutory framework to provide technical and financial assistance to the States to prevent, reduce, and eliminate pollution in the nation's waters generally. For example, section 105 of the Act, ''Grants for research and development,'' authorized EPA ''to make grants to any State, municipality, or intermunicipal or interstate agency for the purpose of assisting in the development of any project which will demonstrate a new or improved method of preventing, reducing, and eliminating the discharge into *any waters* of pollutants from sewers which carry storm water or both storm water and pollutants.'' 33 U.S.C. 1255(a)(1) (emphasis added). Section 105 also authorized EPA ''to make grants to any State or States or interstate agency to demonstrate, in *river basins or portions thereof,* advanced treatment and environmental enhancement techniques to control pollution from all sources . . . including nonpoint sources, . . . [and] . . . to carry out the purposes of section 301 of this Act . . . for research and demonstration projects for prevention of pollution of *any waters*

[15] The FWPCA is commonly referred to as the CWA following the 1977 amendments to the FWPCA. Public Law 95–217, 91 Stat. 1566 (1977). For ease of reference, the agencies will generally refer to the FWPCA in this notice as the CWA or the Act.

[16] The term ''navigable water of the United States'' is a term of art used to refer to waters subject to federal jurisdiction under the RHA. *See, e.g.,* 33 CFR 329.1. The term is not synonymous with the phrase ''waters of the United States'' under the CWA, *see id.,* and the general term ''navigable waters'' has different meanings depending on the context of the statute in which it is used. *See, e.g., PPL Montana, LLC* v. *Montana,* 132 S. Ct. 1215, 1228 (2012).

[17] 33 U.S.C. 1370 also prohibits authorized States from adopting any limitations, prohibitions, or standards that are less stringent than required by the CWA.

by industry including, but not limited to, the prevention, reduction, and elimination of the discharge of pollutants.'' 33 U.S.C. 1255(b)–(c) (emphasis added); *see also id.* at 1256(a) (authorizing EPA to issue ''grants to States and to interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution''). Section 108, ''Pollution control in the Great Lakes,'' authorized EPA to enter into agreements with any state to develop plans for the ''elimination or control of pollution, *within all or any part of the watersheds* of the Great Lakes.'' *Id.* at 1258(a) (emphasis added); *see also id.* at 1268(a)(3)(C) (defining the ''Great Lakes System'' as ''all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes''). Similar broad pollution control programs were created for other major watersheds, including, for example, the Chesapeake Bay, *see id.* at 1267(a)(3), Long Island Sound, *see id.* at 1269(c)(2)(D), and Lake Champlain. *See id.* at 1270(g)(2).

In addition to the Act's non-regulatory measures to control pollution of the nation's waters generally, Congress created a federal regulatory permitting program designed to address the discharge of pollutants into a subset of those waters identified as ''navigable waters,'' defined as ''the waters of the United States.'' *Id.* at 1362(7). Section 301 contains the key regulatory mechanism: ''Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.'' *Id.* at 1311(a). A ''discharge of a pollutant'' is defined to include ''any addition of any pollutant to navigable waters from any point source,'' such as a pipe, ditch or other ''discernible, confined and discrete conveyance.'' *Id.* at 1362(12), (14). The term ''pollutant'' means ''dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.'' *Id.* at 1362(6). Thus, it is unlawful to discharge pollutants into waters of the United States from a point source unless the discharge is in compliance with certain enumerated sections of the CWA, including obtaining authorizations pursuant to the section 402 National Pollutant Discharge Elimination System (NPDES) permit program or the section 404 dredged or fill material permit program. *See id.* at 1342 and 1344. Congress therefore hoped to achieve the Act's objective ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' by addressing pollution of all waters via non-regulatory means and federally regulating the discharge of pollutants to the subset of waters identified as ''navigable waters.'' [18]

Some commenters disagreed that the CWA distinguishes between the ''nation's waters'' and a subset of those waters known as the ''navigable waters.'' Many of these commenters suggested that the agencies' interpretation is not supported by the text or structure of the Act and is based instead on selectively quoting from and mischaracterizing the Act's provisions. Other commenters argued that the two terms are synonymous under the Act.

Fundamental principles of statutory interpretation support the agencies' recognition of a distinction between the ''nation's waters'' and ''navigable waters.'' As the Supreme Court has observed, ''[w]e assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning.'' *Bailey* v. *United States,* 516 U.S. 137, 146 (1995) (recognizing the canon of statutory construction against superfluity). Further, ''the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'' *FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 133 (2000) (internal quotation marks and citation omitted); *see also United Savings Ass'n* v. *Timbers of Inwood Forest Associates,* 484 U.S. 365, 371 (''Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear[.]'') (citation omitted). Here, the non-regulatory sections of the CWA reveal Congress' intent to restore and maintain the integrity of the nation's waters using federal assistance to support State and local partnerships to control pollution in the nation's waters in addition to a federal regulatory prohibition on the discharge of pollutants into the navigable waters.

Under this statutory scheme, the States are responsible for developing water quality standards for ''waters of the United States'' within their borders and reporting on the condition of those waters to EPA every two years. 33 U.S.C. 1313, 1315. States must develop total maximum daily loads (TMDLs) for waters that are not meeting established water quality standards and must submit those TMDLs to EPA for approval. *Id.* at 1313(d). States also have authority to issue water quality certifications or waive certification for every federal permit or license issued within their borders that may result in a discharge to navigable waters. *Id.* at 1341.

These same regulatory authorities can be assumed by Indian tribes under section 518 of the CWA, which authorizes the EPA to treat eligible Indian tribes with reservations in a manner similar to States for a variety of purposes, including administering each of the principal CWA regulatory programs. *Id.* at 1377(e). In addition, States and Tribes retain authority to protect and manage the use of those waters that are not navigable waters under the CWA. *See, e.g., id.* at 1251(b), 1251(g), 1370, 1377(a). At this time, forty-seven States administer the CWA section 402 permit program for those ''waters of the United States'' within their boundaries,[19] and two States (Michigan and New Jersey) administer the section 404 permit program for those waters that are assumable by States pursuant to section 404(g). At present, no Tribes administer the section 402 or 404 programs, although some are exploring the possibility.

The agencies have developed regulatory programs designed to ensure that the full statute is implemented as Congress intended. *See, e.g., Hibbs* v. *Winn,* 542 U.S. 88, 101 (2004) (''A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.''). This includes pursuing the overall ''objective'' of the CWA to ''restore and

[18] Members of Congress were aware when they drafted the 1972 CWA amendments that different types of the Nation's waters would be subject to different degrees of federal control. For instance, in House Debate regarding a proposed and ultimately failed amendment to prohibit the discharge of pollutants to ground waters in addition to navigable waters, Representative Don H. Clausen stated, ''Mr. Chairman, in the early deliberations within the committee which resulted in the introduction of H.R. 11896, a provision for ground waters . . . was thoroughly reviewed and it was determined by the committee that there was not sufficient information on ground waters to justify the types of controls that are required for navigable waters. I refer the gentleman to the objectives of this act as stated in section 101(a). The objective of this act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. I call your attention to the fact that this does not say the Nation's 'navigable waters,' 'interstate waters,' or 'intrastate waters.' It just says 'waters.' This includes ground waters.'' 118 Cong. Rec. at 10,667 (daily ed. March 28, 1972).

[19] Three States (Massachusetts, New Hampshire, and New Mexico) do not currently administer any part of the CWA section 402 program.

maintain the chemical, physical, and biological integrity of the Nation's waters,'' 33 U.S.C. 1251(a), while implementing the specific ''policy'' directives from Congress to, among other things, ''recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution'' and ''to plan the development and use . . . of land and water resources.'' *Id.* at 1251(b); *see also Webster's II, New Riverside University Dictionary* (1994) (defining ''policy'' as a ''plan or course of action, as of a government[,] designed to influence and determine decisions and actions;'' an ''objective'' is ''something worked toward or aspired to: Goal'').[20] The agencies therefore recognize a distinction between the specific word choices of Congress, including the need to develop regulatory programs that aim to accomplish the goals of the Act while implementing the specific policy directives of Congress.[21] To do so, the agencies must determine what Congress had in mind when it defined ''navigable waters'' in 1972 as simply ''the waters of the United States.''

Congress' authority to regulate ''navigable waters'' derives from its power to regulate the ''channels of interstate commerce'' under the Commerce Clause. *Gibbons* v. *Ogden,* 22 U.S. (9 Wheat.) 1 (1824); *see also United States* v. *Lopez,* 514 U.S. 549, 558–59 (1995) (describing the ''channels of interstate commerce'' as one of three areas of congressional authority under the Commerce Clause). The Supreme Court explained in *SWANCC* that the term ''navigable'' indicates ''what Congress had in mind as its authority for enacting the Clean Water Act: Its traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made.'' 531 U.S. 159, 172 (2001). The Court further explained that nothing in the legislative history of the Act provides any indication that ''Congress intended to exert anything more than its commerce power over navigation.'' *Id.* at 168 n.3. The Supreme Court, however, has recognized that Congress intended ''to exercise its powers under the Commerce Clause to regulate at least some waters that would not be deemed 'navigable' under the classical understanding of that term.'' *Riverside Bayview,* 474 U.S. at 133; *see also SWANCC,* 531 U.S. at 167.

The classical understanding of the term navigable was first articulated by the Supreme Court in *The Daniel Ball:*

> Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways of commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. And they constitute navigable waters of the United States within the meaning of the Acts of Congress, in contradistinction from the navigable waters of the States, when they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other States or foreign countries in the customary modes in which such commerce is conducted by water.

77 U.S. (10 Wall.) 557, 563 (1871). Over the years, this traditional test has been expanded to include waters that had been used in the past for interstate commerce, *see Economy Light & Power Co.* v. *United States,* 256 U.S. 113, 123 (1921), and waters that are susceptible for use with reasonable improvement. *See United States* v. *Appalachian Elec. Power Co.,* 311 U.S. 377, 407–10 (1940).

By the time the 1972 CWA amendments were enacted, the Supreme Court had held that Congress' authority over the channels of interstate commerce was not limited to regulation of the channels themselves but could extend to activities necessary to protect the channels. *See Oklahoma ex rel. Phillips* v. *Guy F. Atkinson Co.,* 313 U.S. 508, 523 (1941) (''Congress may exercise its control over the non-navigable stretches of a river in order to preserve or promote commerce on the navigable portions.''). The Supreme Court also had clarified that Congress could regulate waterways that formed a part of a channel of interstate commerce, even if they are not themselves navigable or do not cross state boundaries. *See Utah* v. *United States,* 403 U.S. 9, 11 (1971).

These developments were discussed during the legislative process leading up to the passage of the 1972 CWA amendments, and certain members referred to the scope of the amendments as encompassing waterways that serve as a ''link in the chain'' of interstate commerce as it flows through various channels of transportation, such as railroads and highways. *See, e.g.,* 118 Cong. Rec. 33756–57 (1972) (statement of Rep. Dingell); 118 Cong. Rec. 33699 (Oct. 4, 1972) (statement of Sen. Muskie).[22] Other references suggest that congressional committees at least contemplated applying the ''control requirements'' of the Act ''to the navigable waters, portions thereof, and their tributaries.'' S. Rep. No. 92–414, 92nd Cong., 1st Sess. at 77 (1971). And in 1977, when Congress authorized State assumption over the section 404 dredged or fill material permitting program, Congress limited the scope of assumable waters by requiring the Corps to retain permitting authority over Rivers and Harbors Act waters (as identified by *The Daniel Ball* test) plus wetlands adjacent to those waters, minus historic use only waters. *See* 33 U.S.C. 1344(g)(1).[23] This suggests that Congress had in mind a broader scope of waters subject to CWA jurisdiction than waters traditionally understood as navigable. *See SWANCC,* 531 U.S. at 171; *Riverside Bayview,* 474 U.S. at 138 n.11.

Thus, Congress intended to assert federal authority over more than just waters traditionally understood as navigable, and Congress rooted that authority in ''its commerce power over navigation.'' *SWANCC,* 531 U.S. at 168 n.3. However, there must be a limit to that authority and to what water is

[20] The legislative history of the CWA further illuminates the distinction between the terms ''policy'' and ''objective,'' or ''goal.'' As Congress drafted the 1972 CWA amendments, the Senate bill set the ''no-discharge of pollutants into the navigable water by 1985'' provision as a policy whereas the House bill set it as a goal. The Act was ultimately passed with the ''no-discharge by 1985'' provision established as a goal. *See* 33 U.S.C 1251(a)(1). In House consideration of the Conference Report, Congressman Jones captured the policy versus goal distinction in Section 101(a)(1) as follows: ''The objective of this legislation is to restore and preserve for the future the integrity of our Nation's waters. The bill sets forth as a national goal the complete elimination of all discharges into our navigable waters by 1985, but . . . the conference report states clearly that achieving the 1985 target date is a goal, not a national policy. As such, it serves as a focal point for long-range planning, and for research and development in water pollution control technology. . . . While it is our hope that we can succeed in eliminating all discharge into our waters by 1985, without unreasonable impact on the national life, we recognized in this report that too many imponderables exist, some still beyond our horizons, to prescribe this goal today as a legal requirement.'' 118 Cong. Rec. H. 33749 (daily ed. October 4, 1972).

[21] *See, e.g., Nat'l Fed'n of Indep. Bus.* v. *Sebelius,* 567 U.S. 519, 544, (2012) (''Where Congress uses certain language in one part of a statute and different language in another, it is generally presumed that Congress acts intentionally.''); *Russello* v. *United States,* 464 U.S. 16, 23 (1983) (''[Where] Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.''); *see also Crandon* v. *United States,* 494 U.S. 152, 158 (1990) (''In determining the meaning of the statute, we look not only to the particular statutory language, but to the design of the statute as a whole and to its object *and policy.*'') (emphasis added).

[22] The agencies recognize that individual member statements are not a substitute for full congressional intent, but they do help provide context for issues that were discussed during the legislative debates. For a detailed discussion of the legislative history of the 1972 CWA amendments, *see* Albrecht & Nickelsburg, *Could SWANCC Be Right? A New Look at the Legislative History of the Clean Water Act,* 32 ELR 11042 (Sept. 2002).

[23] For a detailed discussion of the legislative history supporting the enactment of section 404(g), see *Final Report of the Assumable Waters Subcommittee* (May 2017), App. F.

subject to federal jurisdiction. How the agencies should exercise that authority has been the subject of dispute for decades, but the Supreme Court on three occasions has analyzed the issue and provided some instructional guidance.

2. U.S. Supreme Court Precedent

a. Adjacent Wetlands

In *Riverside Bayview,* the Supreme Court considered the Corps' assertion of jurisdiction over ''low-lying, marshy land'' immediately abutting a water traditionally understood as navigable on the grounds that it was an ''adjacent wetland'' within the meaning of the Corps' then-existing regulations. 474 U.S. at 124. The Court addressed the question whether non-navigable wetlands may be regulated as ''waters of the United States'' on the basis that they are ''adjacent to'' navigable-in-fact waters and ''inseparably bound up with'' them because of their ''significant effects on water quality and the aquatic ecosystem.'' *See id.* at 131–35 & n.9.

In determining whether to give deference to the Corps' assertion of jurisdiction over adjacent wetlands, the Court acknowledged the difficulty in determining where the limits of federal jurisdiction end, noting that the line is somewhere between open water and dry land:

> *In determining the limits of its power* to regulate discharges under the Act, the Corps must necessarily choose some point at which water ends and land begins. Our common experience tells us that this is often no easy task: the transition from water to solid ground is not necessarily or even typically an abrupt one. Rather, between open waters and dry land may lie shallows, marshes, mudflats, swamps, bogs—in short, a huge array of areas that are not wholly aquatic but nevertheless fall far short of being dry land. Where on this continuum to find the limit of ''waters'' is far from obvious.

Id. at 132 (emphasis added). Within this statement, the Supreme Court identifies a basic principle for adjacent wetlands: The limits of jurisdiction lie within the ''continuum'' or ''transition'' ''between open waters and dry land.'' Observing that Congress intended the CWA ''to regulate at least some waters that would not be deemed 'navigable,''' the Court therefore held that it is ''a permissible interpretation of the Act'' to conclude that ''a wetland that actually abuts on a navigable waterway'' falls within the ''definition of 'waters of the United States.''' *Id.* at 133, 135. Thus, a wetland that abuts a water traditionally understood as navigable is subject to CWA jurisdiction because it is ''inseparably bound up with the 'waters' of the United States.'' *Id.* at 134. ''This holds true even for wetlands that are not the result of flooding or permeation by water having its source in adjacent bodies of open water.'' *Id.* The Court also noted that the agencies can establish categories of jurisdiction for adjacent wetlands. *See id.* at 135 n.9.

The Supreme Court in *Riverside Bayview* declined to decide whether wetlands that are not adjacent to navigable waters could also be regulated by the agencies. *See id.* at 124 n.2 & 131 n.8. In *SWANCC* a few years later, however, the Supreme Court analyzed a similar question but in the context of an abandoned sand and gravel pit located some distance from a traditional navigable water, with excavation trenches that ponded—some only seasonally—and served as habitat for migratory birds. 531 U.S. at 162–64. The Supreme Court rejected the government's stated rationale for asserting jurisdiction over these ''nonnavigable, isolated, intrastate waters'' as outside the scope of CWA jurisdiction. *Id.* at 171–72. In doing so, the Supreme Court noted that *Riverside Bayview* upheld ''jurisdiction over wetlands that actually abutted on a navigable waterway'' because the wetlands were ''inseparably bound up with the 'waters' of the United States.'' *Id.* at 167.[24] As summarized by the *SWANCC* majority:

> It was the significant nexus between the wetlands and ''navigable waters'' that informed our reading of the CWA in *Riverside Bayview Homes.* Indeed, we did not ''express any opinion'' on the ''question of authority of the Corps to regulate discharges of fill material into wetlands that are not adjacent to bodies of open water. . . . In order to rule for [the Corps] here, we would have to hold that the jurisdiction of the Corps extends to ponds that are not adjacent to open water. But we conclude that the text of the statute will not allow this.

Id. at 167–68 (citations omitted).

The Court also rejected the argument that the use of the abandoned ponds by migratory birds fell within the power of Congress to regulate activities that in the aggregate have a substantial effect on interstate commerce, or that the CWA regulated the use of the ponds as a municipal landfill because such use was commercial in nature. *Id.* at 173. Such arguments, the Court noted, raised ''significant constitutional questions.'' *Id.* ''Where an administrative interpretation of a statute invokes the outer limits of Congress' power, we expect a clear indication that Congress intended that result.'' *Id.* at 172–73 (''Congress does not casually authorize administrative agencies to interpret a statute to push the limit of congressional authority.''). This is particularly true ''where the administrative interpretation alters the federal-state framework by permitting federal encroachment upon a traditional state power.'' *Id.* at 173; *see also Atascadero State Hospital* v. *Scanlon,* 473 U.S. 234, 242–43 (1985) (''If Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute[.]'''); *Gregory* v. *Ashcroft,* 501 U.S. 452, 460–61 (1991) (''the plain statement rule . . . acknowledg[es] that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere''). ''Rather than expressing a desire to readjust the federal-state balance in this manner, Congress chose [in the CWA] to 'recognize, preserve, and protect the primary responsibilities and rights of States . . . to plan the development and use . . . of land and water resources . . . .'' *SWANCC,* 531 U.S. at 174 (quoting 33 U.S.C. 1251(b)). The Court found no clear statement from Congress that it had intended to permit federal encroachment on traditional State power and construed the CWA to avoid the significant constitutional questions related to the scope of federal authority authorized therein. *Id.*[25]

Several years after *SWANCC,* the Supreme Court considered the concept

[24] For additional context, at oral argument during *Riverside Bayview,* the government attorney characterized the wetland at issue as ''in fact an adjacent wetland, adjacent—by adjacent, I mean it is immediately next to, abuts, adjoins, borders, whatever other adjective you might want to use, navigable waters of the United States.'' Transcript of Oral Argument at 16, *United States* v. *Riverside Bayview Homes, Inc.,* 474 U.S. 121 (1985) (No. 84–701).

[25] The agencies note that during oral argument in *SWANCC,* Justice Kennedy stated, ''[T]his case, it seems to me, does point up the problem that petitioner's counsel raised quoting from page 1 of the blue brief, 'it is the primary responsibility of the states to eliminate pollution and to plan development and use of land' . . . It seems to me that this illustrates that the way in which the Corps has promulgated its regulation *departs from the design of the statute.*'' (emphasis added). Transcript of Oral Argument at 40, *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers,* 531 U.S. 159 (2001) (No. 99–1178). And several years later, in oral argument in *Rapanos,* after U.S. Solicitor General Clement stated, ''[W]hat Congress recognized in 1972 is that they had to regulate beyond traditional navigable waters,'' Justice Kennedy immediately replied, ''But the Congress in 1972 also . . . said it's a statement of policy to reserve to the States the power and the responsibility to plan land use and water resources. And under your definition, I just see that we're giving no scope at all to that clear statement of the congressional policy.'' Transcript of Oral Argument at 58, *Rapanos* v. *United States and Carabell* v. *United States,* 547 U.S. 715 (2006) (Nos. 04–1034, 04–1384).

of adjacency in consolidated cases arising out of the Sixth Circuit. *See Rapanos* v. *United States,* 547 U.S. 715 (2006). In one case, the Corps had determined that wetlands on three separate sites were subject to CWA jurisdiction because they were adjacent to ditches or man-made drains that eventually connected to traditional navigable waters several miles away through other ditches, drains, creeks, and/or rivers. *Id.* at 719–20, 729. In another case, the Corps had asserted jurisdiction over a wetland separated from a man-made drainage ditch by a four-foot-wide man-made berm. *Id.* at 730. The ditch emptied into another ditch, which then connected to a creek, and eventually connected to Lake St. Clair, a traditional navigable water, approximately a mile from the parcel at issue. The berm was largely or entirely impermeable but may have permitted occasional overflow from the wetland to the ditch. *Id.* The Court, in a fractured opinion, vacated and remanded the Sixth Circuit's decision upholding the Corps' asserted jurisdiction over the four wetlands at issue, with Justice Scalia writing for the plurality and Justice Kennedy concurring in the judgment but on alternate grounds. *Id.* at 757 (plurality), 787 (Kennedy, J., concurring).

The plurality determined that CWA jurisdiction only extended to adjacent ''wetlands with a continuous surface connection to bodies that are 'waters of the United States' in their own right, so that there is no clear demarcation between 'waters' and wetlands.'' *Id.* at 742. The plurality then concluded that ''establishing . . . wetlands . . . covered by the Act requires two findings: First, that the adjacent channel contains a 'wate[r] of the United States,' (*i.e.,* a relatively permanent body of water connected to traditional interstate navigable waters); and second, that the wetland has a continuous surface connection with that water, making it difficult to determine where the 'water' ends and the 'wetland' begins.'' *Id.* (alteration in original).

In reaching the adjacency component of the two-part analysis, the plurality interpreted *Riverside Bayview,* and its subsequent *SWANCC* decision characterizing *Riverside Bayview,* as authorizing jurisdiction over wetlands that physically abutted traditional navigable waters. *Id.* at 740–42. The plurality focused on the ''inherent ambiguity'' described in *Riverside Bayview* in determining where on the continuum between open waters and dry land the scope of federal jurisdiction should end. *Id.* at 740. It was ''the inherent difficulties of defining precise bounds to regulable waters,'' *id.* at 741 n.10, according to the plurality, that prompted the Court in *Riverside Bayview* to defer to the Corps' inclusion of adjacent wetlands as ''waters'' subject to CWA jurisdiction based on proximity. *Id.* at 741 (''When we characterized the holding of *Riverside Bayview* in *SWANCC,* we referred to the close connection between waters and the wetlands they gradually blend into: 'It was the significant nexus between the wetlands and 'navigable waters' that informed our reading of the CWA in *Riverside Bayview Homes.*'''); *see also Riverside Bayview,* 474 U.S. 134, quoting 42 FR 37128 (July 19, 1977) (''For this reason, the landward limit of Federal jurisdiction under Section 404 must include any adjacent wetlands that form the border of or are in reasonable proximity to other waters of the United States, as these wetlands are part of this aquatic system.''). The plurality also noted that ''*SWANCC* rejected the notion that the ecological considerations upon which the Corps relied in *Riverside Bayview* . . . provided an *independent* basis for including entities like 'wetlands' (or 'ephemeral streams') within the phrase 'the waters of the United States.' *SWANCC* found such ecological considerations irrelevant to the question whether physically isolated waters come within the Corps' jurisdiction.'' *Id.* at 741–42 (original emphasis).

Justice Kennedy disagreed with the plurality's conclusion that adjacency requires a ''continuous surface connection'' to covered waters. *Id.* at 772. In reading the phrase ''continuous surface connection'' to mean a continuous ''surface-water connection,'' *id.* at 776, and interpreting the plurality's standard to include a ''surface-water-connection requirement,'' *id.* at 774, Justice Kennedy stated that ''when a surface-water connection is lacking, the plurality forecloses jurisdiction over wetlands that abut navigable-in-fact waters—even though such navigable waters were traditionally subject to federal authority.'' *Id.* at 776. He noted that the *Riverside Bayview* Court ''deemed it irrelevant whether 'the moisture creating the wetlands . . . find[s] its source in the adjacent bodies of water.'' *Id.* at 772 (citations omitted).

The plurality did not directly address the precise distinction raised by Justice Kennedy. It did note in response that the ''*Riverside Bayview* opinion required'' a ''continuous *physical* connection,'' *id.* at 751 n.13 (emphasis added), and focused on evaluating adjacency between a ''water'' and a wetland ''in the sense of possessing a continuous surface connection that creates the boundary-drawing problem we addressed in *Riverside Bayview.*'' *Id.* at 757. The plurality also explained that its standard includes a ''physical-connection requirement'' between wetlands and covered waters. *Id.* at 751 n.13. In other words, the plurality appeared to be more focused on the abutting nature rather than the source of water creating the wetlands at issue in *Riverside Bayview* to describe the legal constructs applicable to adjacent wetlands. *See id.* at 747; *see also Webster's II, New Riverside University Dictionary* (1994) (defining ''abut'' to mean ''to border on'' or ''to touch at one end or side of something''). The plurality agreed with Justice Kennedy and the *Riverside Bayview* Court that ''[a]s long as the wetland is 'adjacent' to covered waters . . . its creation *vel non* by inundation is irrelevant.'' *Id.* at 751 n.13.[26]

Because wetlands with a physically remote hydrologic connection do not raise the same boundary-drawing concerns presented by actually abutting wetlands, the plurality determined that ''inherent ambiguity in defining where water ends and abutting ('adjacent') wetlands begin'' upon which *Riverside Bayview* rests does not apply to such features. *Id.* at 742 (''Wetlands with only an intermittent, physically remote hydrologic connection to 'waters of the United States' do not implicate the boundary-drawing problem of *Riverside Bayview,* and thus lack the necessary connection to covered waters that we described as a 'significant nexus' in *SWANCC*[.]''). The plurality supported this position by referring to the Court's treatment of certain isolated waters in *SWANCC* as non-jurisdictional. *Id.* 741–42 (''We held that 'nonnavigable, isolated, intrastate waters—which, unlike the wetlands at issue in *Riverside Bayview,* did not 'actually abu[t] on a navigable waterway,'—were not included as 'waters of the United States.'''). It interpreted the reasoning of *SWANCC* to exclude those waters. The plurality found ''no support for the inclusion of physically unconnected wetlands as covered 'waters''' based on *Riverside Bayview's* treatment of the Corps' definition of adjacent. *Id.* at 747; *see also id.* at 746 (''the Corps' definition of 'adjacent' . . . has been extended beyond reason.'').

[26] The agencies' 2008 *Rapanos* Guidance recognizes that the plurality's ''continuous surface connection'' does not refer to a continuous surface *water* connection. *See, e.g., Rapanos* Guidance at 7 n.28 (''A continuous surface connection does not require surface water to be continuously present between the wetland and the tributary.'').

Although ultimately concurring in judgment, Justice Kennedy focused on the ''significant nexus'' between adjacent wetlands and traditional navigable waters as the basis for determining whether a wetland is subject to CWA jurisdiction. He quotes the *SWANCC* decision, which explains, ''[i]t was the significant nexus between wetlands and navigable waters . . . that informed our reading of the [Act] in *Riverside Bayview Homes.*'' 531 U.S. at 167. Justice Kennedy also interpreted the reasoning of *SWANCC* to exclude certain isolated waters. His opinion notes that: ''Because such a nexus was lacking with respect to isolated ponds, the Court held that the plain text of the statute did not permit the Corps' action.'' 547 U.S. at 767 (internal quotations and citations omitted). Justice Kennedy notes that the wetlands at issue in *Riverside Bayview* were ''adjacent to [a] navigable-in-fact waterway[],'' while the ''ponds and mudflats'' considered in *SWANCC* ''were isolated in the sense of being unconnected to other waters covered by the Act.'' *Id.* at 765–66. ''Taken together, these cases establish that in some instances, as exemplified by *Riverside Bayview,* the connection between a nonnavigable water or wetland and a navigable water may be so close, or potentially so close, that the Corps may deem the water or wetland a 'navigable water' under the Act. In other instances, as exemplified by *SWANCC,* there may be little or no connection. Absent a significant nexus, jurisdiction under the Act is lacking.'' *Id.* at 767.

According to Justice Kennedy, whereas the isolated ponds and mudflats in *SWANCC* lack a ''significant nexus'' to navigable waters, it is the ''conclusive standard for jurisdiction'' based on ''a reasonable inference of ecological interconnection'' between adjacent wetlands and navigable-in-fact waters that allows for their categorical inclusion as ''waters of the United States.'' *Id.* at 780 (''[T]he assertion of jurisdiction for those wetlands [adjacent to navigable-in-fact waters] is sustainable under the act by showing adjacency alone.''). Justice Kennedy surmised that it may be that the same rationale ''without any inquiry beyond adjacency . . . could apply equally to wetlands adjacent to certain major tributaries.'' *Id.* He noted that the Corps could establish by regulation categories of tributaries based on volume of flow, proximity to navigable waters, or other relevant factors that ''are significant enough that wetlands adjacent to them are likely, in the majority of cases, to perform important functions for an aquatic system incorporating navigable waters.'' *Id.* at 780–81. However, ''[t]he Corps' existing standard for tributaries'' provided Justice Kennedy ''no such assurance'' to infer the categorical existence of a requisite nexus between waters traditionally understood as navigable and wetlands adjacent to nonnavigable tributaries. *Id.* at 781. That is because:

> the breadth of [the tributary] standard—which seems to leave wide room for regulation of drains, ditches, and streams remote from any navigable-in-fact water and carrying only minor water volumes towards it—precludes its adoption as the determinative measure of whether adjacent wetlands are likely to play an important role in the integrity of an aquatic system comprising navigable waters as traditionally understood. Indeed, in many cases wetlands adjacent to tributaries covered by this standard might appear little more related to navigable-in-fact waters than were the isolated ponds held to fall beyond the Act's scope in *SWANCC.*

Id. at 781–82.

To avoid this outcome, Justice Kennedy stated that, absent development of a more specific regulation and categorical inclusion of wetlands adjacent to ''certain major'' or even ''minor'' tributaries as was established in *Riverside Bayview, id.* at 780–81, the Corps ''must establish a significant nexus on a case-by-case basis when it seeks to regulate wetlands based on adjacency to nonnavigable tributaries. Given the potential overbreadth of the Corps' regulations, this showing is necessary to avoid unreasonable applications of the statute.'' *Id.* at 782. Justice Kennedy stated that adjacent ''wetlands possess the requisite nexus, and thus come within the statutory phrase 'navigable waters,' if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.'" *Id.* at 780. ''Where an adequate nexus is established for a particular wetland, it may be permissible, as a matter of administrative convenience or necessity, to presume covered status for other comparable wetlands in the region.'' *Id.* at 782.

In establishing this significant nexus test, Justice Kennedy relied, in part, on the overall objective of the CWA to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' *Id.* at 779 (quoting 33 U.S.C. 1251(a)). However, Justice Kennedy also acknowledged that ''environmental concerns provide no reason to disregard limits in the statutory text.'' *Id.* at 778. With respect to wetlands adjacent to nonnavigable tributaries, Justice Kennedy therefore determined that ''mere adjacency . . . is insufficient. A more specific inquiry, based on the significant-nexus standard, is . . . necessary.'' *Id.* at 786. By not requiring adjacent wetlands to possess a significant nexus with navigable waters, Justice Kennedy noted that under the Corps' interpretation, federal regulation would be permitted ''whenever wetlands lie alongside a ditch or drain, however remote or insubstantial, that eventually may flow into traditional navigable waters. The deference owed the Corps' interpretation of the statute does not extend so far.'' *Id.* at 778–79.

In summary, although the standards that the plurality and Justice Kennedy established are not identical, and each standard excludes some waters that the other standard does not, the standards contain substantial similarities. The plurality and Justice Kennedy agree in principle that the determination must be made using a basic two-step approach that considers: (1) The connection of the wetland to the tributary; and (2) the status of the tributary with respect to downstream traditional navigable waters. The plurality and Justice Kennedy also agree that the connection between the wetland and the tributary must be close. The plurality refers to that connection as a ''continuous surface connection'' or ''continuous physical connection,'' as demonstrated in *Riverside Bayview. Id.* at 742, 751 n.13. Justice Kennedy recognizes that ''the connection between a nonnavigable water or wetland and a navigable water may be so close, or potentially so close, that the Corps may deem the water or wetland a 'navigable water' under the Act.'' *Id.* at 767. The second part of their common analytical framework is addressed in the next section.

b. Tributaries

The definition of ''tributary'' was not addressed in either *Riverside Bayview* or *SWANCC.* And while the focus of *Rapanos* was on whether the Corps could regulate wetlands adjacent to nonnavigable tributaries far removed from navigable-in-fact waters, the plurality and concurring opinions do provide guidance as to the scope of CWA coverage of tributaries to navigable-in-fact waters.

The plurality and Justice Kennedy both recognize that the jurisdictional scope of the CWA is not restricted to traditional navigable waters. *Rapanos,* 547 U.S. at 731 (Scalia, J., plurality) (''the Act's term 'navigable waters' includes something more than

traditional navigable waters''); *id.* at 767 (Kennedy, J., concurring) (''Congress intended to regulate at least some waters that are not navigable in the traditional sense.''). Both also agree that federal authority under the Act does have limits. *See id.* at 731–32 (plurality).

With respect to tributaries specifically, both the plurality and Justice Kennedy focus in part on a tributary's contribution of flow to and connection with traditional navigable waters. The plurality would include as ''waters of the United States'' ''only relatively permanent, standing or flowing bodies of water'' and would define such ''waters'' as including streams, rivers, oceans, lakes and other bodies of waters that form geographical features, noting that all such ''terms connote continuously present, fixed bodies of water . . . .'' *Id.* at 732–33, 739. The plurality would also require relatively permanent waters to be connected to traditional navigable waters in order to be jurisdictional. *See id.* at 742 (describing a '''wate[r] of the United States''' as ''*i.e.,* a relatively permanent body of water *connected to* traditional interstate navigable waters'') (emphasis added). The plurality would exclude ephemeral flows and related features, stating ''[n]one of these terms encompasses transitory puddles or ephemeral flows of water.'' *Id.* at 733; *see also id.* at 734 (''In applying the definition to 'ephemeral streams,' . . . the Corps has stretched the term 'waters of the United States' beyond parody. The plain language of the statute simply does not authorize this 'Land Is Waters' approach to federal jurisdiction.''). Justice Kennedy would appear to exclude some streams considered jurisdictional under the plurality's test, but he may include some that would be excluded by the plurality. *See id.* at 769 (noting that under the plurality's test, ''[t]he merest trickle, if continuous, would count as a 'water' subject to federal regulation, while torrents thundering at irregular intervals through otherwise dry channels would not'').

Both the plurality and Justice Kennedy would include some seasonal or intermittent streams as ''waters of the United States.'' *Id.* at 733 & n.5, 769. The plurality noted, for example, that its reference to ''relatively permanent'' waters did ''not necessarily exclude streams, rivers, or lakes that might dry up in extraordinary circumstances, such as drought,'' or ''*seasonal* rivers, which contain continuous flow during some months of the year but no flow during dry months . . . .'' *Id.* at 732 n.5 (emphasis in original). Neither the plurality nor Justice Kennedy, however, defined with precision where to draw the line. The plurality provides that ''navigable waters'' must have ''at a bare minimum, the ordinary presence of water,'' *id.* at 734, and Justice Kennedy notes that the Corps can identify by regulation categories of tributaries based on ''their volume of flow (either annually or on average), their proximity to navigable waters, or other relevant considerations'' that ''are significant enough that wetlands adjacent to them are likely, in the majority of cases, to perform important functions for an aquatic system incorporating navigable waters.'' *Id.* at 780–81.

Both the plurality and Justice Kennedy also agreed that the Corps' existing treatment of tributaries raised significant jurisdictional concerns. For example, the plurality was concerned about the Corps' broad interpretation of tributaries themselves. *See id.* at 738 (plurality) (''Even if the term 'the waters of the United States' were ambiguous as applied to channels that sometimes host ephemeral flows of water (which it is not), we would expect a clearer statement from Congress to authorize an agency theory of jurisdiction that presses the envelope of constitutional validity.''). And Justice Kennedy objected to the categorical assertion of jurisdiction over wetlands adjacent to the Corps' existing standard for tributaries ''which seems to leave wide room for regulation of drains, ditches, and streams remote from any navigable-in-fact water and carrying only minor water volumes towards it . . . .'' *Id.* at 781 (Kennedy, J. concurring), *see also id.* at 781–82 (''[I]n many cases wetlands adjacent to tributaries covered by this standard might appear little more related to navigable-in-fact waters than were the isolated ponds held to fall beyond the Act's scope in *SWANCC.*'').

Though some commenters agreed that aspects of the plurality's and Justice Kennedy's opinions align regarding the limits of federal jurisdiction under the CWA, other commenters disagreed that the opinions share important commonalities. These commenters asserted that the opinions have disparate rationales that cannot be reconciled. While the agencies acknowledge that the plurality and Justice Kennedy viewed the question of federal CWA jurisdiction differently, the agencies find that there are sufficient commonalities between these opinions to help instruct the agencies on where to draw the line between Federal and State waters.

3. Principles and Considerations

As discussed in the previous section, a few important principles emerge that can serve as the basis for the agencies' conclusion that the agencies exceeded their authority when defining the scope of CWA jurisdiction under the 2015 Rule. As a threshold matter, the power conferred on the agencies under the CWA to regulate the ''waters of the United States'' is grounded in Congress' commerce power over navigation. The agencies can choose to regulate beyond waters more traditionally understood as navigable, including some tributaries to those traditional navigable waters, but must provide a reasonable basis grounded in the language and structure of the Act for determining the extent of jurisdiction. The agencies can also choose to regulate wetlands adjacent to the traditional navigable waters and some tributaries, if the wetlands are closely connected to the tributaries, such as in the transitional zone between open waters and dry land. The Supreme Court's opinion in *SWANCC,* however, calls into question the agencies' authority to regulate certain nonnavigable, isolated, intrastate waters that lack a sufficient connection to traditional navigable waters. This counsels that the agencies should avoid regulatory interpretations of the CWA that raise constitutional questions regarding the scope of their statutory authority. Finally, the agencies can regulate certain waters by category, which could improve regulatory predictability and certainty and ease administrative burden while still effectuating the purposes of the Act.

The agencies also recognize and respect the primary responsibilities and rights of States to regulate their land and water resources. *See* 33 U.S.C. 1251(b), 1370. The oft-quoted objective of the CWA to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters,'' *id.* at 1251(a), must be implemented in a manner consistent with Congress' policy directives to the agencies. The Supreme Court long ago recognized the distinction between federal waters traditionally understood as navigable and waters ''subject to the control of the States.'' *The Daniel Ball,* 77 U.S. (10 Wall.) 557, 564–65 (1870). Over a century later, the Supreme Court in *SWANCC* reaffirmed the State's ''traditional and primary power over land and water use.'' 531 U.S. at 174; *accord Rapanos,* 547 U.S. at 738 (Scalia, J., plurality opinion).

Ensuring that States retain authority over their land and water resources pursuant to section 101(b) and section 510 helps carry out the overall objective of the CWA and ensures that the agencies are giving full effect and consideration to the entire structure and function of the Act. *See, e.g., id.* at 755–

56 (Scalia, J., plurality opinion) (''[C]lean water is not the *only* purpose of the statute. So is the preservation of primary state responsibility for ordinary land-use decisions. 33 U.S.C. 1251(b).'') (original emphasis). That includes the dozens of non-regulatory grant, research, nonpoint source, groundwater, and watershed planning programs that were intended by Congress to assist the States in controlling pollution in all of the nation's waters, not just its navigable waters. Controlling all waters using the Act's federal regulatory mechanisms would significantly reduce the need for the more holistic planning provisions of the Act and the State partnerships they entail. Therefore, by recognizing the distinctions between the nation's waters and the navigable waters and between the overall objective and goals of the CWA and the specific policy directives from Congress, the agencies can fully implement the entire structure of the Act while respecting the specific word choices of Congress. *See, e.g., Bailey* v. *United States,* 516 U.S. at 146; *Nat'l Fed'n of Indep. Bus.* v. *Sebelius,* 567 U.S. at 544.

Further, the agencies are cognizant that the ''Clean Water Act imposes substantial criminal and civil penalties for discharging any pollutant into waters covered by the Act without a permit . . . .'' *U.S. Army Corps of Engineers* v. *Hawkes Co.,* 136 S. Ct. 1807, 1812 (2016). As Justice Kennedy observed in 2016, ''the reach and systemic consequences of the Clean Water Act remain a cause for concern'' and ''continues to raise troubling questions regarding the Government's power to cast doubt on the full use and enjoyment of private property throughout the Nation . . . .''). *Id.* at 1816–17 (Kennedy, J., concurring). The agencies recognize that the 2015 Rule and subsequent litigation challenging the legality of core components of that rule have added to the questions regarding the appropriate scope of the Federal government's regulatory power and power over private property, and that currently the scope of those powers varies based on State line.

C. Reasons for Repeal

The agencies are repealing the 2015 Rule for four primary reasons. First, the agencies have concluded that the 2015 Rule misapplied Justice Kennedy's significant nexus standard despite identifying that standard as its touchstone. The 2015 Rule adopted an interpretation of the significant nexus standard that impermissibly expanded the scope of federal jurisdiction, resulting in the regulation of waters beyond what Congress intended. The rule did so by misapplying Justice Kennedy's standard to broaden the meaning and application of the terms ''tributary,'' ''adjacent,'' and ''significant nexus'' while reinterpreting the phrase ''similarly situated lands in the region'' to support the potential assertion of federal regulation over nearly all waters within large watersheds. The agencies are repealing the 2015 Rule because the agencies have now concluded that the 2015 Rule exceeded the legal limits on the scope of the agencies' jurisdiction under the CWA as intended by Congress and as reflected in Supreme Court cases, including Justice Kennedy's articulation of the significant nexus standard in *Rapanos.*[27]

Second, the agencies have concluded that the 2015 Rule did not adequately consider and accord due weight to the express congressional policy in CWA section 101(b) to ''recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce and eliminate pollution'' and ''to plan the development and use . . . of land and water resources.'' 33 U.S.C. 1251(b). The CWA balances preservation of the traditional power of States to regulate land and water resources within their borders with federal water quality regulation and oversight to protect the ''waters of the United States.'' The agencies now conclude that in promulgating the 2015 Rule, they did not accord due weight to that balance. The 2015 Rule expanded jurisdiction over the pre-existing regulatory regime in a manner that encroached on traditional State land-use regulation and the authority of States to regulate State waters, and it altered Federal, State, tribal, and local government relationships in implementing CWA programs without a clear statement from Congress. By repealing the 2015 Rule, the agencies are reversing that encroachment on State authority and restoring those pre-existing relationships.

Third, given the errors in applying Justice Kennedy's significant nexus standard to assert an expanded theory of federal jurisdiction and the failure to adequately consider and accord due weight to the policy direction from Congress to respect the roles and responsibilities of the Federal government and States in implementing the full suite of regulatory and non-regulatory programs in the CWA, the agencies have concluded that the 2015 Rule, like the application of the Corps' regulations in *SWANCC,* ''raise[s] significant questions of Commerce Clause authority and encroach[es] on traditional state land-use regulation.'' *Rapanos,* 547 U.S. at 776 (Kennedy, J., concurring); *see also Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922, at *23 (S.D. Ga. Aug. 21, 2019) (finding the 2015 Rule ''unlawful'' given its ''significant intrusion on traditional state authority'' without ''any clear or manifest statement to authorize intrusion into that traditional state power''). Given the absence of a ''clear indication'' that Congress intended to invoke the outer limits of its power, *see* 531 U.S. at 172–73, the agencies are repealing the 2015 Rule to avoid interpretations of the CWA that push the envelope of their constitutional and statutory authority, consistent with principles of constitutional avoidance.

Lastly, the agencies also recognize that the 2015 Rule has been remanded by the U.S. District Court for the Southern District of Texas for failing to comply with the APA. That court found that the distance-based limitations in the final rule were not a logical outgrowth of the proposal in violation of the APA's public notice and comment requirements. *See Texas* v. *EPA,* No. 3:15–cv–162, 2019 WL 2272464 (S.D. Tex. May 28, 2019). The court found this error ''significant'' because the specific distance-based limitations ''alter[ed] the jurisdictional scope of the Act.'' *Id.* at *5. The agencies are also aware that litigants challenging the 2015 Rule alleged other APA deficiencies, including the lack of record support for the distance-based limitations inserted into the final rule without adequate notice. Several commenters on the proposed repeal of the 2015 Rule raised similar concerns, arguing that the 2015 Rule was arbitrary and capricious because of the lack of record support for those limitations. The agencies recognize that the Federal government, in prior briefing, has defended the procedural steps the agencies took to develop and support the 2015 Rule. Having considered the public comments and relevant litigation positions, and the decision of the Southern District of Texas on related arguments, the agencies now conclude that the

[27] The agencies are not taking a position in this rulemaking regarding whether Justice Kennedy's concurring opinion in *Rapanos* is or should be the controlling authority regarding the scope of federal jurisdiction under the CWA. *See, e.g., Rapanos,* 547 U.S. at 758 (Roberts, C.J., concurring). The agencies used Justice Kennedy's significant nexus standard as the touchstone for the 2015 Rule, and for the reasons described herein, the agencies are repealing the 2015 Rule because it exceeded the scope of authority described in that standard. The agencies requested comment regarding whether Justice Kennedy's concurring opinion ''must be a mandatory component of any future definition of 'waters of the United States' '' as part of the rulemaking on a proposed revised definition. *See* 84 FR 4154, 4167, 4177 (Feb. 14, 2019).

administrative record for the 2015 Rule did not contain sufficient record support for the distance-based limitations that appeared for the first time in the final rule. This conclusion is further supported by similar findings of the U.S. District Court for the Southern District of Georgia, which remanded the 2015 Rule to the agencies in August 2019 after identifying substantive and procedural errors with respect to numerous provisions, including the rule's distance limitations. *Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922 (S.D. Ga. Aug. 21, 2019). By repealing the 2015 Rule for the reasons stated herein, the agencies are remedying the procedural defects underlying the 2015 Rule and responding to these court orders remanding the 2015 Rule.

In reaching this decision, the agencies considered the public comments received in response to the NPRM and SNPRM. The agencies also carefully reviewed their statutory and constitutional authority, as well as court rulings interpreting the CWA and others arising from litigation challenging the 2015 Rule. Some courts issuing preliminary injunctions to stay implementation of the 2015 Rule have suggested that the agencies' interpretation of the ''significant nexus'' standard, as applied in the 2015 Rule, may not have implemented the limits of federal CWA jurisdiction reflected in decisions of the Supreme Court. *See, e.g., North Dakota* v. *EPA,* 127 F. Supp. 3d 1047, 1055–56 (D.N.D. 2015). The agencies now agree with the rationale of those decisions as they appropriately recognize the limits of the agencies' authority under the CWA. Moreover, the agencies find that the court rulings issued thus far against the 2015 Rule corroborate the agencies' concerns regarding the scope and legal basis of the rule.

1. The 2015 Rule Misapplied and Inappropriately Expanded the Significant Nexus Standard

When promulgating the 2015 Rule, the agencies did not properly apply Justice Kennedy's significant nexus standard as a limiting test in a manner that would avoid unreasonable applications of the CWA. Having reconsidered the relevant Supreme Court opinions, the agencies now conclude that the significant nexus standard is indeed a limiting test necessarily constraining overly broad applications of the statute. In *Rapanos,* Justice Kennedy concluded that the CWA covers only ''waters that are or were navigable in fact or that could reasonably be so made'' as well as waters with a ''significant nexus'' to navigable waters in the traditional sense. 547 U.S. at 779 (Kennedy, J., concurring). Specifically, Justice Kennedy found that ''wetlands possess the requisite nexus'' if they ''either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of'' navigable-in-fact waters. *Id.* at 780. In contrast, according to Justice Kennedy, the CWA does not regulate wetlands with ''speculative or insubstantial'' effects on the integrity of navigable waters. *Id.*

In promulgating the 2015 Rule, the agencies sought to interpret ''the scope of the 'waters of the United States' for the CWA using the goals, objectives, and policies of the statute, the Supreme Court case law, the relevant and available science, and the agencies' technical expertise and experience as support.'' 80 FR 37056. In particular, the agencies focused on the significant nexus standard in defining the scope of CWA jurisdiction. *Id.* at 37060 (''The key to the agencies' interpretation of the CWA is the significant nexus standard, as established and refined in Supreme Court opinions.'').

After careful review of the 2015 Rule and the public comments received in response to the notices proposing to repeal the 2015 Rule, the agencies now conclude that the rule misconstrued the significant nexus standard described by Justice Kennedy in *Rapanos.* Key provisions of the rule were at odds with Justice Kennedy's understanding of the phrase ''significant nexus'' because they permitted ''applications . . . that appeared likely . . . to raise constitutional difficulties and federalism concerns,'' 547 U.S. at 776 (Kennedy, J., concurring),[28] including the categorical assertion of jurisdiction over certain wetlands and waters that ''lie alongside a ditch or drain, however remote and insubstantial.'' *See id.* at 778–79. The agencies' misapplication of the significant nexus standard also ran counter to principles articulated by the Supreme Court in *SWANCC,* as the 2015 Rule permitted federal jurisdiction over certain nonnavigable, isolated, intrastate waters similar to the ponds and mudflats that ''raise[d] significant constitutional questions'' in that case. 531 U.S. at 173–74; *see also Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922, at *23 (S.D. Ga. Aug. 21, 2019). The agencies' misapplication of the significant nexus standard in the 2015 Rule also resulted in a definition of ''waters of the United States'' that did not give sufficient effect to the word ''navigable'' within the phrase ''navigable waters'' in a manner consistent with Supreme Court precedent. Ultimately, the fundamental and systemic broad interpretation and misapplication of the significant nexus standard in the 2015 Rule resulted in a ''close-to-the-edge expansion of [the agencies'] own powers'' with a ''theory of jurisdiction that presse[d] the envelope of constitutional validity.'' 547 U.S. at 738, 756 (Scalia, J., plurality). For these reasons, described in detail below, the agencies misconstrued the limits of the CWA and are repealing the 2015 Rule.

a. The 2015 Rule Failed to Properly Consider and Adopt the Limits of the ''Significant Nexus'' Standard as First Established in SWANCC

The phrase ''significant nexus'' first appeared in *SWANCC* wherein Chief Justice Rehnquist, joined by Justice Kennedy and other Justices, described the holding of the Court in *Riverside Bayview:* ''It was the significant nexus between the wetlands and 'navigable waters' that informed our reading of the CWA in *Riverside Bayview Homes.*'' 531 U.S. at 167. While the *Riverside Bayview* Court did not ''express any opinion'' on the ''question of the authority of the Corps to regulate discharges of fill material into wetlands that are not adjacent to bodies of open water,'' 474 U.S. at 131–32 n.8, the *SWANCC* Court ''conclude[d] that the text of the statute will not allow'' jurisdiction of the Corps to ''extend[ ] to ponds that are not adjacent to open water.'' 531 U.S. at 168.

In describing the significant nexus standard in *Rapanos,* Justice Kennedy recognized that ''in some instances, as exemplified by *Riverside Bayview,* the connection between a nonnavigable water or wetland and a navigable water may be so close, or potentially so close, that the Corps may deem the water or wetland a 'navigable water' under the Act. In other instances, as exemplified by *SWANCC,* there may be little or no connection.'' 547 U.S. at 767 (Kennedy, J., concurring). Justice Kennedy

[28] Although not central to the agencies' decision to repeal the 2015 Rule, the agencies also conclude that the 2015 Rule's regulatory definition of ''significant nexus'' was incompatible with the *Rapanos* plurality's interpretation of ''significant nexus.'' *See* 547 U.S. at 755 (Scalia, J., plurality) (''*Our* interpretation of the phrase ['significant nexus'] is both consistent with [*Riverside Bayview* and *SWANCC*] *and* compatible with what the Act *does* establish as the jurisdictional criterion: 'waters of the United States.' Wetlands are 'waters of the United States' if they bear the 'significant nexus' of physical connection, which makes them as a practical matter *indistinguishable* from waters of the United States. What other nexus could *conceivably* cause them to be 'waters of the United States'?'' (original emphasis)).

explained his interpretation of the meaning and import of *SWANCC:* ''Because such a [significant] nexus was lacking with respect to isolated ponds, the Court held that the plain text of the statute did not permit'' the Corps to assert jurisdiction over the isolated ponds and mudflats at issue in *SWANCC. Id.; see also id.* at 774 (describing ''*SWANCC*'s holding'' to mean that '''nonnavigable, isolated, intrastate waters,' are not 'navigable waters.' '' (quoting *SWANCC,* 531 U.S. at 171)); *id.* at 781–82 (''[I]n many cases wetlands adjacent to tributaries covered by [the Corps' existing tributary] standard might appear little more related to navigable-in-fact waters than were the isolated ponds held to fall beyond the Act's scope in *SWANCC.*''). The *Rapanos* plurality recognized the same jurisdictional limits articulated in *SWANCC. See* 547 U.S. at 726 (''Observing that '[i]t was the significant nexus between the wetlands and 'navigable waters' that informed our reading of the CWA in *Riverside Bayview,'* we held that *Riverside Bayview* did not establish 'that the jurisdiction of the Corps extends to ponds that are not adjacent to open water.' '' (citations and emphasis omitted)). And Justice Stevens, writing for four Justices in dissent in *Rapanos,* also recognized this principle. *See id.* at 795 (Stevens, J., dissenting) (''The Court [in *SWANCC*] rejected [the Corps' exercise of jurisdiction] since these isolated pools, unlike the wetlands at issue in *Riverside Bayview,* had no 'significant nexus' to traditionally navigable waters.''); *id.* at 796 (Stevens, J., dissenting) (''[T]he Corps has reasonably interpreted its jurisdiction to cover *nonisolated* wetlands.'' (emphasis added)).

In the SNPRM, the agencies specifically requested comment and additional information on ''whether the water features at issue in *SWANCC* or other similar water features could be deemed jurisdictional under the 2015 Rule,'' and whether such a determination would be ''consistent with or otherwise well-within the agencies' statutory authority.'' 83 FR 32249. The agencies now conclude that in formulating the significant nexus test in the 2015 Rule, the agencies failed to properly consider or adopt the limits of the significant nexus standard established in *SWANCC*—the very case in which the phrase ''significant nexus'' originated—and Justice Kennedy's opinion in *Rapanos.* The preamble to the 2015 Rule stated that ''[t]he agencies utilize[d] the significant nexus standard, as articulated by Justice Kennedy's opinion [in *Rapanos*] and informed by the unanimous opinion in *Riverside Bayview* and the plurality opinion in *Rapanos.*'' 80 FR 37061. But the rule did not properly consider the limits of the significant nexus standard as first described in *SWANCC* and subsequently relied upon by Justice Kennedy in *Rapanos,* nor was it adequately informed by the unanimous opinion in *Riverside Bayview.*

For example, applying the 2015 Rule to the waters at issue in *SWANCC* demonstrates that the 2015 Rule did not comport with the limits of the CWA as interpreted in that decision. The ''seasonally ponded, abandoned gravel mining depressions'' at issue in *SWANCC* were within 4,000 feet of Poplar Creek—a ''tributary'' under the 2015 Rule which leads to the Fox River and in turn flows into the Illinois and Mississippi Rivers. Based on this information, the *SWANCC* ponds and mudflats would have been subject to a case-specific significant nexus analysis under the 2015 Rule's (a)(8) provision. *See* 80 FR 37105.[29] Considering the nine functions relevant to a significant nexus evaluation as defined in the 2015 Rule, including ''runoff storage'' and ''sediment trapping,'' *id.* at 37067, as well as the descriptions of the site available to the agencies, the *SWANCC* ponds and mudflats would almost certainly have a ''significant nexus'' under the 2015 Rule because they could be found to retain ''stormwater volumes and associated sediment coming off the landfill'' that would otherwise reach a navigable water. *See* Brief of Dr. Gene Likens et al. as *Amici Curiae* in Support of Respondent at 6–28, *SWANCC,* 531 U.S. 159 (No. 99–1178) [hereinafter Scientists' Brief] (quoting Decision Document A.R. 15645–47); *see also id.* (''[The *SWANCC* site] holds enough water to fill the Pentagon four feet deep. . . . Absent strict controls, this water could easily end up directly or indirectly in the Fox River, . . . which in turn flows into the navigable Illinois and Mississippi Rivers.''); *Rapanos,* 547 U.S. at 749 (Scalia, J., plurality) (''[T]he ponds at issue in *SWANCC* could . . . offer nesting, spawning, rearing and resting sites for aquatic or land species, and serve as valuable storage areas for storm and flood waters[.]'' (internal quotation marks and citations omitted)). In fact, given this evidence, were the Corps not to find jurisdiction over the *SWANCC* ponds under the 2015 Rule's (a)(8) provision, the agencies are cognizant that the Corps could be subject to allegations that such a finding would be an arbitrary and capricious application of that provision. And yet, with this information before it,[30] the majority of the *SWANCC* Court concluded that the nonnavigable, isolated, intrastate waters at issue in *SWANCC* fell beyond the scope of federal CWA jurisdiction. *See SWANCC,* 531 U.S. at 174 (''[W]e find nothing approaching a clear statement from Congress that it intended § 404(a) to reach an abandoned sand and gravel pit such as we have here.'').

The agencies have solicited comment on the proper scope and interpretation of the *SWANCC* decision as part of their effort to propose a revised definition of ''waters of the United States'' pursuant to Executive Order 13778. *See* 84 FR 4165. In that proposal, the agencies noted that the Federal government historically has applied a more narrow reading of *SWANCC* when determining jurisdiction over individual water features,[31] while simultaneously

[29] The ''seasonally ponded, abandoned gravel mining depressions located on the [*SWANCC*] project site,'' 531 U.S. at 164, would not have been covered by the 2015 Rule's exclusion for water-filled depressions created incidental to mining activity. *See e.g.,* 33 CFR 328.3(b)(4)(v). While the text of the 2015 Rule is not clear on this point, the earlier regulatory preambles that this exclusion is based on and the 2015 Rule Response to Comments (RTC) document confirm that this exclusion ceases to apply if the mining activities that created the waters are abandoned. *See* 53 FR 20764, 20765 (June 6, 1988) (''we generally do not consider the following waters to be 'waters of the United States' . . . [w]ater-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel *unless and until* the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States'') (emphasis added); *see also* 2015 Rule RTC, Topic 7 at 209 (''The exclusion applies to pits excavated in dry land for obtaining fill, sand, or gravel. The rule does not change the agencies' existing practice that these features could be found to be jurisdictional once the construction or mining activity is completed or abandoned and the water feature remains.'').

[30] This information, along with other ecological functions of isolated waters, was submitted to the *SWANCC* Court in *amicus* briefs filed in support of the Corps by ecologists and several States. *See* Scientists' Brief; Brief of the States of California et al. as *Amici Curiae* in Support of Respondents, *SWANCC,* 531 U.S. 159 (No. 99–1178). Additionally, in oral argument during *SWANCC,* U.S. Deputy Solicitor General Wallace stated, ''The waters here . . . serve as storage for what would otherwise be flood waters during periods of heavy rain that would cause overflow. That was part of what the Corps had to deal with in dealing with this [permit] application.'' Transcript of Oral Argument at 39, *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers,* 531 U.S. 159 (2001) (No. 99–1187).

[31] *But see* Transcript of Oral Argument at 41, *Rapanos* v. *United States and Carabell v. United States,* 547 U.S. 715 (2006) (Nos. 04–1034, 04–1384) where U.S. Solicitor General Clement stated that after *SWANCC* ''the Corps and the EPA's view of wetlands would cover about 80 percent of the wetlands in the country. And that shows that *the impact of this Court's decision in SWANCC was real*

Continued

applying a broader reading of Justice Kennedy's concurring opinion in *Rapanos. Id.* at 4167, 4177. While the agencies consider comments as to the appropriateness of that dichotomy as part of their separate rulemaking, the agencies continue to agree with their express statement in the 2008 *Rapanos* Guidance regarding the jurisdictional limitations articulated in *SWANCC* as interpreted by Justice Kennedy:

> When applying the significant nexus standard to tributaries and wetlands, it is important to apply it within the limits of jurisdiction articulated in *SWANCC.* Justice Kennedy cites *SWANCC* with approval and asserts that the significant nexus standard, rather than being articulated for the first time in *Rapanos,* was established in *SWANCC.* 126 S. Ct. at 2246 (describing *SWANCC* as ''interpreting the Act to require a significant nexus with navigable waters''). It is clear, therefore, that Justice Kennedy did not intend for the significant nexus standard to be applied in a manner that would result in assertion of jurisdiction over waters that he and the other justices determined were not jurisdictional in *SWANCC.* Nothing in this guidance should be interpreted as providing authority to assert jurisdiction over waters deemed non-jurisdictional by *SWANCC.*

2008 *Rapanos* Guidance at 9 n.32.[32] The agencies continue to utilize the 2008 *Rapanos* Guidance in those States where the pre-2015 regulations are in place, and upon reconsideration reiterate and agree ''that Justice Kennedy did not intend for the significant nexus standard to be applied in a manner that would result in assertion of jurisdiction over waters that he and the other justices determined were not jurisdictional in *SWANCC.*'' *Id.*

In the 2015 Rule, and in particular the (a)(8) provision, the agencies reinterpreted their understanding of the limits of jurisdiction set by Justice Kennedy's significant nexus test as described in the 2008 *Rapanos* Guidance. Thus, under the 2015 Rule's (a)(8) category for waters subject to case-specific significant nexus analyses, the 2015 Rule could have swept ''ponds that are not adjacent to open water,'' 531 U.S. at 168, along with other non-adjacent waters and wetlands into the scope of federal jurisdiction under the CWA. It did so by applying the nine functions described at 80 FR 37067, only one of which—provided its effect on the nearest primary water, either alone or in combination with other similarly situated waters in the watershed, was more than speculative or insubstantial—was necessary to subject a non-adjacent water or wetland to federal jurisdiction under the 2015 Rule. *See id.* at 37091. Under this formulation of the significant nexus standard, the very ponds at issue in *SWANCC* would be subject to federal review under the (a)(8) category of the 2015 Rule, and, as described above, would almost certainly be found to have a significant nexus under the 2015 Rule.

Some commenters identified a narrow interpretation of *SWANCC* that they suggested would not conflict with the 2015 Rule's (a)(8) category of jurisdictional waters: While the *SWANCC* ponds may not be jurisdictional based on the use of those waters as habitat for migratory birds, they could be jurisdictional nonetheless if they satisfy one of the functions listed at 80 FR 37067 (*e.g.,* sediment trapping, runoff storage). Similarly, noting that Justice Kennedy had characterized the *SWANCC* ponds as ''bearing no evident connection to navigable-in-fact waters,'' some commenters suggested that it would be appropriate to assert federal jurisdiction over the *SWANCC* ponds if the agencies established that such features satisfy the significant nexus test and thus have an ''evident connection'' to downstream navigable waters. Other commenters asserted that finding the *SWANCC* ponds jurisdictional under the 2015 Rule would be inconsistent with Justice Kennedy's understanding of the scope of federal jurisdiction under the Act.

As noted above, the agencies believe that Justice Kennedy did not intend for the significant nexus standard to be applied in a manner that would result in the assertion of jurisdiction over waters that he and the other justices determined were not jurisdictional in *SWANCC.* The text of *SWANCC* supports this interpretation. The *SWANCC* majority specifically concluded that the ''text of the statute will not allow'' the assertion of CWA jurisdiction over the ponds at issue in that case. 531 U.S. at 168. Thus, the agencies could not develop a formulation of a case-specific significant nexus test that the Supreme Court specifically rejected.[33]

For these reasons, the agencies now find that the 2015 Rule departed from and conflicted with the agencies' prior interpretation of *SWANCC* without adequate notice and a reasoned explanation for the change in interpretation. *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515–16 (2009) (''*Fox*''). In promulgating the 2015 Rule, the agencies acknowledged potential differences between their legal interpretations underlying the rule and the 2008 *Rapanos* Guidance. *See, e.g.,* Technical Support Document for the Clean Water Rule: Definition of Waters of the United States at 79–83. The agencies failed to identify or acknowledge, however, that the 2015 Rule could regulate that which the Supreme Court rejected in *SWANCC,* a clear departure from their opposite position in the 2008 *Rapanos* Guidance. In this regard, the agencies recognize that their reinterpretation of *Rapanos, SWANCC,* and Justice Kennedy's significant nexus test was inconsistent with those cases.

After reconsidering this issue, the agencies conclude that they lack statutory authority to promulgate a rule that would result in assertion of jurisdiction over waters that the Supreme Court determined were not jurisdictional in *SWANCC,* and that Justice Kennedy did not intend for the significant nexus standard he articulated in *Rapanos* to be applied in such a manner. In finalizing the 2015 Rule, the agencies therefore improperly departed from their prior position regarding this key element of the 2008 *Rapanos* Guidance.

In returning to an interpretation of Justice Kennedy's decision that comports with the 2008 *Rapanos* Guidance, the agencies recognize the *SWANCC* Court's admonition to avoid constructions of the statute that raise significant constitutional questions related to the scope of federal authority authorized therein. 531 U.S. at 174; *see also* Section III.C.3, *infra.* By interpreting Justice Kennedy's significant nexus standard to regulate the very same or similar waters the Supreme Court ruled the text of the statute would not allow, the agencies pushed the boundaries of statutory interpretation. The 2015 Rule also raised questions regarding whether there is any meaning to the limits of

and substantial because about 20 percent of the Nation's *wetlands are isolated.*'' (emphasis added).

[32] The agencies also recognize that Justice Stevens interpreted the *SWANCC* majority opinion to apply beyond the Migratory Bird Rule and the specific ponds at issue in *SWANCC,* stating the decision ''invalidates the 1986 migratory bird regulation *as well as the Corps' assertion of jurisdiction over all waters except for actually navigable waters, their tributaries, and wetlands adjacent to each.*'' 531 U.S. at 176–77 (Stevens, J., dissenting) (emphasis added).

[33] These same defects apply to the 2015 Rule's (a)(7) category. The preamble to the 2015 Rule stated, ''a water [or wetland] that does not meet the definition of 'adjacent waters' may be determined to be a 'water of the United States' on a case-specific basis under paragraph (a)(8) of the rule,'' 80 FR 37080, and the 2015 Rule subjected (a)(7) waters to the same case-specific significant nexus analysis that it applied to (a)(8) waters, only without the distance-based limitations used in the (a)(8) category. *See id.* (''[W]aters may be determined to have a significant nexus on a case-specific basis under paragraph *(a)(7)* or (a)(8).'') (emphasis added).

jurisdiction articulated by a unanimous Supreme Court in *Riverside Bayview,* which found that ''[i]n determining the limits of [their] power to regulate discharges under the Act,'' the agencies ''must necessarily choose some point at which water ends and land begins.'' 474 U.S. at 132 (''[B]etween open waters and dry land may lie shallows, marshes, mudflats, swamps, bogs—in short, a huge array of areas that are not wholly aquatic but nevertheless fall far short of being dry land. Where on this continuum to find the limit of 'waters' is far from obvious.''). By allowing federal jurisdiction to reach certain isolated ponds, such as those at issue in *SWANCC,* and certain physically remote wetlands that ''do not implicate the boundary-drawing problem of *Riverside Bayview,*'' the 2015 Rule asserted federal control over some features that ''lack the necessary connection to covered waters . . . described as a 'significant nexus' in *SWANCC*[.]'' 547 U.S. at 742 (Scalia, J., plurality);[34] *see also Hawkes,* 136 S. Ct. at 1817 (Kennedy, J., concurring) (''[T]he *reach* and systemic consequences of the Clean Water Act remain a cause for concern.'' (emphasis added)).

Given the 2015 Rule permitted federal jurisdiction over certain physically disconnected waters and wetlands like those at issue in *SWANCC*—either categorically as ''adjacent'' waters or on a case-specific basis according to an expanded significant nexus test—the agencies now conclude for this and other reasons that the 2015 Rule exceeded the agencies' statutory authority as interpreted in *SWANCC* and Justice Kennedy's concurrence in *Rapanos.* The agencies may not exceed the authority of the statutes they are charged with administering, *see* 5 U.S.C. 706(2)(C) (prohibiting agency actions ''in excess of statutory jurisdiction, authority, or limitations''), and must avoid interpretations of the statutes they administer that push constitutional boundaries. *See* Section III.C.3, *supra.*

In contrast to the 2008 *Rapanos* Guidance, the 2015 Rule failed to respect the limits of the significant nexus standard established in *SWANCC* and the foundation for Justice Kennedy's significant nexus standard in *Rapanos.* For these reasons, the agencies repeal the 2015 Rule.

b. The 2015 Rule's Interpretation and Application of the Significant Nexus Standard Did Not Respect the Limits of Federal Jurisdiction Reflected in Justice Kennedy's Opinion in Rapanos

In the SNPRM, the agencies ''propose[d] to conclude that the 2015 Rule exceeded the agencies' authority under the CWA'' by adopting an ''expansive'' interpretation of Justice Kennedy's significant nexus standard that was ''inconsistent with important aspects of that opinion'' and resulted in a rule that ''cover[ed] waters outside the scope of the Act.'' 83 FR 32228, 32240. The agencies have considered the many comments received discussing these issues and now conclude that, in contrast to the limiting nature of the significant nexus standard first described in *SWANCC* and elaborated on by Justice Kennedy in *Rapanos,* the agencies' interpretation of the significant nexus standard in the 2015 Rule was overly expansive and did not comport with or respect the limits of jurisdiction reflected in the CWA and decisions of the Supreme Court.

The agencies' broader interpretation of the significant nexus standard served as a fundamental basis of the 2015 Rule and informed the development of the definitions of the categorically jurisdictional and case-specific waters under the rule. *See* 80 FR 37060 (''The key to the agencies' interpretation of the CWA is the significant nexus standard, as established and refined in Supreme Court opinions.''). In applying this broad standard, the agencies established an expansive definition of jurisdictional ''tributaries,'' which in turn provided for *per se* jurisdictional ''adjacent'' (including ''neighboring'') waters and wetlands within specific distance and geographic limits of those tributaries and from which even farther-reaching case-specific significant nexus analyses could be conducted for isolated waters and wetlands not already meeting the broad jurisdictional-by-rule definitions. The result was a compounding of errors that subjected the vast majority of water features in the United States to the jurisdictional purview of the Federal government.[35] This outcome is incompatible with the significant nexus standard and the limits of jurisdiction described in *SWANCC* and by Justice Kennedy in *Rapanos.*

To be sure, the agencies enjoy discretion in setting the jurisdictional limits of the Act. *See Rapanos,* 547 U.S. at 758 (Roberts, C.J., concurring); *but see id.* at 757 (noting that the Corps' ''boundless view'' of its authority in *SWANCC* ''was inconsistent with the limiting terms Congress had used in the Act''). However, that discretion is not unbridled. It must remain within the confines of the Act's text and the Supreme Court's interpretations of the outer bounds of jurisdiction. The agencies exercised this discretion in an impermissible manner in 2015 by codifying a regulatory test for jurisdiction that exceeded the agencies' authority under the Act. Whereas ''the significant-nexus test itself *prevents* problematic applications of the statute,'' 547 U.S. at 783 (Kennedy, J., concurring) (emphasis added), the 2015 Rule misapplied the standard to *create* them.

i. The 2015 Rule's Definition of ''Significant Nexus'' Was Inconsistent With the Limiting Nature of Justice Kennedy's Significant Nexus Standard

In *Rapanos,* Justice Kennedy found that adjacent ''wetlands possess the requisite nexus, and thus come within the statutory phrase 'navigable waters,' if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.' '' *Id.* at 780 (Kennedy, J., concurring). Justice Kennedy articulated this significant nexus standard to limit federal jurisdiction under the CWA to avoid ''problematic'' or ''unreasonable'' applications of the statute arising from the breadth of the Corps' then-existing standard for tributaries. *See id.* at 783, 782. Pursuant to Justice Kennedy's opinion, if a water lacks a ''significant nexus,'' it is not jurisdictional under the Act. *See id.* at 767.

After reviewing the public comments received on this rulemaking, the agencies conclude that the 2015 Rule's definition of ''significant nexus'' was inconsistent with the limiting nature of Justice Kennedy's significant nexus standard, resulting in a definition of ''waters of the United States'' that exceeded the scope of federal jurisdiction under the Act. In particular, the agencies now find that the 2015

[34] While the agencies acknowledged being informed by the *Rapanos* plurality in developing the 2015 Rule, *see* 80 FR 37061, the regulation of non-adjacent waters as jurisdictional via the (a)(7) and (a)(8) categories is inconsistent with that opinion. *See Rapanos,* 547 U.S. at 742 (Scalia, J., plurality) (''[O]nly those wetlands with a continuous surface connection to bodies that are 'waters of the United States' in their own right, so that there is no clear demarcation between 'waters' and wetlands, are 'adjacent to' such waters and covered by the Act.'' (emphasis omitted)); *see also id.* at 748 (''If isolated permanent and seasonal ponds of varying size and depth, which, after all, might at least be described as 'waters' in their own right—did not constitute 'waters of the United States,' *a fortiori,* isolated swampy *lands* do not constitute 'waters of the United States.' '') (original emphasis) (internal quotation marks and citations omitted).

[35] The agencies noted in 2015 ''that the vast majority of the nation's water features are located within 4,000 feet of a covered tributary, traditional navigable water, interstate water, or territorial sea.'' 2015 Rule Economic Analysis at 11.

Rule's interpretation of the phrase ''similarly situated lands in the region'' contravened the limiting principles inherent in Justice Kennedy's articulation of the significant nexus test. The significant change in the agencies' understanding of the meaning of Justice Kennedy's opinion and reasons for reinterpreting it was not explained and led to a compounding of errors in the agencies' misapplication of the significant nexus test.

Justice Kennedy did not expressly define the phrase ''similarly situated lands in the region.'' His opinion, nevertheless, provides indications of the intended meaning of this phrase. The agencies expressed their understanding of this phrase in the 2008 *Rapanos* Guidance (at 8), stating that the phrase includes a tributary and all wetlands adjacent to that tributary. The guidance describes a ''tributary'' as ''the entire reach of the stream that is of the same order (*i.e.,* from the point of confluence, where two lower order streams meet to form the tributary, downstream to the point such tributary enters a higher order stream).'' *Id.* at 10. Thus, under the agencies' 2008 guidance:

> [W]here evaluating significant nexus for an adjacent wetland, the agencies will consider the flow characteristics and functions performed by the tributary to which the wetland is adjacent along with the functions performed by the wetland and all other wetlands adjacent to that tributary. This approach reflects the agencies' interpretation of Justice Kennedy's term ''similarly situated'' to include all wetlands adjacent to the same tributary. . . . Interpreting the phrase ''similarly situated'' to include all wetlands adjacent to the same tributary is reasonable because such wetlands are physically located in a like manner (*i.e.,* lying adjacent to the same tributary).

Id.

In the 2015 Rule, the agencies reinterpreted the phrase ''similarly situated lands in the region'' by defining ''(1) which waters are 'similarly situated,' and thus should be analyzed in combination, in (2) the 'region,' for purposes of a significant nexus analysis.'' 80 FR 37065. This approach departed from the agencies' interpretation in the 2008 *Rapanos* Guidance by splitting the phrase into two separate, expansive concepts (''similarly situated'' and ''in the region''). The agencies considered waters to be ''similarly situated'' in the 2015 Rule when they ''function alike and are sufficiently close to function together in affecting downstream waters.'' 80 FR 37106. The preamble of the 2015 Rule further explained the concept of ''sufficiently close'':

> Similarly situated waters can be identified as sufficiently close together for purposes of this paragraph of the regulation when they are within a contiguous area of land with relatively homogeneous soils, vegetation, and landform (*e.g.,* plain, mountain, valley, etc.). In general, it would be inappropriate, for example, to consider waters as ''similarly situated'' under paragraph (a)(8) if these waters are located in different landforms, have different elevation profiles, or have different soil and vegetation characteristics, *unless the waters perform similar functions and are located sufficiently close to a ''water of the United States''* to allow them to consistently and collectively function together to affect a traditional navigable water, interstate water, or the territorial seas. In determining whether waters under paragraph (a)(8) are sufficiently close to each other the agencies will also consider hydrologic connectivity to each other *or a jurisdictional water.*

80 FR 37092 (emphasis added). The 2015 Rule preamble also established that ''under paragraph (a)(8), waters do not need to be of the same type (as they do in paragraph (a)(7)) to be considered similarly situated. As described above, waters are similarly situated under paragraph (a)(8) where they perform similar functions *or* are located sufficiently close to each other, regardless of type.'' *Id.* (emphasis added). The agencies explained that this interpretation was based in part on ''one of the main conclusions of the [Connectivity Report] . . . that the incremental contributions of individual streams and wetlands are cumulative across entire watersheds, and their effects on downstream waters should be evaluated within the context of other streams and wetlands in that watershed.'' *Id.* at 37066. The agencies then defined ''in the region'' within the 2015 Rule's regulatory definition of ''significant nexus'' to mean ''the watershed that drains to the nearest'' primary water (*i.e.,* categories (a)(1)–(3)).[36]

The agencies acknowledged this change in position from the 2008 *Rapanos* Guidance by explaining: ''The functions of the contributing waters are inextricably linked and have a cumulative effect on the integrity of the downstream traditional navigable water, interstate water, or the territorial sea. For these reasons, it is more appropriate to conduct a significant nexus analysis at the watershed scale than to focus on a specific site, such as an individual stream segment.'' *Id.* at 37066. As expressed in the 2008 *Rapanos* Guidance, the agencies previously understood the phrase ''similarly situated lands in the region'' to include all wetlands adjacent to the same tributary. The 2008 *Rapanos* Guidance states that ''[a] tributary . . . is the entire reach of the stream that is of the same order[.]'' 2008 *Rapanos* Guidance at 10.

The 2015 Rule also departed from the 2008 *Rapanos* Guidance by applying the concept of ''similarly situated lands in the region'' to other waters, not only wetlands, across the entire watershed of the nearest primary water. *See id.* at 37066 (''A single point of entry watershed is the drainage basin within whose boundaries all precipitation ultimately flows to the nearest single traditional navigable water, interstate water, or the territorial sea. . . . The watershed includes all streams, wetlands, lakes, and open waters within its boundaries.''). In essence, the agencies determined that not only do ''*wetlands* possess the requisite nexus . . . if the *wetlands,* either alone or in combination with similarly situated *lands* in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable,' '' 547 U.S. at 780 (Kennedy, J., concurring) (emphasis added), but also ''[*tributaries*] possess the requisite nexus, and thus come within the statutory phrase 'navigable waters,' if the [*tributaries*], either alone or in combination with similarly situated [*tributaries*] in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.' '' 80 FR 37068 (''[W]aters meeting the definition of 'tributary' in a single point of entry watershed are similarly situated and have a significant nexus because they significantly affect the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas.'').

[36] The preamble of the 2015 Rule, however, created an exception for the codified definition of ''in the region'' in the Arid West in ''situations where the single point of entry watershed is very large.'' *See* 80 FR 37092 (''[In those situations] it may be reasonable to evaluate all similarly situated waters in a smaller watershed. Under those circumstances, the agencies may demarcate adjoining catchments surrounding the water to be evaluated that, together, are generally no smaller than a typical 10-digit hydrologic unit code (HUC–10) watershed in the same area. The area identified by this combination of catchments would be the 'region' used for conducting a significant nexus evaluation under paragraphs (a)(7) or (a)(8) under those situations. The basis for such an approach in very large single point of entry watersheds in the arid West should be documented in the jurisdictional determination.''). The agencies now conclude that this exception, included in the final rule preamble without adequate notice, was at odds with the regulatory text of the 2015 Rule and created further confusion as to the application of the 2015 Rule's ''significant nexus'' test and the scope of aggregation for purposes of a significant nexus inquiry under the rule.

As a result of the agencies' reinterpretation of a Supreme Court Justice's opinion referencing ''similarly situated lands in the region,'' the 2015 Rule broadened the scope of aggregation for determining jurisdiction in a ''significant nexus'' analysis relative to the 2008 *Rapanos* Guidance, which more closely aligned with what Justice Kennedy intended for that test. In the SNPRM, the agencies solicited comment on whether the 2015 Rule's approach to the phrase ''similarly situated lands in the region'' relied on the scientific literature ''without due regard for the restraints imposed by the statute and case law.'' 83 FR 32240. Multiple commenters expressed concern that the 2015 Rule's interpretation of the phrase was inconsistent with Justice Kennedy's opinion. In particular, these commenters suggested that the 2015 Rule's approach of aggregating the contributions of all streams or all wetlands within an entire watershed impermissibly lowered the bar for establishing a significant nexus. Other commenters asserted that the 2015 Rule's approach was consistent with Justice Kennedy's opinion because the agencies found, in reliance on the Connectivity Report, that waters aggregated at a watershed scale have a connection to and impact downstream traditional navigable waters.

The agencies now conclude that applying Justice Kennedy's concept of ''similarly situated lands in the region'' to encompass all ''tributaries'' as broadly defined in the 2015 Rule and potentially all wetlands in a single point of entry watershed of the nearest primary water resulted in a regulatory definition that expanded federal jurisdiction to cover waters outside the scope of the Act, and thus exceeded the agencies' statutory authority. The agencies' analytical failure occurred in the first instance in the transition between the proposed and final versions of the 2015 Rule. For example, potential inclusion of all of the wetlands or waters in the watershed of the nearest primary water under the final 2015 Rule significantly expanded the scope of aggregation that determined jurisdiction in a ''significant nexus'' analysis from the focus in the proposed rule on waters ''located sufficiently close together or sufficiently close to a 'water of the United States' so that they can be evaluated as a single landscape unit.'' 79 FR 22263. The proposed rule adhered more closely to the agencies' position on aggregation in the 2008 *Rapanos* Guidance in that wetlands adjacent to the same tributary reach are inherently located closer together and closer to a ''water of the United States'' than are all non-adjacent wetlands across an entire single point of entry watershed. But in finalizing the 2015 Rule, the agencies viewed the scientific literature through a broader lens relative to the proposed rule. *See, e.g.,* 80 FR 37094. This broader lens, as discussed in the following subsections, resulted in the *per se* regulation of a more expansive class of (a)(5) ''tributaries,'' including categorical jurisdiction over ephemeral ''tributaries,'' the *per se* regulation of a broader range of waters (not just wetlands) considered ''adjacent'' under the (a)(6) category, and case-specific inclusion of waters (not just wetlands) that are not ''adjacent'' to other waters but nonetheless could be regulated as ''waters of the United States'' according to the rule's (a)(7) and (a)(8) categories.

The agencies adopted this broader aggregation approach without proper analysis of whether this approach was consistent with the statutory limits in the CWA's text and the limits included in Justice Kennedy's opinion in *Rapanos.* As explained in Section III.B, Justice Kennedy articulated the significant nexus standard to limit federal jurisdiction under the CWA to avoid ''unreasonable'' assertions of jurisdiction arising from the breadth of the Corps' then-existing standard for tributaries. As evidenced by the discussion in his concurrence, Justice Kennedy intended his significant nexus standard to be a limiting test, cabining the potential overreach of federal CWA jurisdiction. The agencies now believe that interpreting ''similarly situated lands in the region'' to encompass all ''tributaries'' as broadly defined in the 2015 Rule and potentially all wetlands in a ''watershed that drains to the nearest'' primary water was inconsistent with the application of Justice Kennedy's significant nexus test as a limiting standard.

For example, the agencies should have considered whether the aggregated landscape approach swept certain isolated ponds, such as those at issue in *SWANCC,* into federal jurisdiction. *See* Section III.C.1.a, *supra.* The *SWANCC* Court concluded that ''the text of the statute will not allow'' the Corps to regulate ''ponds that are not adjacent to open water.'' *SWANCC,* 531 U.S. at 168. And in *Rapanos,* Justice Kennedy even questioned the dissent's conclusion ''that the ambiguity in the phrase 'navigable waters' allows the Corps to construe the statute as reaching all '*non*-isolated wetlands[.]' '' 547 U.S. at 780 (emphasis added) (stating that this position ''seems incorrect''). Similarly, Justice Kennedy did not subscribe to the *Rapanos* dissent's position that ''would permit federal regulation whenever wetlands lie alongside a ditch or drain, however remote and insubstantial, that eventually may flow into traditional navigable waters.'' *Id.* at 778. ''The deference owed to the Corps' interpretation of the statute,'' Justice Kennedy wrote, ''does not extend so far.'' *Id.* at 778–79.

The 2015 Rule also permitted the agencies to find a ''significant nexus'' based on ''just one function,'' 80 FR 37068, such as ''provision of life cycle dependent aquatic habitat'' for species found in primary waters. *Id.* at 37106. For an effect to be significant, the rule required that it must be more than speculative or insubstantial. *Id.* The rule allowed for jurisdiction when a water significantly affects ''aquatic habitats through wind- and animal-mediated dispersal'' of ''[a]nimals and other organisms,'' *id.* at 37072, including when ''[p]lants and invertebrates'' '' 'hitchik[e]' on waterfowl'' ''to and from prairie potholes'' anywhere across an entire watershed. Connectivity Report at 5–5. Yet if, as the *SWANCC* Court held, the use of isolated ponds by migratory birds themselves was an insufficient basis upon which to establish jurisdiction, it cannot stand to reason that the seeds and critters clinging to their feathers can constitute a ''significant nexus.'' *See* 547 U.S. at 749 (Scalia, J., plurality) (''This [strictly ecological] reasoning would swiftly overwhelm *SWANCC* altogether[.]'').

Several federal courts have now questioned the 2015 Rule's interpretation of Justice Kennedy's significant nexus standard in *Rapanos.* The U.S. District Court for the District of North Dakota found ''[t]he Rule . . . likely fails to meet [Justice Kennedy's significant nexus] standard'' and ''allows EPA regulation of waters that do not bear any effect on the 'chemical, physical, and biological integrity' of any navigable-in-fact water.'' *North Dakota* v. *EPA,* 127 F. Supp. 3d 1047, 1056 (D.N.D. 2015). Likewise, the Sixth Circuit stated in response to petitioners' ''claim that the [2015] Rule's treatment of tributaries, 'adjacent waters,' and waters having a 'significant nexus' to navigable waters is at odds with the Supreme Court's ruling in *Rapanos*'' that ''[e]ven assuming, for present purposes, as the parties do, that Justice Kennedy's opinion in *Rapanos* represents the best instruction on the permissible parameters of 'waters of the United States' as used in the Clean Water Act, it is far from clear that the new Rule's distance limitations are harmonious with the instruction.'' *In re EPA,* 803 F.3d at 807 & n.3 (noting that

''[t]here are real questions regarding the collective meaning of the [Supreme] Court's fragmented opinions in *Rapanos*''). The agencies recognize these deficiencies in the 2015 Rule and agree with the concerns raised by these courts.

As explained in the following sections, the agencies find that the application of an overly broad significant nexus standard in the 2015 Rule resulted in a regulatory definition of ''waters of the United States'' that did not comport with Justice Kennedy's understanding of the limits of federal CWA jurisdiction and exceeded the agencies' statutory authority. Moreover, the agencies find that while Justice Kennedy noted ''the significant-nexus test itself prevents problematic applications of the statute,'' 547 U.S. at 783 (Kennedy, J., concurring), including asserting jurisdiction over waters or wetlands like those at issue in *SWANCC* having ''little or no connection'' to navigable waters, *id.* at 767, the 2015 Rule's broad significant nexus standard would have led to similar unreasonable applications of the CWA that the *SWANCC* Court and Justice Kennedy both sought to prevent. *See* Section III.C.3, *infra.*

ii. The 2015 Rule's Definition of (a)(5) Waters Exceeded the Scope of CWA Jurisdiction Envisioned in Justice Kennedy's Significant Nexus Test

The agencies' misinterpretation of Justice Kennedy's significant nexus standard resulted in the categorical assertion of *per se* jurisdiction over an expansive ''tributary'' network. The 2015 Rule defined ''tributary'' as a water that contributes flow, either directly or through another water, to a primary water and that is characterized by the presence of the ''physical indicators'' of a bed and banks and an ordinary high water mark. ''These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary.'' 80 FR 37105. The 2015 Rule's ''tributary'' definition included channels that flow ''only in response to precipitation events,'' *id.* at 37076–77, and features that may be dry for months or many years [37] as long as they contribute flow, however minimal, infrequent, or indirect to a primary water, and exhibit physical indicators of a bed, bank, and an ordinary high water mark.

Coupling the 2015 Rule's expansive definition of ''significant nexus'' with the findings of the Connectivity Report, the agencies concluded at that time that features meeting the rule's ''tributary'' definition ''provide many common vital functions important to the chemical, physical, and biological integrity of downstream waters'' and ''function together to affect downstream waters'' such that all features that satisfied the ''tributary'' definition could be considered ''similarly situated'' and thus assessed together in a significant nexus analysis. 80 FR 37066. Because of this aggregate approach, the agencies found that all (a)(5) ''tributaries'' could be considered categorically jurisdictional because any covered tributary, either alone or when considered in combination with other covered tributaries in the watershed, had a significant nexus to primary waters. 80 FR 37058.

Though some commenters found that the agencies properly relied on the 2015 Rule's scientific record to conclude that features meeting the ''tributary'' definition possess the requisite significant nexus and are thus categorically jurisdictional, other commenters expressed concern with the agencies' categorical assertion of jurisdiction over covered tributaries. These commenters suggested that the rule's ''tributary'' definition was too broad and would extend federal jurisdiction to features with remote proximity and tenuous connections to traditional navigable waters, contrary to the limits of CWA authority recognized in Justice Kennedy's *Rapanos* concurrence.

The agencies now conclude that the 2015 Rule's ''tributary'' definition exceeded the jurisdictional limits envisioned in Justice Kennedy's significant nexus standard. Under the 2015 Rule's definition of ''tributary,'' the agencies determined that the mere contribution of flow to primary waters—however minimal, infrequent, or indirect—and the presence of ''physical indicators'' of a bed and banks and an ordinary high water mark were sufficient to support the categorical assertion of jurisdiction over features (including individual features) meeting the definition of ''tributary'' because the agencies determined that such features, in the aggregate, would possess a significant nexus to navigable waters. *See* 80 FR 37076. Yet, Justice Kennedy found that ''[a]bsent some measure of the significance of the connection for downstream water quality,'' a ''mere hydrologic connection'' is ''too uncertain'' and ''should not suffice in all cases'' as ''the connection may be too insubstantial . . . to establish the required nexus'' with ''navigable waters as traditionally understood.'' 547 U.S. at 784–85 (Kennedy, J., concurring). Moreover, while Justice Kennedy questioned jurisdiction over features with ''[t]he merest trickle [even] if continuous'' as potentially lacking a significant nexus to navigable waters, *id.* at 769, the 2015 Rule's definition of ''tributary'' categorically includes the merest trickle—whether continuous or discontinuous—so long as it contributes flow at some unspecified time, directly or indirectly, to downstream navigable-in-fact waters, has the requisite physical indicators, and is not covered by an exclusion. Such an interpretation of ''tributary'' is, at the very least, in significant tension with Justice Kennedy's standard.

The agencies also conclude that the categorical assertion of jurisdiction over features meeting the 2015 Rule's ''tributary'' definition, particularly ephemeral features, was inconsistent with Justice Kennedy's significant nexus standard. Because ephemeral streams were not categorically jurisdictional under the pre-2015 regulations as informed by the agencies' applicable guidance, *see* 2008 *Rapanos* Guidance at 7 (''[R]elatively permanent' waters do not include ephemeral tributaries which flow only in response to precipitation. . . . CWA jurisdiction over these waters will be evaluated under the significant nexus standard[.]''), the 2015 Rule's ''tributary'' definition expanded the scope of federal CWA jurisdiction over such features without subjecting them to a case-specific significant nexus evaluation. The agencies expect that the extent of this change might have been greater in portions of the country where non-relatively permanent (*i.e.,* non-seasonal intermittent and ephemeral) streams are more prevalent (*e.g.,* the arid West), relative to other parts of the country. The agencies now conclude that this change in the scope of federal CWA jurisdiction due to the categorical inclusion of ephemeral streams meeting the rule's ''tributary'' definition encroached too far into the realm of traditional State land use authority by asserting *per se* federal control over certain waters more appropriately left to the jurisdiction of the States, such as

[37] A study by the U.S. Army Corps of Engineers in the Arid West, for example, revealed flood recurrence intervals for the field ordinary high water mark ranged from <1 to 15.5 years. *See* U.S. Army Corps of Engineers Engineer Research and Development Centers. ERDC/CRREL TR–11–12. *Ordinary High Flows and the Stage-Discharge Relationship in the Arid West Region.* Curtis, K.E., R.W. Lichvar, L.E. Dixon. (July 2011) at Table 4, *available at http://www.spk.usace.army.mil/Portals/12/documents/regulatory/pdf/TR11-12_gage.pdf* (hereafter, ''Ordinary High Flows in the Arid West'').

ephemeral streams distant or far-removed from navigable-in-fact waters. This intrusion into State authority does not align with Justice Kennedy's significant nexus standard, as it gives rise to the type of federalism concerns and ''problematic applications of the statute'' that Justice Kennedy's significant nexus test was intended to prevent. *See* 547 U.S. at 783 (Kennedy, J., concurring) (''[T]he significant-nexus test itself prevents problematic applications of the statute[.]''). Though the agencies had found it appropriate to categorically include (a)(5) ''tributaries'' due to the ''science-based conclusion'' that such waters, either individually or collectively, possess the requisite significant nexus, the agencies now find that this approach was flawed, as the agencies relied on scientific information about the aggregate effects of (a)(5) ''tributaries'' without due regard for the limits on federal CWA jurisdiction reflected in Justice Kennedy's *Rapanos* concurrence. *See* 80 FR 37079; 2015 Rule Response to Comments—Topic 8: Tributaries at 140; *see also* Section III.C.1.d, *infra.*

The agencies' concerns regarding the breadth of the 2015 Rule's ''tributary'' definition are echoed in the U.S. District Court for the Southern District of Georgia's remand order. *Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922 (S.D. Ga. Aug. 21, 2019). There, the court found that the categorical assertion of jurisdiction over features meeting the 2015 Rule's ''tributary'' standard ''is an impermissible construction of the CWA,'' as it could cover waters that lack the requisite significant nexus, particularly in the Arid West. *Id.* at *13–15.

The agencies also conclude that the 2015 Rule's ''tributary'' definition failed to properly account for Justice Kennedy's concerns, explained in *Rapanos,* regarding the use of a broad ''tributary'' standard as the ''determinative measure'' of whether adjacent wetlands possess the requisite significant nexus. 547 U.S. at 781. Before *Rapanos,* the Corps deemed a water a jurisdictional tributary if it fed into a traditional navigable water (or a tributary thereof) and possessed ''an ordinary high-water mark,'' defined as a ''line on the shore established by the fluctuations of water and indicated by [certain] physical characteristics.'' *Id.* Justice Kennedy found that this tributary concept ''may well provide a reasonable measure of whether specific minor tributaries bear a sufficient nexus with other regulated waters to constitute 'navigable waters' under the Act'' if it ''is subject to reasonably consistent application.'' *Id.* (citing a 2004 GAO Report ''noting variation in results among Corps district offices''). ''Yet,'' as Justice Kennedy stated, ''the breadth of this standard—which seems to leave wide room for regulation of drains, ditches, and streams remote from any navigable-in-fact water and carrying only minor volumes towards it—precludes its adoption as the determinative measure of whether adjacent wetlands are likely to play an important role in the integrity of an aquatic system comprising navigable waters as traditionally understood.'' *Id.* ''[M]ere adjacency to a tributary of this sort is insufficient; a similar ditch could just as well be located many miles from any navigable-in-fact water and carry only insubstantial flow towards it. A more specific inquiry, based on the significant-nexus standard, is therefore necessary.'' *Id.* at 786. Justice Kennedy's discussion focused on adjacent wetlands because the facts of *Rapanos* presented the question of jurisdiction over wetlands. However, his concern that the agencies' ''tributary'' definition giving rise to the *Rapanos* dispute may be overly expansive—such that federal jurisdiction over wetlands adjacent to those tributaries may exceed the scope of the CWA—is relevant to the agencies' consideration of the ''tributary'' definition in the 2015 Rule.

Justice Kennedy stated that ''[t]hrough regulations or adjudication, the Corps may choose to identify categories of tributaries that, due to their volume of flow (either annually or on average), their proximity to navigable waters, or other relevant considerations, are significant enough that wetlands adjacent to them are likely, in the majority of cases, to perform important functions for an aquatic system incorporating navigable waters,'' *id.* at 780–81, but the 2015 Rule did not properly consider those factors. Under the 2015 Rule, many minor ditches and ephemeral ''tributaries'' would be considered ''navigable waters'' categorically, regardless of their distance to traditional navigable waters or whether the downstream water quality effects of such individual features are ''speculative or insubstantial.'' 547 U.S. at 780 (Kennedy, J., concurring). As such, the agencies conclude that the 2015 Rule's ''tributary'' definition would have swept in ''drains, ditches, and streams remote from any navigable-in-fact water and carrying only minor water volumes towards it'' such that it could not be ''the determinative measure of whether adjacent wetlands [to such features] are likely to play an important role in the integrity of an aquatic system.'' *See id.* at 781 (Kennedy, J., concurring); *see also id.* at 738 (plurality).[38]

The agencies now conclude that the 2015 Rule inappropriately established *per se* jurisdiction over features that Justice Kennedy characterized as ''drains, ditches, and streams remote from any navigable-in-fact water and carrying only minor water volumes toward it.'' *Id.* at 781 (Kennedy, J., concurring). The rule then used those ''tributaries'' as the starting point from which to establish its category of jurisdictional-by-rule ''adjacent'' and ''neighboring'' waters and wetlands and the baseline from which to extend distance limits of up to 4,000 feet to determine the jurisdictional status of those waters and wetlands based on a case-specific significant nexus test. In doing so (as described in the next two subsections), the agencies now find that they compounded their error and cast an even wider net of federal jurisdiction in contravention of Justice Kennedy's concurrence in *Rapanos.*

iii. The 2015 Rule's Definition of (a)(6) Waters Exceeded the Scope of CWA Jurisdiction Envisioned in Justice Kennedy's Significant Nexus Test

Under category (a)(6), the 2015 Rule asserted jurisdiction-by-rule over ''all waters adjacent to a water identified in paragraphs (a)(1) through (5) of this section, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.'' 80 FR 37104. The agencies did not expressly amend the longstanding definition of ''adjacent'' (defined as ''bordering, contiguous, or neighboring''), but effectively broadened the definition by adding a definition of ''neighboring'' that impacted the interpretation of ''adjacent.'' The 2015 Rule defined ''neighboring'' to encompass all waters located within 100 feet of the ordinary high water mark of a category (1) through (5) ''jurisdictional by rule'' water; all waters located within the 100-year floodplain of a category (1) through (5) ''jurisdictional by rule'' water and not more than 1,500 feet from the ordinary high water mark of such

[38] Courts that have considered the merits of challenges to the 2015 Rule at the preliminary injunction stage similarly observed that the rule may conflict with Justice Kennedy's opinion in *Rapanos,* particularly the rule's definition of ''tributary.'' The District of North Dakota found that the definitions in the 2015 Rule raise ''precisely the concern Justice Kennedy had in *Rapanos,* and indeed the general definition of tributary [in the 2015 Rule] is strikingly similar'' to the standard for tributaries that concerned Justice Kennedy in *Rapanos. North Dakota,* 127 F. Supp. 3d at 1056. The Southern District of Georgia also found that ''[t]he same fatal defects that plagued the definition of tributaries in *Rapanos* plague the [2015 Rule] here.'' *Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922, at *16 (S.D. Ga. Aug. 21, 2019).

water; all waters located within 1,500 feet of the high tide line of a category (1) though (3) ''jurisdictional by rule'' water; and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. 80 FR 37105. The entire water was considered neighboring if any portion of it lies within one of these zones. *See id.* The agencies' 2014 proposed rule did not include these distance limitations on the definition of ''adjacent'' or ''neighboring.''

The agencies received many comments on the NPRM and SNPRM discussing the 2015 Rule's approach to ''adjacent'' waters. Many commenters asserted that the rule's definition of ''adjacent'' waters could cover waters adjacent to remote tributaries, resulting in the assertion of jurisdiction over the same type of waters that Justice Kennedy suggested did not fall within the scope of CWA jurisdiction. Other commenters stated that the 2015 Rule's ''adjacent'' waters definition was consistent with Justice Kennedy's significant nexus standard because they stated that the scientific record for the 2015 Rule supported the agencies' finding at that time that such waters had a significant nexus to downstream navigable-in-fact waters. After considering the public comments, the agencies now find that the 2015 Rule's treatment of ''adjacent'' exceeded the agencies' statutory authority and ran afoul of Justice Kennedy's significant nexus test in *Rapanos.*

As a threshold matter, because the definition of (a)(6) waters in the 2015 Rule was keyed to waters ''adjacent'' to (a)(1) through (a)(5) waters, the definition of (a)(6) waters rests on tenuous jurisdictional footing for the reasons discussed in the (a)(5) ''tributaries'' section above. In addition, the rule's definition of (a)(6) waters did not comport with Justice Kennedy's significant nexus test.

In *Rapanos,* Justice Kennedy's analysis of the agencies' jurisdictional test clearly distinguished between ''wetlands adjacent to navigable-in-fact waters,'' which can be regulated based on adjacency alone, and wetlands adjacent ''to nonnavigable tributaries,'' for which ''the Corps must establish a significant nexus on a case-by-case basis'' should it seek to regulate them, ''[a]bsent more specific regulations.'' 547 U.S. at 782 (Kennedy, J., concurring). Justice Kennedy found this individualized significant nexus determination ''necessary to avoid unreasonable applications of the statute'' in the face of ''the potential overbreadth of the Corps' regulations.'' *Id.* Specifically, Justice Kennedy expressed concern that the breadth of the Corps' then-existing tributary standard ''precludes its adoption as the determinative measure of whether adjacent wetlands are likely to play an important role in the integrity of an aquatic system comprising navigable waters as traditionally understood.'' *Id.* at 781.

The agencies now conclude that the 2015 Rule did just that—adopted a categorically jurisdictional rule for all adjacent wetlands (and waters) tied to a similarly broad ''tributary'' standard that did not adequately respond to Justice Kennedy's concerns about ''insubstantial flow'' and remoteness. *Id.* at 786. The agencies now find that the 2015 Rule codified the very test that Justice Kennedy rejected and for which the dissenting Justices in *Rapanos* advocated. Justice Stevens, writing for himself and three other Justices in dissent, did not share Justice Kennedy's concerns with the breadth of the Corps' then-existing tributary standard and with it serving as the basis for determining adjacency. Indeed, Justice Stevens would have held that the significant nexus test ''is *categorically satisfied* as to wetlands adjacent to navigable waters *or their tributaries*'' because ''it [is] clear that wetlands adjacent to tributaries of navigable waters generally have a 'significant nexus' with the traditionally navigable waters downstream.'' 547 U.S. at 807 (Stevens, J., dissenting) (emphasis added). Although the agencies sought to implement the significant nexus test articulated by Justice Kennedy in *Rapanos* when finalizing the 2015 Rule, the agencies now conclude that by failing to address Justice Kennedy's concerns as to the breadth of the ''tributary'' definition to which the ''adjacent'' definition was tied, the agencies erroneously adopted and codified a test more like Justice Stevens's categorical test for adjacent waters under the guise of promulgating ''more specific regulations.'' *Id.* at 782 (Kennedy, J., concurring).

In remanding the 2015 Rule to the agencies, the U.S. District Court for the Southern District of Georgia also found that the rule's ''adjacent'' waters definition relied on an impermissibly broad ''tributary'' standard. *Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922, at *15–17 (S.D. Ga. Aug. 21, 2019). There, the court explained that though the 2015 Rule's ''tributary'' definition contained the additional requirement of a bed and banks, the rule's definition was ''functionally the same as the definition in *Rapanos,*'' as the court found ''no evidence demonstrating how the addition of bed and banks . . . does anything to further limit the definition of tributaries so as to alleviate Justice Kennedy's concerns of over-breadth in *Rapanos.*'' *Id.* at *16–17. The court held that as a result, the ''adjacent'' waters provision ''could include 'remote' waters . . . that have only a 'speculative or insubstantial' effect on the quality of navigable in fact waters,'' contrary to the significant nexus standard in Justice Kennedy's opinion. *Id.* (quoting *Rapanos,* 547 U.S. at 778–81 (Kennedy, J., concurring)).

Upon further reflection, including consideration of arguments made in the subsequent litigation expressing certain concerns that litigants were unable to make during the notice and comment period, as well as the decisions of those courts that have preliminarily or finally reviewed the 2015 Rule, the agencies now believe that Justice Kennedy would not have endorsed the agencies' approach in the 2015 Rule, just as he did not join the dissenting Justices in *Rapanos.* For the agencies to conclude otherwise in the 2015 Rule was an error, requiring its repeal.

In addition, the agencies find that the 2015 Rule's definition of ''adjacent'' also exceeded the agencies' authority to regulate ''navigable waters'' under the CWA. Under the 2015 Rule, the agencies determined that all waters and wetlands meeting the ''adjacent'' definition categorically possessed a significant nexus, either alone or in combination with similarly situated waters, and thus were jurisdictional. 80 FR 37058. The agencies justified this approach through heavy reliance on the findings of the Connectivity Report, *see* 80 FR 37066, and a reinterpretation of the phrase ''similarly situated lands in the region.'' *See* Section III.C.1.b.i, *supra.* Under the 2008 *Rapanos* Guidance, which the agencies now believe hews closer to Justice Kennedy's opinion in that case, only wetlands adjacent to the ''reach of the stream that is of the same order'' of a non-navigable tributary that is not relatively permanent or wetlands adjacent to but that do not directly abut a relatively permanent non-navigable tributary were aggregated for the purposes of a significant nexus analysis. 2008 *Rapanos* Guidance at 1. In contrast, under the 2015 Rule, these same wetlands were *per se* jurisdictional as ''adjacent waters.'' The 2015 Rule also expanded the scope of aggregation for its case-specific significant nexus analysis to *non*-adjacent wetlands *and waters* alone or in combination with similarly situated wetlands and waters across an entire single point of entry watershed that drains to the nearest primary water. The agencies now conclude that this approach was inconsistent with the

agencies' CWA authority as envisioned by Justice Kennedy's concurring opinion in *Rapanos.*

While the 2015 Rule asserted categorical jurisdiction over ''all waters [and wetlands] located within 100 feet of the ordinary high water mark'' of even the most remote and minor channel meeting the rule's definition of ''tributary,'' Justice Kennedy stated that ''[t]he deference owed to the Corps' interpretation of the statute does not extend'' to ''wetlands'' that ''lie alongside a ditch or drain, however remote or insubstantial, that eventually may flow into traditional navigable waters.'' *Rapanos,* 547 U.S. at 778–79 (Kennedy, J., concurring). Justice Kennedy also stated that ''[t]he Corps' theory of jurisdiction'' in *Rapanos* and *Carabell*—that being ''adjacency to tributaries, however remote and insubstantial''—''raises concerns.'' *Id.* at 780. In fact, Justice Kennedy took issue with the dissent's conclusion in *Rapanos* that ''the ambiguity in the phrase 'navigable waters' allows the Corps to construe the statute as reaching all 'non-isolated wetlands,' '' noting that this position ''seems incorrect.'' *Id.* Further, with respect to wetlands adjacent to nonnavigable tributaries, Justice Kennedy determined that ''mere adjacency . . . is insufficient. A more specific inquiry, based on the significant-nexus standard, is . . . necessary.'' *Id.* at 786; *see also id.* at 774 (''As *Riverside Bayview* recognizes, the Corps' adjacency standard is reasonable in *some* of its applications.'') (emphasis added). Yet, under the 2015 Rule's expansive ''adjacent'' waters definition, the agencies established that adjacency alone was sufficient and reasonable in *all* of its applications—including situations where any portion of a physically disconnected wetland lay within 100 feet of a remote drain meeting the rule's broad ''tributary'' definition.

The agencies also find that the 2015 Rule's *per se* coverage under the definition of ''adjacent'' of all waters and wetlands located within the 100-year floodplain and within 1,500 feet of the ordinary high water mark of a primary water, jurisdictional impoundment, or tributary was not consistent with the limits of federal jurisdiction under the CWA as interpreted by Justice Kennedy. Pursuant to that provision, the rule extended federal jurisdiction to certain isolated ponds, wetlands, and ditches categorically simply because they might have a hydrologic connection with such waters during a storm event with a low probability of occurring in any given year. The agencies now conclude that this categorical inclusion was inconsistent with Justice Kennedy's significant nexus standard in *Rapanos,* which requires beyond ''speculat[ion]'' that a water or wetland ''significantly affect[s] the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.' '' *Id.* at 780. Indeed, Justice Kennedy stated that a ''mere hydrologic connection *should not suffice* in all cases'' because it ''may be too insubstantial for the hydrologic linkage to establish the required nexus with navigable waters as traditionally understood.'' *Id.* at 784–85 (emphasis added). As applied to the facts of *Carabell,* Justice Kennedy believed that ''possible flooding'' was an unduly speculative basis for a jurisdictional connection between wetlands and other jurisdictional waters. *Id.* at 786 (Kennedy, J., concurring). The *Rapanos* plurality similarly questioned the Corps' broad interpretation of its regulatory authority to include wetlands '' 'adjacent' to covered waters . . . if they lie within the 100-year floodplain of a body of water.'' *Id.* at 728 (Scalia, J., plurality) (internal quotation marks and citations omitted). Thus, the agencies find that a once in a 100-year hydrologic connection between otherwise physically disconnected waters, which satisfied the definition of ''neighboring'' in the 2015 Rule, is too insubstantial to justify a categorical finding of a ''significant nexus'' with navigable-in-fact waters under *Rapanos. See also Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922, at *18 (S.D. Ga. Aug. 21, 2019) (finding that the 2015 Rule failed to show that the majority of waters within the 100-year floodplain have a significant nexus to navigable waters). To be sure, certain waters that meet the definition of ''neighboring'' in the 2015 Rule would meet Justice Kennedy's ''significant nexus'' test; however, other features that would *not* meet Justice Kennedy's test would nonetheless meet the definition of ''neighboring'' in the 2015 Rule and thus be jurisdictional *per se.*

The agencies therefore find that their interpretation of ''adjacent'' and ''neighboring'' exceeded the limits of federal CWA jurisdiction described by Justice Kennedy and ignored his intention that the significant nexus test be used to *prevent* categorical assertion of jurisdiction over all wetlands adjacent to all tributaries, broadly defined. The 2015 Rule misconstrued Justice Kennedy's significant nexus standard to do exactly the opposite—*permit* categorical assertion of jurisdiction over all wetlands and waters ''adjacent'' or ''neighboring'' all ''tributaries.'' For the foregoing reasons, the agencies conclude that the 2015 Rule's definition of (a)(6) waters exceeded their statutory authority.

iv. The 2015 Rule's Inclusion of (a)(7) and (a)(8) Waters That Could Be Jurisdictional Under a Case-Specific Significant Nexus Analysis Exceeded the Scope of CWA Jurisdiction Envisioned in Justice Kennedy's Significant Nexus Test

The 2015 Rule established two types of jurisdictional waters ''found after a case-specific analysis to have a significant nexus to traditional navigable waters, interstate waters, or the territorial seas, either alone or in combination with similarly situated waters in the region.'' 80 FR 37058. The first category, (a)(7) waters, consists of five specific types of waters in specific regions of the country: Prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands. *Id.* at 37105. The second category, (a)(8) waters, consists of all waters located within the 100-year floodplain of any category (1) through (3) ''jurisdictional by rule'' water and all waters located within 4,000 feet of the high tide line or ordinary high water mark of any category (1) through (5) ''jurisdictional by rule'' water. *Id.* The rule established no distance limitation for the (a)(7) waters, *id.* at 37093, and the distance-based limitations for the (a)(8) waters were adopted without adequate notice in violation of the APA. *See Texas* v. *EPA,* No. 3:15–cv–162, 2019 WL 2272464, at *5 (S.D. Tex. May 28, 2019).[39]

The 2015 Rule defined ''significant nexus'' to mean a water, including wetlands, that either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a primary water. 80 FR 37106. Under the 2015 Rule, to determine whether a water, alone or in combination with similarly situated waters across a watershed, had a ''significant nexus,'' the agencies considered nine functions such as sediment trapping, runoff storage, provision of life cycle dependent aquatic habitat, among others. *Id.* Under the rule, it was sufficient for determining whether a water has a significant nexus if any single function performed by the water, alone or together with similarly situated

[39] The agencies also note that the distance limitations in the 2015 Rule were included without sufficient record support.

waters in the watershed of the nearest primary water, contributed significantly to the chemical, physical, or biological integrity of the nearest primary water. *Id.*

The agencies conclude that the 2015 Rule's categories of (a)(7) and (a)(8) waters exceeded the agencies' CWA authority for several independent reasons. As described in Section III.C.1.a, certain waters that fall within the scope of category (a)(8) are beyond the limits of federal authority. By establishing a jurisdictional category for (a)(8) waters to which the 2015 Rule's case-specific significant nexus test applied, the rule would have swept certain ''ponds that are not adjacent to open water''—like those isolated ponds and mudflats at issue in *SWANCC*—into the federal regulatory net despite the *SWANCC* Court's conclusion that ''the text of the statute will not allow this.'' 531 U.S. at 168. Moreover, like the agencies' interpretation of (a)(6) ''adjacent'' waters in the 2015 Rule, the baseline for determining if a water was subject to a case-specific significant nexus analysis under the 2015 Rule's (a)(8) category was established, among other means, according to specified distances keyed to the definition of (a)(5) ''tributaries.'' The agencies established a distance up to 4,000 feet from the ordinary high water mark of even the most remote and insubstantial ''tributary'' within which all waters and wetlands would be subject to a case-specific significant nexus analysis based in large part on the expanded aggregation theory discussed in Section III.C.1.b.i.[40]

Further, while the 2008 *Rapanos* Guidance (at 1) limited the case-specific significant nexus inquiry to (1) non-navigable tributaries that are not relatively permanent, (2) wetlands adjacent to non-navigable tributaries that are not relatively permanent, and (3) wetlands adjacent to but that do not directly abut a relatively permanent nonnavigable tributary, the 2015 Rule asserted jurisdiction over such tributaries and adjacent wetlands categorically and then expanded the scope of the case-specific significant nexus test to non-adjacent waters and wetlands alone or in combination with ''similarly situated'' waters and wetlands anywhere within the same single point of entry watershed. In other words, the (a)(7) and (a)(8) categories were designed to capture waters that fall outside the 2015 Rule's broad ''adjacent'' waters (a)(6) category. *See* 80 FR 37080. Given the agencies' conclusion that the categorical assertion of jurisdiction over features meeting the 2015 Rule's definitions of ''tributary'' and ''adjacent'' contravened the limits of federal jurisdiction reflected in Justice Kennedy's opinion, it necessarily follows that the 2015 Rule's (a)(7) and (a)(8) categories—which apply to certain waters located *outside* the scope of those jurisdictional-by-rule categories—similarly exceeded the scope of the agencies' statutory authority. *See Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922, at *20 (S.D. Ga. Aug. 21, 2019) (finding that the 2015 Rule's (a)(8) provision would ''extend federal jurisdiction beyond the limits allowed under the CWA''). For example, because of the expansive significant nexus test in the 2015 Rule coupled with the breadth of certain key concepts and terms (*e.g.,* ''tributaries,'' ''adjacent,'' and ''neighboring'') relative to the prior regulatory regime, the agencies now conclude that the 2015 Rule's (a)(7) and (a)(8) categories would have permitted federal jurisdiction over waters and wetlands appearing ''little more related to navigable-in-fact waters than were the isolated ponds held to fall beyond the Act's scope in *SWANCC.*'' 547 U.S. at 781–82 (Kennedy, J., concurring).

Relying on the concurring opinion of Justice Kennedy,[41] the 2015 Rule misapplied the significant nexus standard to subject similarly-situated waters (including small streams, ephemeral ''tributaries,'' non-adjacent wetlands, and small lakes and ponds) across entire watersheds that were not already jurisdictional categorically under another provision of the 2015 Rule to federal purview. Indeed, taken together, the enumeration of the nine functions relevant to the ''significant nexus'' analysis and the more expansive interpretation of ''similarly situated'' and ''in the region'' in the 2015 Rule meant that the vast majority of water features in the United States would be *per se* jurisdictional or could come within the jurisdictional purview of the Federal government pursuant to the rule's (a)(7) and (a)(8) provisions for case-specific waters.[42] As discussed in Section III.C.1.b.i, such a result is inconsistent with the limiting nature of Justice Kennedy's significant nexus test.

Justice Kennedy also stated that ''*[a]bsent more specific regulations* . . . the Corps must establish a significant nexus on a case-by-case basis when it seeks to regulate wetlands based on *adjacency* to nonnavigable tributaries. Given the potential overbreadth of the Corps' regulations, this showing is necessary to avoid unreasonable applications of the statute.'' *Id.* at 782 (emphasis added). In the 2015 Rule, the agencies provided more specific regulations for ''tributaries'' and ''adjacent'' waters and wetlands, both of which were based upon their misinterpretation of Justice Kennedy's significant nexus standard. But the agencies then applied their overbroad interpretation of significant nexus to the evaluation of (a)(7) and (a)(8) waters on case-specific basis. The agencies are concerned that there is nothing in Justice Kennedy's concurring opinion in *Rapanos* that indicates he envisioned a case-specific approach to establish adjacency-based jurisdiction *after* more specific regulations have been established that purported to establish the categorical limits of adjacency. And while the 2015 Rule preamble properly characterized Justice Kennedy's acknowledgment that ''the agencies could establish more specific regulations *or* establish a significant nexus on a case-by-case basis,'' 80 FR 37058 (emphasis added), the 2015 Rule nevertheless ''continue[d] to assess significant nexus on a case-specific basis'' for (a)(7) and (a)(8) waters. *Id.*

The 2015 Rule also established different scopes of inquiry for determining whether an (a)(7) or (a)(8) water has a significant nexus to a primary water. ''For practical administrative purposes, the rule [did] not require evaluation of all similarly situated waters under paragraph (a)(7) or (a)(8) when concluding that those waters have a significant nexus'' to a primary water. 80 FR at 37094. ''When a subset of similarly situated waters provides a sufficient science-based justification to conclude presence of a significant nexus, for efficiency purposes a significant nexus analysis need not unnecessarily require time and resources to locate and analyze all

[40] The 2015 Rule placed no distance limits on the scope of a significant nexus inquiry for waters within the 100-year floodplain of a primary water. *See* 80 FR 37088.

[41] The agencies note that they requested comment on the appropriate scope and application of Justice Kennedy's concurring opinion as part of their proposed new definition of ''waters of the United States,'' including whether it is the controlling opinion from *Rapanos,* the application of the significant nexus standard to tributaries in addition to adjacent wetlands, and related topics. *See* 84 FR 4167, 4177. The agencies are evaluating comments submitted in response to that request and need not take positions on those questions to support or resolve the issues raised in this rulemaking.

[42] The agencies noted in 2015 ''that the vast majority of the nation's water features are located within 4,000 feet of a covered tributary, traditional navigable water, interstate water, or territorial sea.'' 2015 Rule Economic Analysis at 11. As such, the agencies' attempts to mitigate the expansive reach of (a)(8) waters through this distance limitation was illusory.

similarly situated waters in the entire point of entry watershed.'' *Id.* In contrast, ''[a] conclusion that significant nexus is lacking *may not be based on consideration of a subset of similarly situated waters* because under the significant nexus standard the inquiry is how the similarly situated waters in combination affect the integrity of the downstream water.'' *Id.* (emphasis added). In other words, under the 2015 Rule, a significant nexus inquiry for (a)(7) and (a)(8) waters may be inconclusive until *all* similarly situated waters across the entire single point of entry watershed are analyzed and it is determined that such features do not have a significant nexus, when considered in combination, to the nearest downstream primary water. The agencies are concerned that the potential requirement for an analysis of all broadly defined ''similarly situated waters in the region'' until the agencies can determine that a feature does not possess a significant nexus to a primary water ''raise[s] troubling questions regarding the Government's power to cast doubt on the full use and enjoyment of private property throughout the Nation.'' *Hawkes,* 136 S. Ct. 1807, 1812, 1816–17 (Kennedy, J., concurring). As a result, the agencies are concerned that the 2015 Rule potentially leaves ''people in the dark,'' *Sessions* v. *Dimaya,* No. 15–1498, 2018 U.S. LEXIS 2497, at *39, 42–43 (S. Ct. Apr. 17, 2018) (Gorsuch, J., concurring in part and concurring in judgment), about the jurisdictional status of individual isolated ponds and wetlands within their property boundaries until every last similarly situated feature within the watershed boundary of the nearest primary water is analyzed by the Federal government. The agencies find that these concerns provide further support for the agencies' decision to repeal the 2015 Rule.

In summary, the agencies conclude that the significant nexus test articulated in the 2015 Rule and the systemic problems associated with its use to justify the definition of ''tributary'' (which formed the baseline from which to extend the limits of ''adjacent'' waters and the scope of case-specific significant nexus analyses) resulted in a definition of ''waters of the United States'' that failed to respect the limits of the ''significant nexus'' standard articulated in *SWANCC* and Justice Kennedy's *Rapanos* concurrence. The agencies' conclusion is also supported by reasoning that has been adopted by various district courts reviewing requests for preliminary injunctions of the 2015 Rule and ruling on the merits of the 2015 Rule. The U.S. District Court for the District of North Dakota, for example, found that ''[t]he Rule . . . likely fails to meet [Justice Kennedy's significant nexus] standard'' and ''allows EPA regulation of waters that do not bear any effect on the 'chemical, physical, and biological integrity' of any navigable-in-fact water.'' *North Dakota* v. *EPA,* 127 F. Supp. 3d 1047, 1056 (D.N.D. 2015). And the U.S. District Court for the Southern District of Georgia found that multiple provisions in the 2015 Rule were inconsistent with Justice Kennedy's significant nexus standard, including the rule's ''tributary'' definition, which the court held extended federal CWA jurisdiction ''well beyond what is allowed under Justice Kennedy's interpretation of the CWA,'' and the rule's ''adjacent'' waters provision, which the court found ''could include 'remote' waters . . . that have only a 'speculative or insubstantial' effect on the quality of navigable in fact waters.'' *Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922, at *14, 17 (S.D. Ga. Aug. 21, 2019) (quoting *Rapanos,* 547 U.S. at 778–81 (Kennedy, J., concurring)). Further, as discussed in Section III.C.3, the agencies find that the 2015 Rule leads to similar unreasonable applications of the CWA that *SWANCC* and Justice Kennedy both sought to prevent. The agencies now conclude that the 2015 Rule was flawed due to the systemic misapplication of the significant nexus standard, and the agencies therefore repeal the 2015 Rule in its entirety to ''avoid the significant constitutional and federalism questions'' it raises. 531 U.S. at 174.

c. The 2015 Rule's Expansive Interpretation of the Significant Nexus Standard Failed To Give the Word ''Navigable'' in the CWA Sufficient Effect

By applying an expansive interpretation of the significant nexus standard within the definitions and treatment of ''tributaries,'' ''adjacent'' waters, and waters subject to a case-specific ''significant nexus'' test, the agencies now believe and conclude that the 2015 Rule did not give the word ''navigable'' within the phrase ''navigable waters'' sufficient effect. The CWA grants the agencies jurisdiction over ''navigable waters,'' 33 U.S.C. 1311(a), defined as ''the waters of the United States.'' *Id.* at 1362(7). ''Congress' separate definitional use of the phrase 'waters of the United States' [does not] constitute[ ] a basis for reading the term 'navigable waters' out of the statute.'' *SWANCC,* 531 U.S. at 172. Indeed, navigability was ''what Congress had in mind as its authority for enacting the CWA.'' *Id.*

As described in Section III.B.1, Congress intended to assert federal authority over more than just waters traditionally understood as navigable but rooted that authority in ''its commerce power over navigation.'' *Id.* at 168 n.3. Therefore, there must necessarily be a limit to that authority and to what waters are subject to federal jurisdiction. *See, e.g.,* 547 U.S. at 779 (Kennedy, J., concurring) (''[T]he word 'navigable' in the Act must be given some effect.''); *see also id.* at 734 (Scalia, J., plurality) (''As we noted in *SWANCC,* the traditional term 'navigable waters'—even though defined as 'the waters of the United States'—carries some of its original substance: '[I]t is one thing to give a word limited effect and quite another to give it no effect whatever.' 531 U.S., at 172.'').

The agencies find that in defining ''tributary,'' ''adjacent,'' ''neighboring,'' and ''significant nexus'' broadly so as to sweep within federal jurisdiction many ephemeral ''tributaries'' as defined in the 2015 Rule, certain remote ditches, and certain isolated ponds and wetlands that, like the isolated ponds and mudflats at issue in *SWANCC,* ''bear[ ] no evident connection to navigable-in-fact waters,'' 547 U.S. at 779 (Kennedy, J., concurring), the 2015 Rule did not give sufficient effect to the term ''navigable'' in the CWA. *See South Carolina* v. *Catawba Indian Tribe,* 476 U.S. 498, 510 n.22 (1986) (''It is our duty to give effect, if possible, to every clause and word of a statute[.]'' (quoting *United States* v. *Menasche,* 348 U.S. 528, 538–39 (1955)) (internal quotations omitted)). Many commenters expressed a similar concern. Other commenters asserted that the 2015 Rule did give sufficient effect to the term ''navigable.''

Justice Kennedy's concurring opinion in *Rapanos,* which the 2015 Rule sought to implement, recognized it is a ''central requirement'' of the Act that ''the word 'navigable' in 'navigable waters' be given some importance.'' 547 U.S at 778 (Kennedy, J., concurring). If the word ''navigable'' has any meaning, the CWA cannot be interpreted to ''permit federal regulation whenever wetlands lie along a ditch or drain, however remote and insubstantial, that eventually may flow into traditional navigable waters.'' *Id.* at 778–79 (Kennedy, J., concurring). Yet the agencies find that the 2015 Rule did just that in certain cases, including sweeping the *SWANCC* ponds and similarly-situated waters within federal purview. *See* Section III.C.1.a, *supra.* The agencies conclude, therefore, that the 2015 Rule did not give sufficient effect to the word ''navigable'' in the

phrase ''navigable waters'' in a manner consistent with *SWANCC,* Justice Kennedy's concurring opinion in *Rapanos,* or the text of the CWA.

d. Because the 2015 Rule Misinterpreted the Significant Nexus Standard, it Misapplied the Findings of the Connectivity Report To Assert Jurisdiction Over Waters Beyond the Limits of Federal Authority

The 2015 Rule relied on a scientific literature review—the Connectivity Report—to support exerting federal jurisdiction over certain waters. *See* 80 FR 37065 (''[T]he agencies interpret the scope of 'waters of the United States' protected under the CWA based on the information and conclusions in the [Connectivity] Report.''). The report notes that connectivity ''occur[s] on a continuum or gradient from highly connected to highly isolated,'' and ''[t]hese variations in the degree of connectivity are a critical consideration to the ecological integrity and sustainability of downstream waters.'' *Id.* at 37057. The conclusions in this report, while informative, cannot be dispositive in interpreting the statutory reach of ''waters of the United States.'' The definition of ''waters of the United States'' must be grounded in a legal analysis of the limits on CWA jurisdiction that Congress intended by use of the term ''navigable waters,'' and a faithful understanding and application of the limits expressed in Supreme Court opinions interpreting that term.

In its review of a draft version of the Connectivity Report, EPA's Science Advisory Board (''SAB'') noted, ''[s]patial proximity is one important determinant of the magnitude, frequency and duration of connections between wetlands and streams that will ultimately influence the fluxes of water, materials and biota between wetlands and downstream waters.'' [43] ''Wetlands that are situated alongside rivers and their tributaries are likely to be connected to those waters through the exchange of water, biota and chemicals. As the distance between a wetland and a flowing water system increases, these connections become less obvious.'' [44] The Connectivity Report also recognizes that ''areas that are closer to rivers and streams have a higher probability of being connected than areas farther away.'' Connectivity Report at ES–4.

Yet, as the SAB observed, ''[t]he Report is a science, not policy, document that was written to summarize the current understanding of connectivity or isolation of streams and wetlands relative to large water bodies such as rivers, lakes, estuaries, and oceans.'' [45] ''The SAB also recommended that the agencies clarify in the preamble to the final rule that 'significant nexus' is a legal term, not a scientific one.'' 80 FR 37065. And in issuing the 2015 Rule, the agencies stated, ''the science does not provide a precise point along the continuum at which waters provide only speculative or insubstantial functions to downstream waters.'' *Id.* at 37090. Although the agencies acknowledged that science cannot dictate where to draw the line of federal jurisdiction, *see, e.g.,* 80 FR 37060, notwithstanding that qualifier, the agencies relied on the Connectivity Report extensively in establishing the 2015 Rule's definition of ''waters of the United States.'' *See id.* at 37057 (''The [Connectivity] Report provides much of the technical basis for [the] rule.'').

In promulgating the 2015 Rule, the agencies stated that the science documented in the Connectivity Report showed that Justice Kennedy's significant nexus standard was satisfied by the rule's expansive definition of ''water of the United States.'' *See, e.g.,* 80 FR 37058 (''[T]ributaries' and 'adjacent' waters, are jurisdictional by rule, as defined, because the science *confirms* that they have a significant nexus to traditional navigable waters, interstate waters, or territorial seas.'' (emphasis added)). Yet, as described previously, the definition failed to properly implement the fundamental limits of Justice Kennedy's test. In doing so the agencies focused too heavily on the nexus component of the significant nexus test to define the scope of CWA jurisdiction without appropriate regard to the *significance* of that nexus. While this approach and the Connectivity Report correctly recognize that upstream waters are connected to downstream waters, the agencies now find that the approach failed to acknowledge that ''[a]bsent some measure of the significance of the connection for downstream water quality, this standard [is] too uncertain'' and ''mere hydrologic connection should not suffice in all cases; the connection may be too insubstantial for the hydrologic linkage to establish the required nexus with navigable waters as traditionally understood.'' *Rapanos,* 547 U.S. at 784–85 (Kennedy, J., concurring). By adopting an aggregated watershed-scale approach to CWA jurisdiction, as further described in Section III.C.1.b.i, the 2015 Rule interpreted too broadly a key element of Justice Kennedy's significant nexus standard and greatly increased the scope of federal regulation.

A number of commenters expressed the view that the agencies relied too heavily on scientific principles in interpreting ''significant nexus'' in the 2015 Rule and did not adequately consider the legal constraints on federal jurisdiction inherent in the CWA's statutory text and Supreme Court precedent. Commenters noted that the Connectivity Report did not provide the agencies with any ''bright lines'' as to where federal CWA jurisdiction begins and ends and that the report did not provide any guidance on how to apply Justice Kennedy's significant nexus test to a waterbody. Other commenters suggested that the agencies appropriately relied on the Connectivity Report and the SAB's review of its findings in developing the 2015 Rule's significant nexus standard. Several commenters, in fact, argued that the science underlying the Connectivity Report should drive the limits of federal jurisdiction under the CWA.

The agencies conclude that in establishing the limits of federal regulatory authority under the CWA in the 2015 Rule, the agencies placed too much emphasis on the information and conclusions of the Connectivity Report at the expense of the limits on federal jurisdiction reflected in the statutory text and decisions of the Supreme Court. According to the 2015 Rule, the Connectivity Report and the SAB review confirmed that:

> Tributary streams, including perennial, intermittent, and ephemeral streams, are chemically, physically, and biologically connected to downstream waters, and influence the integrity of downstream waters. Wetlands and open waters in floodplains and riparian areas are chemically, physically, and biologically connected with downstream waters and influence the ecological integrity of such waters. Non-floodplain wetlands and open waters provide many functions that benefit downstream water quality and ecological integrity, but their effects on downstream waters are difficult to assess based solely on the available science.

80 FR 37057. Thus, despite Justice Kennedy's description of the extent of ''[t]he deference owed the Corps' interpretation of the statute,'' 547 U.S. at 778–79 (Kennedy, J., concurring), the agencies concluded that the Connectivity Report supported a ''tributary'' definition that included certain ''remote and insubstantial'' channels ''that eventually may flow into traditional navigable waters,'' *id.* at 778, an ''adjacent'' waters definition that

[43] Science Advisory Board, U.S. EPA. Review of the EPA Water Body Connectivity Report at 60 (Oct. 17, 2014).

[44] *Id.* at 55.

[45] *Id.* at 2.

included all ''wetlands [and waters that] lie alongside'' such channels, *id.,* and a case-specific significant nexus test that applied to non-adjacent waters and wetlands, either alone or in combination, within 4,000 feet of those channels. These aspects of the 2015 Rule, at a minimum, created substantial tension with Justice Kennedy's opinion in *Rapanos.*

Of particular concern to the agencies today is the 2015 Rule's broad application of Justice Kennedy's phrase ''similarly situated lands in the region.'' As discussed in Section III.C.1.b.i, the agencies took an expansive reading of this phrase, in part based on ''one of the main conclusions of the [Connectivity Report] . . . that the incremental contributions of individual streams and wetlands are cumulative across entire watersheds, and their effects on downstream waters should be evaluated within the context of other streams and wetlands in that watershed.'' 80 FR 37066. Yet, Justice Kennedy observed in *Rapanos* that what constitutes a ''significant nexus'' is not a solely scientific question and that it cannot be determined by environmental effects alone. *See, e.g.,* 547 U.S. at 777–78 (noting that although ''[s]cientific evidence indicates that wetlands play a critical role in controlling and filtering runoff . . . *environmental concerns provide no reason to disregard limits in the statutory text*'' (citations omitted) (emphasis added)); *see also Rodriguez* v. *United States,* 480 U.S. 522 (1987) (''[N]o legislation pursues its purposes at all costs.''). The 2015 Rule's treatment of the phrase ''similarly situated'' to mean ''waters that function alike and are sufficiently close to function together in affecting downstream waters'' and ''in the region'' to mean ''the watershed that drains to the nearest'' primary water together expanded the potential jurisdictional purview of the Federal government to include the vast majority of the nation's waters and contravened the limiting nature of Justice Kennedy's description of the significant nexus standard. As a consequence, the 2015 Rule's aggregation method for purposes of its significant nexus inquiry ''raise[d] significant constitutional questions'' similar to the Corps' assertion of jurisdiction over the abandoned ponds at issue in *SWANCC. See* Section III.C.3, *infra* (addressing these constitutional questions in further detail).

The agencies also find that the 2015 Rule placed insufficient weight on the direction of the Court in *Riverside Bayview* regarding the limits of federal jurisdiction and instead relied heavily on the Connectivity Report to support its assertion of jurisdiction.[46] The 2015 Rule stated, ''it is the agencies' task to determine where along [the] gradient [of connectivity] to draw lines of jurisdiction under the CWA,'' 80 FR 37057, yet in establishing those lines, the agencies did not appropriately consider the *Riverside Bayview* Court's discussion regarding the limits of jurisdiction lying within the ''continuum'' or ''transition'' ''between open waters and dry land.'' 474 U.S. at 132. Instead, the agencies appeared to follow the advice of the SAB[47] and issued a definition of ''waters of the United States'' that went far beyond that continuum to reach physically disconnected waters and wetlands under categories (a)(7) and (a)(8).

2. The 2015 Rule Did Not Adequately Consider and Accord Due Weight to Clean Water Act Section 101(b)

When Congress passed the CWA in 1972, it established the objective ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' 33 U.S.C. 1251(a). In order to meet that objective, Congress provided a major role for the States in implementing the CWA and recognized the importance of preserving the States' independent authority and responsibility in this area. *See* 33 U.S.C 1251(b) and 1370. As the Supreme Court has explained, the ''Clean Water Act anticipates a *partnership* between the States and the Federal Government, animated by a *shared* objective: 'to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.' '' *Arkansas* v. *Oklahoma,* 503 U.S. 91, 101 (1992) (emphasis added).

The CWA balances the traditional power of States to regulate land and water resources within their borders with the need for federal water quality regulation to protect the ''navigable waters'' defined as ''the waters of the United States, including the territorial seas.'' 33 U.S.C. 1362(7). Section 101(b) of the Act establishes ''the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution'' and ''to plan the development and use . . . of land and water resources . . . . '' *Id.* at 1251(b). Congress also declared as a national policy that States manage the major construction grant program and implement the core permitting programs authorized by the statute, among other responsibilities. *Id.* The policy statement of 101(b) ''was included in the Act as enacted in 1972 . . . prior to the addition of the optional state administration program in the 1977 amendments. Thus, the policy plainly referred to something beyond the subsequently added state administration program of 33 U.S.C. 1344(g)–(l).'' 547 U.S. at 737 (Scalia, J., plurality) (citations omitted). Congress further added that ''[e]xcept as expressly provided in this [Act], nothing in this Act shall . . . be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.'' 33 U.S.C. 1370. The court in *Georgia* v. *Wheeler* also recognized the important balance between States and the Federal government that Congress prescribed in the CWA, explaining that ''[w]hile the CWA allows the federal government to regulate certain waters for the purposes of protecting the chemical, physical, and biological integrity of the nation's waters, Congress also included within that statute a provision which states that the policy of Congress is to 'recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources.' '' *Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922, at *22 (S.D. Ga. Aug. 21, 2019) (internal citation omitted).

The agencies must develop regulatory programs designed to ensure that the full statute is implemented as Congress intended. *See, e.g., Hibbs* v. *Winn,* 542 U.S. 88, 101 (2004) (''A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant''). This includes pursuing the overall ''objective'' of the CWA to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters,'' 33 U.S.C. 1251(a), while implementing the specific ''policy'' directives from Congress to preserve state authority over their own

[46] The agencies also note that the 2015 Rule was remanded back to the agencies because the final Connectivity Report, which served as the scientific foundation for the rule, was not made available to the public for review and comment. *See Texas* v. *EPA,* No. 3:15–cv–162, 2019 WL 2272464 (S.D. Tex. May 28, 2019).

[47] *See, e.g.,* 80 FR 37064, citing *SAB Consideration of the Adequacy of the Scientific and Technical Basis of the EPA's Proposed Rule titled* ''*Definition of Waters of the United States under the Clean Water Act,*'' U.S. EPA (2014) (In promulgating the 2015 Rule, the agencies noted that the SAB ''expressed support for the proposed rule's . . . inclusion of 'other waters' on a case-specific basis'' and that the SAB ''found it 'appropriate to define 'other waters' as waters of the United States on a case-by-case basis, either alone or in combination with similarly situated waters in the same region.' '').

land and water resources. *See id.* at 1251(b); *see also Webster's II, New Riverside University Dictionary* (1994) (defining ''policy'' as a ''plan or course of action, as of a government[,] designed to influence and determine decisions and actions;'' an ''objective'' is ''something worked toward or aspired to: Goal''). The agencies therefore must recognize a distinction between the specific word choices of Congress, including the need to develop regulatory programs that aim to accomplish the objective of the Act while implementing the specific policy directives of Congress. See Section III.B.1 for additional discussion of this language in the CWA.

In promulgating the 2015 Rule, the agencies conclude that they did not adequately consider and accord due weight to the policy directive of the Congress in section 101(b) of the Act. The 2015 Rule acknowledged the language contained in section 101(b) and the vital role States and Tribes play in the implementation and enforcement of the Act, 80 FR 37059, but it did not appropriately recognize the important policy of 101(b) to preserve the traditional power of States to regulate land and water resources within their borders or the utility and independent significance of the Act's non-regulatory programs.[48] In fact, the agencies failed to adequately acknowledge the meaning of perhaps the most important verb in 101(b), the direction to ''preserve'' existing State authority. That is, Congress recognized existing State authorities at the time it enacted the 1972 CWA amendments and directed the agencies to preserve and protect those authorities, which includes the authority to regulate certain waters as the States deem appropriate, without mandates from the Federal government. It is true that the agencies noted that ''States and federally-recognized tribes, consistent with the CWA, retain full authority to implement their own programs to more broadly and more fully protect the waters in their jurisdiction,'' *id.* at 37060, but the agencies did not include a discussion in the 2015 Rule preamble of the meaning and importance of section 101(b) in guiding the choices the agencies make in setting the outer bounds of CWA jurisdiction. Instead of considering this aspect of the 101(b) congressional policy directive, the agencies reduced the number of waters subject solely to State jurisdiction by broadening their interpretation of ''waters of the United States.'' Several commenters offered interpretations of section 101(b) of the Act similar to the interpretation that the agencies offered in the 2015 Rule and asserted that the import of section 101(b) is Congress' policy that States implement the Act and have authority to impose conditions that are more stringent than the conditions the agencies impose under the Act. As described above, however, the policy directive from Congress in section 101(b) is not so limited.

The agencies now conclude that, at a minimum, the 2015 Rule's case-specific significant nexus provisions stretched the bounds of federal jurisdiction to cover certain waters that more appropriately reside in the sole jurisdiction of States. In describing those provisions, the agencies stated that ''the 100-year floodplain and 4,000 foot boundaries in the rule will sufficiently capture for analysis those waters that are important to protect to achieve the goals of the Clean Water Act.'' 80 FR 37090; *see also id.* at 37091 (''[P]roviding for case-specific significant nexus analysis for waters that are not adjacent but within the 4,000 foot distance limit, as well as those within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas . . . will ensure protection of *the important waters* whose protection will advance the goals of the Clean Water Act . . . .'') (emphasis added). Such statements—and indeed naming the 2015 Rule the ''Clean Water Rule''—imply that waters that are not ''waters of the United States'' (*i.e.,* the subset of the ''Nation's waters'' subject solely to State and tribal authority) are *not* important to protect to meet the objective of the Act. In other words, when they finalized the 2015 Rule, the agencies believed the rule's definition of ''waters of the United States'' covered all waters necessary for regulation under the CWA in order to meet the objective of the Act in section 101(a), and in turn neglected to incorporate the policy of the Congress in section 101(b). And as the plurality warned in *Rapanos,* ''the expansive theory [of jurisdiction] advanced by the Corps, rather than 'preserv[ing] the primary rights and responsibilities of the States,' would have brought virtually all 'plan[ning of] the development and use . . . of land and water resources' by the States under federal control.'' *Rapanos,* 547 U.S. at 737 (Scalia, J., plurality). The 2015 Rule generated the same result, and the agencies now conclude that its definition was ''therefore an unlikely reading of the phrase 'the waters of the United States.'''' *Id.* The agencies' conclusion is consistent with the court's holding in *Georgia* v. *Wheeler* that the 2015 Rule inappropriately encroached on traditional state power. The court in that case found that the 2015 Rule increased the scope of federal jurisdiction ''to a significant degree'' and that this ''significant increase in jurisdiction takes land and water falling traditionally under the states' authority and transfers them to federal authority.'' *Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922, at *23 (S.D. Ga. Aug. 21, 2019) (footnote omitted).

Several commenters criticized the agencies for not articulating the precise limits that the agencies understand section 101(b) to impose. The agencies are not concluding in this rulemaking that section 101(b) of the Act establishes a precise line between waters that are subject to Federal and State regulation, on the one hand, and subject to State regulation only, on the other. Instead, they find that the 2015 Rule failed to adequately consider and accord due weight to the policy directive in section 101(b) and, as a result, asserted jurisdiction over certain waters that are more appropriately left solely in the jurisdiction of States. For example, as described in Section III.C.1.b.iii, the 2015 Rule's definition of ''adjacent'' established *per se* coverage of all waters and wetlands within the 100-year floodplain and within 1,500 feet of the ordinary high water mark of a primary water, jurisdictional impoundment, or tributary. As a result, the rule extended federal jurisdiction to certain isolated ponds, wetlands, and ditches categorically simply because they might have a hydrologic connection with such waters only during an infrequent storm event. Further, the agencies find that the policy directive from the Congress in section 101(b) indicates that certain types of isolated waters are more appropriately left solely under the jurisdiction of States, including those waters the Supreme Court found beyond the statute's reach in *SWANCC* and *Rapanos.* Leaving these types of waters in the sole jurisdiction of States will give due regard to the CWA's numerous non-regulatory programs designed to protect and restore the Nation's waters, not just its navigable waters, the utility of which would be diminished if the ''vast majority''[49] of the Nation's waters are subject to federal purview under the 2015 Rule.

Finally, the 2015 Rule upset the Federal-State balance of the Act by

[48] The majority of the agencies' discussion of section 101(b) in the preamble to the final 2015 Rule focused on the ''particular importance'' of States and Tribes administering the CWA permitting programs. 80 FR 37059.

[49] 2015 Rule Economic Analysis at 11.

''mistaken[ly] . . . assum[ing] . . . that whatever might appear to further the statute's primary objective must be the law.'' *Henson* v. *Santander Consumer USA Inc.,* 137 S. Ct. 1718, 1725 (2017); *see also Rapanos,* 547 U.S. at 755–56 (Scalia, J., plurality) (''[C]lean water is not the *only* purpose of the statute. So is the preservation of primary State responsibility for ordinary land-use decisions. 33 U.S.C. 1251(b).'') (original emphasis). Several commenters emphasized the importance of the objective in section 101(a) to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' and asserted that the policy directive in section 101(b) does not supersede that objective. The agencies recognize the importance of the objective in section 101(a), but they also must recognize the specific policy directives from Congress in section 101(b).[50] As the Supreme Court has explained, ''an administrative agency's power to regulate in the public interest must always be grounded in a valid grant of authority from Congress,'' and ''in [its] anxiety to effectuate the congressional purpose,'' an agency ''must take care not to extend the scope of the statute beyond the point where Congress indicated it would stop.'' *See FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 161 (2000) (citations omitted).

The agencies conclude that the 2015 Rule did not fully recognize the ''partnership between the States and the Federal Government'' in meeting the ''shared objective'' of the Act. *Arkansas* v. *Oklahoma,* 503 U.S. 91, 101 (1992); *see also Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43 (1983) (''Normally, an agency rule would be arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem[.]''). As discussed in more detail below, by over-emphasizing the importance of CWA section 101(a) while not adequately considering and according due weight to section 101(b), the agencies extended federal jurisdiction over waters that ''raise[d] significant constitutional questions,'' 531 U.S. at 173, and ''intru[ded] into traditional state authority'' without ''a 'clear and manifest' statement from Congress.'' 547 U.S. at 738 (Scalia, J., plurality) (quoting *BFP* v. *Resolution Trust Corporation,* 511 U.S. 531, 544 (1994)).

3. In Repealing the 2015 Rule, the Agencies Seek To Avoid Constitutional Questions Relating to the Scope of CWA Authority

The agencies now find that the 2015 Rule raised significant questions of Commerce Clause authority and encroached on traditional State land-use regulation without a clear statement from Congress. As explained in Section III.B.2, the Supreme Court has stated that ''[w]here an administrative interpretation of a statute invokes the outer limits of Congress' power, we expect a clear indication that Congress intended that result.'' *SWANCC,* 531 U.S. at 172–73. The Court has further stated that this is particularly true ''where the administrative interpretation alters the federal-state framework by permitting federal encroachment upon a traditional state power.'' *Id.* at 173; *see also Atascadero State Hospital* v. *Scanlon,* 473 U.S. 234, 242–43 (1985) (''If Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute[.]' ''); *Gregory* v. *Ashcroft,* 501 U.S. 452, 460–61 (1991) (''the plain statement rule . . . acknowledg[es] that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere'').

Congress relied on the broad authority of the Commerce Clause when it enacted the CWA, but it limited the exercise of that authority to its power over navigation. *SWANCC,* 531 U.S. at 168 n.3. In doing so, the Supreme Court has explained that Congress specifically sought to avoid ''federal encroachment upon a traditional state power.'' *Id.* at 172. The Court in *SWANCC* found that ''[r]ather than expressing a desire to readjust the federal-state balance in this manner, Congress chose [in the CWA] to 'recognize, preserve, and protect the primary responsibilities and rights of States . . . to plan the development and use . . . of land and water resources . . .'' *Id.* at 174 (quoting 33 U.S.C. 1251(b)). The Court found no clear statement from Congress that it had intended to permit federal encroachment on traditional State power and construed the CWA to avoid the significant constitutional questions related to the scope of federal authority authorized therein. *Id.* Similarly, the plurality in *Rapanos* stated that ''[w]e ordinarily expect a 'clear and manifest' statement from Congress to authorize an unprecedented intrusion into traditional State authority. The phrase 'the waters of the United States' hardly qualifies.'' *Rapanos,* 547 U.S. at 737–38 (Scalia, J., plurality) (citations omitted).

In *SWANCC,* the Court rejected the argument that the use of nonnavigable, isolated, intrastate waters by migratory birds fell within the power of Congress to regulate activities that in the aggregate have a substantial effect on interstate commerce, or that the targeted use of the ponds at issue as a municipal landfill was commercial in nature. 531 U.S. at 173. Such arguments, the Court noted, ''raise[d] significant constitutional questions,'' *id.,* and ''would result in a significant impingement of the States' traditional and primary power over land and water use.'' *Id.* at 174. Similarly, in *Rapanos,* the plurality applied the clear statement rule when it rejected the Corps' attempt to extend CWA jurisdiction to the waters at issue in that case. 547 U.S. at 737–38 (Scalia, J., plurality). The plurality concluded that any attempt by the Federal government to regulate such water would not only be ''an unprecedented intrusion into traditional state authority,'' but would also ''stretch[ ] the outer limits of Congress' commerce power and raise[ ] difficult questions about the ultimate scope of that power.'' *Id.* at 738.

As described in Section III.C.1, and as several commenters noted, the 2015 Rule extended federal jurisdiction to waters similar to those at issue in *SWANCC.* As a result, the agencies conclude that, like the application of the federal rule giving rise to the *SWANCC* decision, the 2015 Rule pressed the outer bounds of Congress' Commerce Clause authority and encroached on traditional State rights without a clear statement from Congress. Under the 2015 Rule, certain nonnavigable, isolated, intrastate waters like those at issue in *SWANCC* would be deemed federally jurisdictional as ''adjacent'' waters or other waters found on a case-specific basis to have a ''significant nexus'' with primary waters. The agencies' expansive interpretation of Justice Kennedy's significant nexus standard, and in particular the agencies' broad interpretation of the phrase ''similarly situated lands in the region,'' resulted in a definition of ''waters of the United States'' that included certain isolated ponds and wetlands nearly a mile from the nearest ephemeral ''tributary'' or that connect only once in a century to waters more traditionally understood as navigable, and thereby pressed the boundaries of federal jurisdiction.

[50] *See, e.g.,* Transcript of Oral Argument at 58, *Rapanos* v. *United States and Carabell* v. *United States,* 547 U.S. 715 (2006) (Nos. 04–1034, 04–1384). (Quoting Justice Kennedy, ''[T]he Congress in 1972 . . . said it's a statement of policy to reserve to the States the power and the responsibility to plan land use and water resources. And under your definition, I just see that we're giving no scope at all to that clear statement of the congressional policy.'').

The 2015 Rule reached so far into the landscape that, as commenters noted, it is difficult for private property owners to know whether their lands are subject to federal jurisdiction. This is particularly evident in the agencies' discussion of the (a)(7) and (a)(8) categories. For example, the agencies noted in 2015 that it is possible to assert federal jurisdiction over a single wetland feature if the agencies determine that a subset of similarly situated waters in the watershed have, in combination, a significant nexus to the primary waters. But the agencies expressly rejected the ability to determine that a single wetland feature is *not* subject to jurisdiction unless and until all similarly situated waters in the watershed of the nearest primary watershed are evaluated. *See* 80 FR 37094–95 (''A conclusion that significant nexus is lacking may not be based on consideration of a subset of similarly situated waters because under the significant nexus standard the inquiry is how the similarly situated waters in combination affect the integrity of downstream waters.''). Effectively, under the 2015 Rule, a single landowner with an isolated wetland located within a large watershed could not receive a negative approved jurisdictional determination unless the Federal government is satisfied that all ''similarly situated'' wetlands within that watershed do not significantly affect the integrity of the downstream primary water.

This expansive and uncertain cloud of potential federal regulation over all or potentially all water features within an entire watershed raises the very concerns that the constitutional avoidance doctrine and clear statement rule are designed to address. As Justice Kennedy observed in 2016, ''the reach and systemic consequences of Clean Water Act jurisdiction remain a cause for concern'' and ''continues to raise troubling questions regarding the Government's power to cast doubt on the full use and enjoyment of private property throughout the Nation.'' *Hawkes,* 136 S. Ct. at 1816–17 (Kennedy, J., concurring) (also describing the Act's reach as ''ominous''). The agencies conclude that the 2015 Rule amplified those concerns by misapplying the significant nexus standard established in *SWANCC* and further described by Justice Kennedy in *Rapanos.* Just as Justice Kennedy wrote in summary of *SWANCC,* the 2015 Rule likewise ''would raise significant questions of Commerce Clause authority and encroach on traditional state land-use regulation,'' *Rapanos,* 547 U.S. at 776 (Kennedy, J., concurring), while generating ''problematic applications of the statute.'' *Id.* at 783. The agencies' conclusion is consistent with the court's holding in *Georgia* v. *Wheeler.* There, the court found that ''like the majority in *SWANCC* and the plurality in *Rapanos* concluded, the [2015] Rule's vast expansion of jurisdiction over waters and land traditionally within the states' regulatory authority cannot stand absent a clear statement from Congress in the CWA. Since no such statement has been made, the [2015 Rule] is unlawful under the CWA.'' *Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922, at *23 (S.D. Ga. Aug. 21, 2019). To avoid questionable applications of the Act and a ''theory of jurisdiction that presses the envelope of constitutional validity,'' 547 U.S. at 738 (Scalia, J., plurality), the agencies repeal the 2015 Rule in its entirety.

4. The Distance-Based Limitations Were Not a Logical Outgrowth of the Proposed Rule and Were Not Supported by an Adequate Record

The agencies inserted the distance limitations into the final 2015 Rule for the stated purpose of increasing CWA program predictability and consistency and reducing the instances in which permitting authorities would need to make jurisdictional determinations on a case-specific basis. 80 FR 37054. These distance limitations therefore were important in achieving the stated purposes of the rulemaking and were employed in two specific ways. First, the 2015 Rule defined ''neighboring'' to encompass all waters located within 100 feet of the ordinary high water mark of a category (a)(1) through (a)(5) ''jurisdictional by rule'' water; all waters located within the 100-year floodplain of a category (a)(1) through (a)(5) ''jurisdictional by rule'' water and not more than 1,500 feet from the ordinary high water mark of such water; all waters located within 1,500 feet of the high tide line of a category (a)(1) through (a)(3) ''jurisdictional by rule'' water; and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. 80 FR 37105. The agencies' proposed rule did not include these distance limitations in the definition of ''adjacent'' or ''neighboring.'' *See* 79 FR 22263. By defining ''neighboring'' within (a)(6) ''adjacent'' waters in the final rule to include these distance limitations, however, the 2015 Rule categorically defined waters within large swaths of land within the distance limits as jurisdictional. Second, the 2015 Rule applied distance limitations when identifying certain waters that would be subject to a case-specific analysis to determine if they had a ''significant nexus'' to a water that is jurisdictional. 80 FR 37104–05. Waters in section (a)(8) of the 2015 Rule were subject to a case-by-case jurisdictional determination if they are located within the 100-year floodplain of any category (a)(1) through (a)(3) ''jurisdictional by rule'' water or within 4,000 feet of the high tide line or ordinary high water mark of any category (a)(1) through (a)(5) ''jurisdictional by rule'' water. *Id.* These quantitative measures did not appear in the proposed rule nor did they have adequate record support.

In the SNPRM, the agencies requested public comment regarding the distance-based limitations in the 2015 Rule. 83 FR 32241. The agencies ''solicit[ed] comment on whether these distance-based limitations mitigated or affected the agencies' change in interpretation of the similarly situated waters in the 2015 Rule.'' *Id.* The SNPRM also noted ''the concerns raised by some commenters and the federal courts,'' and that ''the agencies have reviewed data previously relied upon to conclude that the 2015 Rule would have no or 'marginal at most' impacts on jurisdictional determinations.'' *Id.* at 32243. The agencies thus specifically ''solicit[ed] comment on whether the agencies appropriately characterized or estimated the potential scope of CWA jurisdiction that could change under the 2015 Rule, including whether the documents supporting the 2015 Rule appropriately considered the data relevant to and were clear in that assessment.'' *Id.* Furthermore, the agencies sought comment on ''any other issues that may be relevant to the agencies' consideration of whether to repeal the 2015 Rule, such as whether any potential procedural deficiencies limited effective public participation in the development of the 2015 Rule.'' *Id.* at 32249.

The agencies received a number of comments in response to the NPRM and SNPRM regarding the distance-based limitations in the 2015 Rule. While some commenters suggested that the 2015 Rule's distance-based limitations were adequately supported and represented a permissible exercise of agency experience and expertise, other commenters asserted that the distance-based limitations were arbitrary and lacked support in the administrative record for the 2015 Rule. Multiple commenters also expressed concern that the public did not have an opportunity to comment on the distance limitations used in the 2015 Rule and argued that those specific measures were not a logical outgrowth of the proposal. Other commenters disagreed that the 2015

Rule was not a logical outgrowth of the proposal and suggested that the agencies had provided adequate notice of the use of distance limitations in the final rule.

After the public comment period on the SNPRM closed, the U.S. District Court for the Southern District of Texas remanded the 2015 Rule to the agencies for failing to comply with the APA, and the U.S. District Court for the Southern District of Georgia remanded the 2015 Rule to the agencies after identifying substantive and procedural errors with respect to numerous provisions, including the rule's distance limitations. In response to these remands, this final rule addresses many of the errors identified by those courts as well as the concerns raised by some commenters regarding the distance-based limitations used in the 2015 Rule.

a. The Distance-Based Limitations Were Not a Logical Outgrowth of the Proposed Rule

The agencies are aware that litigants challenging the 2015 Rule alleged various APA deficiencies, including allegations that the distance-based limitations were inserted into the final rule without adequate notice and that they were not a logical outgrowth of the proposal. The agencies recognize that the U.S. District Court for the Southern District of Texas and the U.S. District Court for the Southern District of Georgia held that the distance-based limitations in the final rule were not a logical outgrowth of the proposal in violation of the APA's public notice and comment requirements. *See Texas* v. *EPA,* No. 15–cv–162, 2019 WL 2272464 (S.D. Tex. May 28, 2019); *Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922, at *23 (S.D. Ga. Aug. 21, 2019). The Southern District of Texas found this error ''significant'' because the specific distance-based limitations ''alter[ed] the jurisdictional scope of the Act.'' *Texas,* 2019 WL 2272464, at *5. The agencies recognize that the Federal government, in prior briefing in *Texas, Georgia,* and other cases, defended the procedural steps the agencies took to develop and support the 2015 Rule. Having considered all of the public comments and relevant litigation positions, and the decisions of the Southern District of Texas and the Southern District of Georgia on related arguments, the agencies now agree with the reasoning of the Southern District of Texas and the Southern District of Georgia and conclude that the proposal for the 2015 Rule did not provide adequate notice of the specific distance-based limitations that appeared for the first time in the final rule. The agencies should have sought public comment on the distance-based limitations before including them in the final rule.

b. The Distance-Based Limitations Were Not Supported by an Adequate Record

The agencies are aware that litigants challenging the 2015 Rule alleged additional APA deficiencies, such as the lack of record support for the distance-based limitations inserted into the final rule without adequate notice. The agencies also recognize that the U.S. District Court for the Southern District of Georgia held that several provisions in the 2015 Rule, including certain distance-based limitations, were arbitrary and capricious in violation of the APA. *Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922, at *29 (S.D. Ga. Aug. 21, 2019). Several commenters on the proposed repeal of the 2015 Rule raised similar concerns, arguing that the 2015 Rule was arbitrary and capricious because of the lack of record support for those limitations. Having considered the public comments and relevant litigation positions, the decisions of the Southern District of Texas and Southern District of Georgia, and other decisions staying or enjoining the 2015 Rule, the agencies now conclude that the record for the 2015 Rule did not contain sufficient record support for the distance-based limitations that appeared for the first time in the final rule.

i. The 100-Year Floodplain Limitation in (a)(6) and (a)(8) Lacked Adequate Record Support

In the record for the 2015 Rule, the agencies included information supporting the conclusion that certain waters within a floodplain or riparian area have a connection to downstream waters. For example, the agencies stated that ''[t]he body of literature documenting connectivity and downstream effects was most abundant for perennial and intermittent streams, and for riparian/floodplain wetlands.'' 2015 TSD at 104; *see also id.* at 350. The agencies concluded that ''science is clear that wetlands and open waters in riparian areas individually and cumulatively can have a significant effect on the chemical, physical, or biological integrity of downstream waters.'' 80 FR 37089. The agencies attempted to substantiate the addition of the 100-year floodplain interval on these general scientific conclusions and their desire to ''add the clarity and predictability that some commenters requested'' to the definition of ''neighboring.'' 2015 TSD at 300. However, upon review of the record supporting the distance limitations in the 2015 Rule, the agencies now conclude that the record did not include adequate support for the specific floodplain interval—the *100-year* floodplain—included in the final rule, even though the agencies understood that ''identifying the 100-year floodplain is an important aspect of establishing jurisdiction under the rule.'' 80 FR 37081. The agencies' conclusion is consistent with the finding of the U.S. District Court for the Southern District of Georgia that ''the [2015] Rule's use of the 100-year floodplain based on FEMA flood maps to define adjacent and case-by-case waters is arbitrary and capricious.'' *Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922, at *30 (S.D. Ga. Aug. 21, 2019).

In the proposed rule, the agencies referenced the 100-year floodplain in just one passage, stating:

> It should be noted that ''floodplain'' as defined in today's proposed rule does not necessarily equate to the 100-year floodplain as defined by the Federal Emergency Management Agency (FEMA). However, the FEMA defined floodplain may often coincide with the current definition proposed in this rule. Flood insurance rate maps are based on the probability of a flood event occurring (*e.g.,* 100-year floods have a 1% probability of occurring in a given year or 500 year-floods have a 0.2% probability of occurring in a particular year). *Flood insurance rate maps are not based on an ecological definition of the term ''floodplain,'' and therefore may not be appropriate for identifying adjacent wetlands and waters for the purposes of CWA jurisdiction.*

79 FR 22236 (emphasis added). Notwithstanding these important limitations identified in the proposal, in the final rule, the agencies relied on the availability of FEMA flood insurance rate maps depicting 100-year floodplains to substantiate the use of that interval. 80 FR 37083 (''[T]he agencies chose the 100-year floodplain in part because FEMA and NRCS together have generally mapped large portions of the United States, and these maps are publicly available, well-known and well-understood.''). While the agencies acknowledged the limited practical import of these maps for setting a floodplain interval in the rule, given that ''much of the United States has not been mapped by FEMA and, in some cases, a particular map may be out of date and may not accurately represent existing circumstances on the ground,'' they did not grapple with these limitations. 80 FR 37081. In explaining its finding that the agencies' use of the 100-year floodplain to define ''adjacent'' and ''case-by-case'' jurisdictional waters in the 2015 Rule was arbitrary and capricious, the U.S. District Court for the Southern District of Georgia similarly noted the deficiencies in the FEMA floodplain maps, stating that ''the

Agencies' justification for the 100-year floodplain interval was based on an incomplete and in some cases inaccurate flood-map scheme.'' *Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922, at *30 (S.D. Ga. Aug. 21, 2019).

Moreover, the agencies did not adequately explain or provide adequate record support for why the agencies believed that the 100-year floodplain interval was more appropriate than another floodplain interval—for instance, the 10-year floodplain, 50-year floodplain, or 500-year floodplain—in the definition of ''neighboring'' for (a)(6) and in (a)(8). In the proposal, the agencies indicated that they were considering a more-frequent flood recurrence interval than the 100-year flood (and, in turn, a typically smaller floodplain area than the 100-year floodplain) to implement the proposed ''floodplain'' definition. 79 FR 22209 (''When determining whether a water is located in a floodplain, the agencies will use best professional judgment to determine which flood interval to use (*for example, 10 to 20 year flood interval zone*).'' (emphasis added)). Upon review of the record, the agencies now acknowledge that they did not materially explain or substantiate selection of the 100-year flood interval over, for example, the 10- to 20-year flood interval, or any other interval. Additionally, although the agencies' technical support document for the 2015 Rule alluded to ''the scientific literature, the agencies' technical expertise and experience'' as supporting the inclusion of the 100-year floodplain, 2015 TSD at 301, the agencies provided no further explanation for why the 100-year floodplain and not another floodplain interval was appropriate. Nor did the agencies adequately describe why such an interval was appropriate for setting the threshold for *per se* jurisdictional coverage as a ''navigable water,'' rather than a case-specific coverage. Using a 100-year floodplain interval instead of a 10-year or 50-year interval would typically subject the waters and wetlands within a larger landmass to *per se* regulation. The Southern District of Georgia similarly found that ''[w]hile the [2015] Rule provides reasons for using floodplains generally to define jurisdiction, it does not provide any other basis for choosing a 100-year interval as opposed to a different interval (such as a 50-year or 200-year floodplain).'' *Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922, at *30 (S.D. Ga. Aug. 21, 2019).

The agencies' conclusion today echoes court decisions that have reviewed the 2015 Rule on the merits and at a preliminary stage. *See, e.g., Id.* at *30; *In re EPA,* 803 F.3d at 807 (''Even assuming, for present purposes, as the parties do, that Justice Kennedy's opinion in *Rapanos* represents the best instruction on the permissible parameters of 'waters of the United States' as used in the Clean Water Act, it is far from clear that the new Rule's distance limitations are harmonious with the instruction.'').

ii. The 1,500 Foot Distance Limitation From the Ordinary High Water Mark of an (a)(1)–(a)(5) Water in (a)(6) Lacked Adequate Record Support

In the 2015 Rule, the agencies concluded as a general matter that physical proximity between two waters was a critical—if not the most critical—factor to determine whether those two waters had a nexus. ''The science is clear that a water's proximity to downstream waters influences its impact on those waters. The Science Report states, '[s]patial proximity is one important determinant of the magnitude, frequency and duration of connections between wetlands and streams that will ultimately influence the fluxes of water, materials and biota between wetlands and downstream waters.' Generally, waters that are closer to a jurisdictional water are more likely to be connected to that water than waters that are farther away.'' 80 FR 37089 (quoting the Connectivity Report at ES–11). These conclusions formed the principal record basis for the inclusion of a distance limitation in the definition of ''neighboring.'' The agencies stated 1,500 feet from the ordinary high water mark of an (a)(1) through (a)(5) water and within the 100-year floodplain of such waters would be categorically jurisdictional ''to protect vitally important waters while at the same time providing a practical and implementable rule.'' 2015 TSD at 351. However, the agencies now acknowledge that they did not provide sufficient record support or an adequate explanation for selecting 1,500 feet, as compared to another distance, from the ordinary high water mark of an (a)(1) through (a)(5) water, 1,500 feet from the high tide line of a category (a)(1) through (a)(3) ''jurisdictional by rule'' water, or 1,500 feet from the ordinary high water mark of the Great Lakes as the boundary within which all wetlands and waters would be jurisdictional categorically. Indeed, the agencies did not explain why the 1,500-foot distance, as compared to 500 feet, 1,000 feet, or another distance, was the appropriate demarcation between categorically jurisdictional waters and those waters that could be jurisdictional on a case-specific basis under the 2015 Rule. The agencies thereby subjected waters and wetlands within a larger landmass to *per se* regulation compared to other smaller distances that may have been selected. For these reasons, the agencies conclude that this distance limitation in the 2015 Rule lacked adequate record support. The agencies' conclusion is consistent with the U.S. District Court for the Southern District of Georgia's holding that ''the 1,500-foot limit for adjacent waters is arbitrary and capricious because the Agencies did not give reasons beyond mere conclusory statements for why this limit was selected'' and that ''the Agencies failed to give specific reasons grounded in science and the significant-nexus analysis under the CWA for why this [1,500-foot] limit was chosen as opposed to any other distance.'' *Georgia* v. *Wheeler,* No. 2:15–cv–079, 2019 WL 3949922, at *30 (S.D. Ga. Aug. 21, 2019). In concluding that the 1,500-foot distance limitation in the 2015 Rule lacked adequate record support, the agencies are not modifying their inherent rulemaking authority to draw a line between jurisdictional and non-jurisdictional waters on the ''continuum'' ''between open waters and dry land.'' *Riverside Bayview,* 474 U.S. at 132. Rather, the agencies are simply acknowledging that their prior rulemaking did not include sufficient record support and justification to adequately satisfy the procedural mandates of the APA.

iii. The 4,000-Foot Distance Limitation From the High Tide Line or Ordinary High Water Mark of Any (a)(1) Through (a)(5) Water in (a)(8) Lacked Adequate Record Support

For waters that were not jurisdictional categorically under the 2015 Rule, the rule required a case-specific significant nexus analysis if those waters are within 4,000 feet of the high tide line or ordinary high water mark of any (a)(1) through (a)(5) water. The agencies supported their selection of the 4,000-foot outer boundary with general statements about the science, the goals of the Act, and administrative convenience. *See* 2015 TSD at 358 (''[D]ue to the many functions that waters located within 4,000 feet of the high tide line of a traditional navigable water or the territorial seas provide and their often close connections to the surrounding navigable in fact waters, science supports the agencies' determination that such waters are rightfully evaluated on a case-specific basis for significant nexus to a traditional navigable water or the

territorial seas.''); *see also id.* at 357 (stating that the agencies concluded that this limitation would ''sufficiently capture for analysis those waters that are important to protect to achieve the goals of the Clean Water Act''). The agencies also stated that, in their experience, ''the vast majority of waters where a significant nexus has been found, and which are therefore important to protect to achieve the goals of the Act, are located within the 4,000 foot boundary.'' 80 FR 37089; *see also* 2015 EA/FONSI at 22–23 (''[T]he vast majority of wetlands with a significant nexus are located within the 4,000 foot boundary.''). Upon reconsideration of this part of the 2015 Rule, the agencies now conclude that they did not provide an adequate record basis or adequate explanation for the selection of the 4,000-foot distance limitation in (a)(8). Indeed, the agencies provided no explanation for why 4,000 feet—and not another distance closer to or farther from a category (a)(1) through (a)(5) water—is the appropriate limitation for case-specific jurisdictional determinations. The agencies also provided insufficient explanation for how they determined that the vast majority of waters where a significant nexus has been found are located within the 4,000 foot boundary, citing in subsequent litigation only to general statements about the agencies' experience in conducting jurisdictional determinations and an analysis of 199 jurisdictional determinations [51] that was not made available for public review and comment.[52] The agencies now conclude that this distance limitation was procedurally deficient and based on an insufficient record.

iv. The Agencies Conclude the Lack of Adequate Record Support for the Distance Limitations Warrants Repeal

The agencies conclude that the procedural errors and lack of adequate record support associated with the distance-based limitations described in this section are a sufficient basis, standing alone, to warrant repeal of the 2015 Rule. The distance limitations were a central aspect of the 2015 Rule, and necessary for the rule to accomplish its goal of increasing consistency and predictability. The agencies have determined that the notice and record deficiencies associated with the distance limitations are fundamental flaws in central provisions of the 2015 Rule, and thus the agencies have concluded that it would not be appropriate to remediate these errors merely by removing the unsupported limitations, as this approach would not maintain consistency with the agencies' stated purposes and findings in the 2015 Rule. The agencies are considering the possible use of distance limitations in the separate rulemaking to establish a proposed revised definition of ''waters of the United States.'' *See, e.g.,* 84 FR 4189 (requesting comment on potential interpretations of adjacency, such as including a distance limit to establish the boundaries between Federal and State waters). Pending any final action on the separate rulemaking, the agencies conclude that this final rule will provide greater certainty by reinstating nationwide a longstanding regulatory framework that is familiar to and well-understood by the agencies, States, Tribes, local governments, regulated entities, and the public. For these reasons, and in response to the remand of the 2015 Rule from the U.S. District Court for the Southern District of Texas, including its concern that the procedural errors altered the scope of CWA jurisdiction, and the remand of the U.S. District Court for the Southern District of Georgia, including its concerns with the substantive and procedural adequacy of the distance-based limitations in the final rule, the agencies repeal the 2015 Rule.

In summary, the deficiencies of the 2015 Rule stem in part from the agencies' application of an overly broad significant nexus standard and their inadequate consideration of section 101(b) of the Act in developing the 2015 Rule. In particular, the agencies find that the broad interpretation of Justice Kennedy's significant nexus standard adopted in the 2015 Rule was a foundational error that propagated throughout the 2015 Rule, misinforming the rule's definitions of ''significant nexus,'' ''similarly situated,'' ''in the region,'' ''tributary,'' ''adjacent,'' and ''neighboring.'' As a result, these flaws pervaded the 2015 Rule's entire structure and scope and resulted in a definition of ''waters of the United States'' that covered waters outside the limits on federal CWA jurisdiction intended by Congress and reflected in Supreme Court cases, in addition to raising significant constitutional questions. The agencies have determined that the substantial problems that are discussed throughout Section III, when considered collectively in the context of the 2015 Rule, were both fundamental and systemic and cannot be addressed individually. Instead, the agencies conclude that the 2015 Rule must be repealed in its entirety.

IV. Basis for Restoring the Pre-Existing Regulations

In the NPRM and SNPRM, the agencies proposed to recodify the pre-2015 regulations to provide regulatory certainty for the agencies, their co-regulators, regulated entities, and the public. *See, e.g.,* 82 FR 34899; 83 FR 32237. The agencies explained that this rulemaking was ''intended to ensure certainty as to the scope of CWA jurisdiction on an interim basis as the agencies proceed to engage in . . . [a] substantive review of the appropriate scope of 'waters of the United States.' ''

[51] U.S. EPA. Supporting Documentation: Analysis of Jurisdictional Determinations for Economic Analysis and Rule (Docket ID: EPA–HQ–OW–2011–0880–20877), *available at https://www.regulations.gov/document?D=EPA-HQ-OW-2011-0880-20877.*

[52] In the SNPRM, the agencies described and sought comment on the 199 JD analysis and six case studies drawn from it that were analyzed as part of the 2015 rulemaking. 83 FR 32244–45. The 199 JD analysis concluded that, of the JDs analyzed, ''four sites included wetlands or waters that are located further than 4,000 feet from a jurisdictional tributary,'' two of which were jurisdictional under the pre-existing regulatory regime. The agencies also concluded that all four of these sites would ''not be jurisdictional'' under the 2015 Rule. Upon further review of the 199 JD analysis and the public comments received, the agencies now conclude that any reliance on the 199 JD analysis to support setting a distance limit of 4,000 feet was misplaced and provided an insufficient record basis for this limitation. First, the analysis considered only one distance limit: 4,000 feet. It made no attempt to determine the change in jurisdiction that would result if a different numeric limitation had been selected or to explain why 4,000 feet was more appropriate than another numeric limitation (*e.g.,* 3,000 feet) for capturing the majority of waters likely to possess a significant nexus. Second, the analysis did not involve performing a case-specific review of jurisdiction under the 2015 Rule, but rather entailed applying the 2015 Rule's parameters to facts contained in existing jurisdictional determinations conducted under the pre-existing regulatory regime. The agencies now conclude that this approach limits the utility of this analysis for determining appropriate distance limits under the criteria of the 2015 Rule. Third, the agencies considered only the change in jurisdiction of waters *beyond 4,000 feet,* even though the analysis contained certain examples where the agencies concluded that the 2015 Rule likely modified jurisdiction over waters *within 4,000 feet* that were deemed not jurisdictional under the pre-existing regulatory regime. *See* AR–20877 at 2 (2004–001914); *id.* (LRC–2015–31); *id.* (LRE–1998–1170040–A14); *id.* at 3 (MVM–2014–460); *id.* at 4 (NAE–2012–1813); *id.* (NAO–2014–2269). The agencies did not explain the importance, if any, of the estimated increase in jurisdiction among these six JDs as part of using this analysis. Lastly, while the agencies explained how this analysis was conducted, the agencies did not fully explain how they used or relied upon this analysis. To be sure, in its brief filed in the U.S. Court of Appeals for the Sixth Circuit, the United States stated that ''Based on [the 199 JD] analysis and their general experience implementing the Act since *Rapanos,* the Agencies concluded that setting a distance limit of 4,000 feet would encompass those waters that are most likely to have a significant nexus while also providing the certainty sought by the public.'' Br. at 123. But the agencies did not provide an adequate explanation as to how they used or relied upon this analysis in the 2015 Rule's preamble, technical support document, response to comments document, or economic analysis.

82 FR 34901. The agencies expressly sought comment on whether recodifying the prior regulations would provide for greater regulatory certainty, *see* 83 FR 32240, and also solicited comment on ''whether it is desirable and appropriate to re-codify [the pre-existing regulations] as an interim first step pending a substantive rulemaking to reconsider the definition of 'waters of the United States.' '' 82 FR 34903.

The agencies received a significant number of comments discussing the impact of this rulemaking on regulatory certainty. Many commenters asserted that the 2015 Rule failed to increase predictability and consistency under the CWA, instead creating confusion and uncertainty. Some commenters stated that the 2015 Rule broadened the scope of federal jurisdiction to include waters that were previously not covered under the CWA, which the commenters argued further contributes to uncertainty and confusion. Other commenters found that the 2015 Rule increased regulatory certainty compared to the pre-existing regulatory regime; these commenters asserted that recodifying the pre-existing regulations would thus reduce regulatory certainty. After a thorough review of the comments received on the NPRM and SNPRM, the agencies conclude that this final rule will provide greater regulatory certainty and national consistency while the agencies consider public comments on the proposed revised definition of ''waters of the United States.'' *See* 84 FR 4154 (Feb. 14, 2019).

This final rule returns implementation of the definition of ''waters of the United States'' under the CWA to the regulatory regime that existed for many years before the agencies issued the 2015 Rule and that still exists in more than half the States at the time of the publication of this final rule. The agencies have maintained separate regulations defining the statutory term ''waters of the United States,'' but the text of the regulations have been virtually identical since the Corps' and the EPA's 1986 and 1988 rulemakings, respectively. *See* 51 FR 41206 (Nov. 13, 1986) (revising Corps regulations to align more closely with EPA regulations defining ''waters of the United States''); *see also* 53 FR 20764 (June 6, 1988) (including language from the preamble to the Corps' 1986 regulations to provide ''clarity and consistency'' regarding the EPA's regulatory definition of ''waters of the United States''). Following the promulgation of the 2015 Rule, the agencies have continued to implement those pre-existing regulations (commonly referred to as the ''1986 regulations'') in a shifting patchwork of States subject to federal court stays of and injunctions against the 2015 Rule. In response to court orders regarding the agencies' ''waters of the United States'' rulemakings, the EPA has maintained a web page with a map reflecting which regulatory regime is applicable in each State (*https://www.epa.gov/wotus-rule/definition-waters-united-states-rule-status-and-litigation-update*).

For over 30 years, challenges to the agencies' application of the 1986 regulations have yielded a significant body of case law that has helped to define the scope of the agencies' CWA authority and shaped the agencies' approach to implementing the pre-2015 regulations. In particular, the Supreme Court's decisions in *SWANCC* and *Rapanos* inform the agencies' implementation of the 1986 regulations. After those decisions, the agencies issued interpretive guidance in 2003 and 2008 that is now longstanding and familiar.[53] As such, though the text of the 1986 regulations has remained largely unchanged,[54] the agencies have refined their application of the 1986 regulatory text consistent with Supreme Court decisions and informed by the agencies' guidance and their technical experience implementing the Act pursuant to those pre-existing regulations.

The agencies have been applying the 1986 regulations consistent with the Supreme Court's decisions in *SWANCC* and *Rapanos* and informed by the agencies' corresponding guidance for over a decade. The agencies, their co-regulators, and the regulated community are thus familiar with the pre-2015 Rule regulatory regime and have amassed significant experience operating under those pre-existing regulations. Agency staff in particular have developed significant technical expertise in implementing the 1986 regulations. For example, between June 2007 and August 2019, the Corps issued 220,169 approved jurisdictional determinations under the pre-2015 Rule regulatory regime.[55]

While some commenters agreed that returning to the pre-2015 Rule regulatory regime would promote regulatory certainty, other commenters asserted that recodifying the pre-existing regulations would reduce regulatory certainty by reinstating the prior regulatory regime's case-specific significant nexus analysis for certain jurisdictional determinations, which the commenters characterized as inconsistent and burdensome. In addition, some commenters argued that the agencies' proposal to repeal the 2015 Rule and recodify the pre-existing regulations disregards the substantial uncertainty, confusion, and inconsistencies under the prior regime that the agencies had sought to address in developing the 2015 Rule.

The agencies acknowledge that in issuing the 2015 Rule, the agencies intended to ''make the process of identifying waters protected under the CWA easier to understand.'' 80 FR 37054, 37057 (June 29, 2015). Yet, as explained in Section III.C. of this notice, the agencies find that the 2015 Rule exceeded the agencies' statutory authority and that the agencies did not adequately consider and accord due weight to Congress' policy directive in CWA section 101(b) in promulgating the 2015 Rule. The agencies have concluded that, as a result of those fundamental issues, the 2015 Rule must be repealed. At the same time, the agencies recognize that the pre-existing regulations pose certain implementation challenges, particularly because significant nexus analyses continue to be required for certain waters consistent with the agencies' still-effective *Rapanos* Guidance. Following the Supreme Court's decisions in *SWANCC* and *Rapanos,* which the agencies note did not vacate or remand the 1986 regulations, the Corps published a guidebook to assist district staff in issuing approved jurisdictional determinations.[56] In particular, the guidebook outlines procedures and documentation used to support significant nexus determinations. This guidebook has been and continues to be publicly available and will continue to serve as a resource in issuing jurisdictional determinations under this final rule.

In May 2019, the U.S. District Court for the Southern District of Texas remanded the 2015 Rule to the agencies

[53] Joint Memorandum, 68 FR 1991, 1995 (Jan. 15, 2003) (providing clarifying guidance regarding the *SWANCC* decision); U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos* v. *United States & Carabell v. United States* (Dec. 2, 2008), *available at https://www.epa.gov/sites/production/files/2016-02/documents/cwa_jurisdiction_following_rapanos120208.pdf.*

[54] In 1993, the agencies added an exclusion for prior converted cropland to the definition of ''waters of the United States.'' *See* 58 FR 45008 (Aug. 25, 1993).

[55] Data from the U.S. Army Corps of Engineers' Operation and Maintenance Business Information Link, Regulatory Module (ORM2) database, May 2019.

[56] U.S. Army Corps of Engineers Jurisdictional Determination (JD) Form Instructional Guidebook, *available at https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Related-Resources/CWA-Guidance/.*

on the grounds that the rule violated the APA. Specifically, the court found that the rule violated the APA's notice and comment requirements because: (1) The 2015 Rule's definition of ''adjacent'' waters (which relied on distance-based limitations) was not a ''logical outgrowth'' of the proposal's definition of ''adjacent'' waters (which relied on ecologic and hydrologic criteria); and (2) the agencies denied interested parties an opportunity to comment on the final draft of the Connectivity Report, which served as the technical basis for the final rule. *See Texas* v. *EPA,* No. 3:15-cv-162, 2019 WL 2272464 (S.D. Tex. May 28, 2019). As the court noted, ''the Final Connectivity Report was the technical basis for the Final Rule and was instrumental in determining what changes were to be made to the definition of the phrase ['the waters of the United States']. '' *Id.* at 12; *see also* 80 FR 37057 (explaining that the Connectivity Report ''provides much of the technical basis for [the] [R]ule.''). The court found that, because the Connectivity Report was an important basis for the 2015 Rule, interested parties should have had an opportunity to comment on the final version of the Report. Recodifying the prior regulations restores a regulatory regime that is not based on the conclusions in the Connectivity Report and remedies the infirmities that the Southern District of Texas and the Southern District of Georgia identified in the 2015 Rule, including the lack of notice for the distance-based limitations in the definition of ''adjacent'' waters and other procedural and substantive deficiencies in the rule.

In the agencies' proposed revised definition of ''waters of the United States,'' the agencies seek to establish a clear and implementable definition that better effectuates the language, structure, and purposes of the CWA. *See* 84 FR 4174. Pending any final action on that proposed rulemaking, the agencies conclude that this final rule will provide greater certainty by reinstating nationwide a longstanding regulatory framework that is familiar to and well-understood by the agencies, States, Tribes, local governments, regulated entities, and the public.

A number of commenters supported repealing the 2015 Rule and recodifying the prior regulations due to the commenters' concerns that litigation over the 2015 Rule creates significant regulatory uncertainty. Commenters noted that the 2015 Rule litigation has led to different regulatory regimes being in effect in different States, thereby burdening regulated entities that operate in multiple States. In contrast, some commenters asserted that regulatory uncertainty associated with legal challenges to the 2015 Rule is not an adequate basis for this rulemaking. Several of these commenters argued that the agencies have failed to consider that this rulemaking could also generate litigation and contribute to uncertainty.

For periods of time over the last four years, the agencies have applied different regulatory regimes throughout the country as the result of preliminary injunctions against the 2015 Rule. By reinstating the 1986 definition of ''waters of the United States'' nationwide, this final rule will alleviate inconsistencies, confusion, and uncertainty arising from the agencies' application of two different regulatory regimes across the country. The agencies recognize that this final rule may itself be subject to legal challenges, and that this gives rise to the possibility of a return to the application of different regulatory definitions in different States. Yet, the agencies cannot predict the outcome of any future challenges, and the possibility of courts enjoining this rule should not preclude the agencies from taking this final action. At this time, due to preliminary injunctions against the 2015 Rule, it is only by finalizing this rule to codify the pre-existing regulations that the agencies can return to implementing a uniform definition of ''waters of the United States'' nationwide.

Though this final rule is intended to be the first step in a comprehensive, two-step rulemaking process, the agencies acknowledge that they cannot prejudge the outcome of the separate rulemaking on a proposed revised definition of ''waters of the United States.'' Regardless of whether the agencies finalize a new definition, the agencies conclude that restoring the pre-existing regulations is appropriate because, as implemented, those regulations adhere more closely than the 2015 Rule to the jurisdictional limits reflected in the statute and case law. For example, the agencies find that the prior regulatory regime is consistent with the agencies' view that Justice Kennedy did not intend for the significant nexus standard to be applied in a manner that would result in assertion of jurisdiction over waters deemed non-jurisdictional in *SWANCC.* Moreover, by leaving certain types of isolated waters and certain ephemeral streams under the sole jurisdiction of States, the pre-existing regulatory framework also provides a more appropriate balancing of CWA sections 101(a) and 101(b). With this final rule, the regulations defining ''waters of the United States'' will be those portions of 33 CFR part 328 and 40 CFR parts 110, 112, 116, 117, 122, 230, 232, 300, 302, and 401 as they existed immediately prior to the 2015 Rule's amendments.[57] The agencies will continue to implement those regulations informed by applicable agency guidance documents and consistent with Supreme Court decisions and longstanding agency practice. Given the longstanding nature of the pre-2015 Rule regulatory framework, its track record of implementation and extensive body of related case law, and thus its familiarity to regulators, the regulated community and other stakeholders, the agencies conclude that this final rule to recodify the 1986 regulations will provide greater regulatory certainty and nationwide consistency while the agencies consider public comments on the proposed revised definition of ''waters of the United States.'' *See* 84 FR 4154.

V. Alternatives to the Final Rule

After thoroughly considering comments received on the NPRM and SNPRM regarding alternatives to this action, the agencies conclude that repealing the 2015 Rule and restoring the pre-2015 Rule regulatory regime is the most effective and efficient way to remedy the fundamental and systemic flaws of the 2015 Rule, achieve the objectives of the Act, and provide regulatory certainty as the agencies consider public comments on a proposed revised definition of ''waters of the United States.'' *See* 84 FR 4154.

Under the APA, a reviewing court will ''hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'' 5 U.S.C. 706(2)(A). In promulgating a rule to repeal existing regulations, agencies must address and consider alternative ways of achieving the relevant statute's objectives and must provide adequate reasons for abandoning those alternatives. *Motor Vehicle Mfrs. Ass'n*

[57] The agencies observe that this final rule to repeal the 2015 Rule and restore the prior regulations is consistent with the broadly accepted practice of courts to reinstate a prior rule where the current regulation is invalid. *See, e.g., Paulsen* v. *Daniels,* 413 F. 3d 999, 1008 (9th Cir. 2005) (''The effect of invalidating an agency rule is to reinstate the rule previously in force.''); *Action on Smoking & Health* v. *Civil Aeronautics Bd.,* 713 F.2d 795, 797 (DC Cir. 1983) (''Thus, by vacating or rescinding the [rule], the judgment of this court had the effect of reinstating the rules previously in force.''). Indeed, were a court to find the 2015 Rule unlawful, the presumptive remedy would be to reinstate the pre-existing regulations. While the agencies recognize and fully acknowledge that their authority differs from that of a federal court, the agencies find that this common judicial practice further illustrates the reasonableness of the agencies' decision to replace the unlawful 2015 Rule with the prior regulations.

v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 48 (1983). Agencies are not required, however, to consider ''all policy alternatives in reaching a decision.'' *Id.* at 50–51. Indeed, an agency rulemaking ''cannot be found wanting simply because the agency failed to include every alternative device and thought conceivable by the mind of man . . . regardless of how uncommon or unknown that alternative may have been.'' *Id.* (quoting *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.,* 435 U.S. 519, 551 (1978)).

The agencies considered alternatives to the final rule throughout the rulemaking process. In the preamble to the NPRM, the agencies explained that they considered alternatives to the proposed action, including simply withdrawing or staying the 2015 Rule, but did not identify any alternatives that would provide stability as effectively and efficiently as the proposed action pending the conclusion of the agencies' two-step rulemaking process. *See* 82 FR 34899, 34903 (July 27, 2017). Similarly, in the preamble to the SNPRM, the agencies explained that they considered several alternatives to the proposed action, including revising specific elements of the 2015 Rule, issuing revised implementation guidance, and further extending the applicability date of the 2015 Rule. *See* 83 FR 32227, 32249 (July 12, 2018). The agencies then requested comments on ''whether any of these alternative approaches would fully address and ameliorate potential deficiencies in and litigation risk associated with the 2015 Rule.'' *Id.* The agencies also requested comment on ''whether this proposal is the best and most efficient approach to address the potential deficiencies [with the 2015 Rule] identified in this notice and to provide the predictability and regulatory certainty that alternative approaches may not provide.'' *Id.*

The agencies received comments suggesting four categories of alternatives to the agencies' proposal to repeal the 2015 Rule and recodify the pre-existing regulations. Commenters suggested (1) revising the 2015 Rule; (2) repealing the 2015 Rule and then maintaining or revising the pre-2015 Rule regulatory regime; (3) repealing the 2015 Rule but not recodifying the pre-existing regulations; and (4) pursuing alternative actions to rulemaking.

The agencies find that revising select provisions in the 2015 Rule would not resolve the fundamental flaws underlying the 2015 Rule and would result in the 2015 Rule remaining in place beyond the effective date of this final rule. As described earlier, the agencies conclude that the 2015 Rule did not implement the legal limits on the scope of the agencies' authority under the CWA as intended by Congress and reflected in Supreme Court cases, did not adequately consider and accord due weight to the policy of the Congress in CWA section 101(b), pushed the envelope of the agencies' constitutional and statutory authority absent a clear statement from Congress, and included distance-based limitations that suffered from procedural errors and a lack of adequate record support. Conducting rulemaking to revise specific provisions in the 2015 Rule would not remedy these fundamental flaws that permeate the rule. The agencies are considering specific definitional changes in their separate rulemaking on a proposed revised definition of ''waters of the United States.'' The agencies find that it is preferable to repeal the 2015 Rule and recodify the pre-existing regulations, informed by applicable agency guidance documents and consistent with Supreme Court decisions and longstanding agency practice, than to leave in place a rule that exceeds the agencies' statutory authority—especially a rule of this magnitude—pending a separate rulemaking process.

Similarly, the agencies find that repealing the 2015 Rule, reinstating the pre-2015 Rule regulatory regime, and either maintaining that regime or using it as a basis for further rulemaking would provide less regulatory certainty than the agencies' current two-step rulemaking approach. The agencies find that reinstating the longstanding and familiar pre-2015 Rule regulatory regime will provide regulatory certainty in this interim period, but they also acknowledge that the pre-existing regulations pose certain implementation difficulties. The agencies thus find that proceeding through the agencies' two-step rulemaking process is preferable to maintaining the ''familiar, if imperfect'' pre-existing regulations. *See In re EPA,* 803 F.3d at 808. If the agencies do not finalize a new definition of ''waters of the United States'' as part of their two-step rulemaking process or if a new definition is overturned by a court in the future, it is appropriate for the pre-2015 Rule regulatory regime to remain in place because, as implemented, it adheres more closely than the 2015 Rule to the limits imposed by the Act and is longstanding and familiar. The agencies conclude that it is appropriate to codify the pre-existing regulations as an interim step pending the agencies' separate rulemaking to establish a definition of ''waters of the United States'' that better effectuates the language, structure, and purposes of the Act.

The agencies also find that repealing the 2015 Rule without restoring the pre-2015 Rule regulatory regime would not provide regulatory certainty to the same extent as the agencies two-step rulemaking approach. The pre-2015 Rule regulatory regime is imperfect, but it is longstanding and familiar. As described in Section IV of this notice, restoring the pre-2015 Rule regime provides regulatory certainty while the agencies reconsider the proper scope of federal CWA authority in the agencies' separate rulemaking process.

Finally, the agencies find that relying solely on non-regulatory actions to clarify the definition of ''waters of the United States'' would not provide sufficient regulatory certainty. The agencies considered revising current guidance, issuing new guidance, and developing improved technical tools to assist agency staff, States, Tribes and the regulated community in implementing the 2015 Rule. The agencies find, however, that adopting these non-regulatory alternatives in lieu of regulatory action would provide less regulatory certainty than the agencies' two-step rulemaking approach and would not remedy the fundamental flaws that permeate the 2015 Rule. In the proposed rulemaking to establish a revised definition of ''waters of the United States,'' however, the agencies are considering additional ways to improve implementation of the definition of ''waters of the United States,'' in addition to revising the regulatory definition. *See* 84 FR 4198–4200.

VI. Economic Analysis

The agencies conducted an economic analysis (EA) for the proposed rule in 2017 to provide information on the potential changes to the costs and benefits of various CWA programs that could result from a change in the number of positive jurisdictional determinations when repealing the 2015 Rule and recodifying the pre-existing regulations. The agencies have since updated their analysis for both the proposed rule to revise the definition of ''waters of the United States'' and for this final rule. The agencies note that the final decision to repeal the 2015 Rule and recodify the pre-existing regulations in this rulemaking is not based on the information in the agencies' economic analysis. *See, e.g., NAHB,* 682 F.3d at 1039–40.

Filings in litigation against the 2015 Rule and comments submitted in response to the 2017 proposed repeal of that rule have critiqued the methods

used to estimate the costs and benefits of these actions. After assessing the input provided, the agencies have concluded that significant flaws in the economic analyses supporting the 2015 Rule and the 2017 proposed repeal led to likely overstatements of costs and benefits. The agencies have therefore made changes to their methodologies in support of this final rule. As a result of these changes, the economic analysis for this final rule explores in greater depth the role the States play in regulating their water resources, corrects and updates the wetland valuation methodology, and more clearly acknowledges the uncertainties in the agencies' calculations.

The most significant reason that costs and benefits of the economic analyses accompanying the 2015 Rule and the 2017 proposed repeal may have been overestimated is that they did not consider the different ways in which State governments could react to a change in CWA jurisdiction. Both analyses assumed that States always adjust regulatory regimes to match the federal jurisdictional level in response to a change in federal jurisdiction. The analysis for this final rule responds to the concerns raised by commenters by incorporating a more balanced and robust characterization of possible State responses to a change in jurisdiction and evaluates a series of scenarios that quantify the sensitivity of the costs and benefits to varying assumptions about State responses. These changes in analytic approach build on the agencies' detailed review of State programs and the literature on environmental federalism.

As described in the EA for this final rule and in the EA for the ''Proposed Revised Definition of 'Waters of the United States,''' December 14, 2018, the agencies' revised analysis indicates that potential State responses to a change in the definition of a ''water of the United States'' fall along a continuum and depend on legal and other constraints. Some States cannot currently regulate a more expansive set of waters than those subject to the federal CWA definition of ''waters of the United States.'' In contrast, States that regulate surface waters and wetlands as broadly or more broadly than the 2015 Rule, independently of the scope of the federal CWA, may not be affected by this action. Complete State ''gap-filling'' could result in no change in compliance costs to the regulated community and no change in environmental benefits (that is, neither avoided costs nor forgone benefits would occur), suggesting a zero-net impact in the long-run, and therefore the costs and benefits presented in the analyses of the 2015 Rule and its proposed repeal may have been overstated for those States. States that fall between these extremes are evaluated by either including or excluding them from the estimates of cost savings and forgone benefits. In reality some States may regulate only a subset of affected waters, but the agencies did not have sufficient information to incorporate that level of detail into the analysis.

Another potential outcome of a change in CWA jurisdiction is that State governments may be able to find more efficient ways of managing local resources than the Federal government, consistent with the theory of ''fiscal federalism'' as described in the EA for the final rule. Depending on the value of a newly characterized non-jurisdictional water, States may or may not choose to regulate that water and the compliance costs and environmental benefits of its regulation could increase or decrease, respectively. In either case, however, net benefits would increase, assuming a State can more efficiently allocate resources towards environmental protection due to local knowledge of amenities and constituent preferences. As effective regulation requires political capital and fiscal resources, however, the likely best indication of the way in which States will exercise their authority as the Federal government changes the scope of CWA jurisdiction is the way in which they have exercised authority in the past and whether the infrastructure to manage the regulatory programs already exists. In considering a number of scenarios in which States may retain regulatory oversight no longer required by the federal regulations implementing the CWA, the revised analysis lowers the estimated cost savings and forgone benefits of final rule.

Litigants and commenters on the 2015 Rule and 2017 proposed repeal, respectively, also identified concerns with the methods the agencies used for the 2015 Rule to value wetlands which the agencies described qualitatively in the 2017 proposal. Application of the agencies' wetlands valuation studies on a national level led to potentially inflated willingness to pay (WTP) estimates and thus an overestimate of the expected benefits from the 2015 Rule. The 2015 analysis relied on estimates of WTP for wetland preservation or expansion from ten studies, but as discussed in the EA for this final rule, the agencies have concluded that only five of the ten studies relied upon satisfy standard benefit transfer selection criteria established in the EPA's own guidelines.

To correct for the prior use of inappropriate studies and concerns with benefit transfer methods used for the 2015 Rule, the agencies developed more appropriate methodologies to estimate the value of forgone wetland benefits that could arise as a result of this final rule. For example, the agencies applied a meta-analysis of wetland valuation studies, which combined and synthesized the results from multiple valuation studies to estimate a new transfer function. Meta-analyses control for the confounding attributes of underlying studies, so this analysis was able to make use of a larger number of studies than the agencies could use for the unit value benefit transfer in the analysis supporting the 2015 Rule.

Even after correcting the approaches taken to estimate State responses and value wetlands, the agencies identified a number of sources of uncertainty in the economic analyses of the 2015 Rule and 2017 proposed repeal. For example, in assessing categories of waters that the 2015 Rule made newly jurisdictional, the agencies did not remove waters subject to that rule's expanded set of exclusions. *See* 2015 Rule Economic Analysis at 8. The economic analysis in support of the 2015 Rule and its proposed repeal therefore likely considered the costs and benefits of regulating waters that would have been subject to exclusions and consequently likely overestimated the costs and benefits of the rule.

Similarly, the estimated benefits and costs from the 2015 Rule and the 2017 proposed repeal may have incorrectly assumed that the percentage increase in costs and benefits of increased positive jurisdictional determinations was equal to the percentage increase in regulated activities. The analyses assumed that the rule would affect entities regulated under the CWA in direct proportion to the percent change in positive jurisdictional determinations. This proportional assumption could have yielded overestimates.

While the agencies have striven to make the economic analysis supporting this final rule as transparent and accurate as possible, their goal in doing so is solely for informational purposes. The agencies are repealing the 2015 Rule to ensure that they do not exceed their statutory authority, not based on analyses of the economic impacts of the 2015 Rule. The economic analyses do, however, provide some helpful information about the 2015 Rule and its repeal. The agencies developed several scenarios using different assumptions about potential State regulation of

waters to provide a range of costs and benefits. Under the scenario that assumes the fewest number of States regulating newly non-jurisdictional waters, the agencies estimate the final rule would produce annual avoided costs ranging between $116 and $174 million and annual forgone benefits ranging between $69 to $79 million. When assuming the greatest number of States are already regulating newly non-jurisdictional waters, the agencies estimate there would be avoided annual costs ranging from $61 to $104 million and annual forgone benefits are estimated to be approximately $37 to $39 million. Under the scenario that assumes no States will regulate newly non-jurisdictional waters, an outcome the agencies believe would be unlikely, the agencies estimate the final rule would produce annual avoided costs ranging from $164 to $345 million and annual forgone benefits ranging from $138 to $149 million.

VII. The Effect of This Rule and the Agencies' Next Steps

In defining the term ''waters of the United States'' under the CWA, Congress gave the agencies broad discretion to articulate reasonable limits on the meaning of that term, consistent with the Act's text and its policies as set forth in CWA section 101. *See, e.g., Rapanos,* 547 U.S. at 758 (Roberts, C.J., concurring) (''Given the broad, somewhat ambiguous, but nonetheless clearly limiting terms Congress employed in the Clean Water Act, the Corps and the EPA would have enjoyed plenty of room to operate in developing *some* notion of an outer bound to the reach of their authority.'') (emphasis in original). In light of the substantial litigation regarding the 2015 Rule and based on the agencies' experience and expertise in administering the definition of ''waters of the United States'' under the CWA under the prior regulations, the agencies proposed to repeal the 2015 Rule and put in place the pre-existing regulations. This proposal was based on the concerns articulated in the NPRM and SNPRM, and the agencies' concern that there may be significant disruption to the implementation of the Act and to the public, including regulated entities, if the 2015 Rule were vacated in part. With this final rule, the agencies exercise their discretion and policy judgment and repeal the 2015 Rule permanently and in its entirety because the agencies believe that this approach is the most appropriate means to remedy the deficiencies of the 2015 Rule identified above, address the extensive litigation surrounding the 2015 Rule, and restore a regulatory process that has been in place for years.

The 2015 Rule amended longstanding regulations contained in portions of 33 CFR part 328 and 40 CFR parts 110, 112, 116, 117, 122, 230, 232, 300, 302, and 401 by revising, removing, and re-designating certain paragraphs and definitions in those regulations. With this final rule, the agencies repeal the 2015 Rule and restore the regulations in existence immediately prior to the 2015 Rule. As such, the regulatory definitions of ''waters of the United States'' in effect beginning on the effective date of this final rule are those portions of 33 CFR part 328 and 40 CFR parts 110, 112, 116, 117, 122, 230, 232, 300, 302, and 401 as they existed immediately prior to the 2015 Rule's amendments. *See, e.g., API* v. *EPA,* 883 F.3d 918, 923 (D.C. Cir. 2018) (regulatory criterion in effect immediately before enactment of criterion that was vacated by the court ''replaces the now-vacated'' criterion); *see also supra* at note 58.

With this final rule, the agencies recodify the prior regulations in the CFR, which avoids creating a regulatory vacuum with the repeal of the 2015 Rule, and the agencies need not consider the potential consequences of such a regulatory vacuum in light of this. The agencies will apply the prior definition consistent with Supreme Court decisions and longstanding practice, as informed by applicable guidance documents, training, and experience, while the agencies consider public comments on the proposed revised definition of ''waters of the United States.'' *See* 84 FR 4154.

The current regulatory scheme for determining CWA jurisdiction is ''familiar, if imperfect,'' *In re EPA,* 803 F.3d at 808, and the agencies and regulated public have significant experience operating under the longstanding regulations that were replaced by the 2015 Rule. Apart from a roughly six-week period when the 2015 Rule was in effect in 37 States and the period since the August 16, 2018 U.S. District Court for the District of South Carolina decision enjoining the applicability date rule nationwide, which placed the 2015 Rule into effect in 26 States (at that time), the District of Columbia, and U.S. Territories, the agencies have continued to implement the pre-existing regulatory definitions in more than half of the States.

The agencies acknowledge that the pre-existing regulations have been criticized and their application has been narrowed by various legal decisions, including *SWANCC* and *Rapanos;* however, the longstanding nature of the regulatory framework and its track record of implementation makes it preferable at this time. The agencies believe that, until a new definition is completed, it is important to retain the regulations that have been implemented for many years rather than the 2015 Rule, which has been and continues to be mired in litigation and recently was remanded back to the agencies for extending the agencies' delegated authority beyond the limits of the CWA and violating the APA when promulgating it.

Restoration of the prior regulatory text in the CFR, interpreted in a manner consistent with Supreme Court decisions, and informed by applicable agency guidance documents and longstanding practice, will ensure that the scope of CWA jurisdiction will be administered in the same manner as it has been in those States where the 2015 Rule has been enjoined and as it was for many years prior to the promulgation of the 2015 Rule. To be clear, the agencies are not finalizing a revised definition of ''waters of the United States'' in this specific rulemaking different from the definition that existed immediately prior to the 2015 Rule. The agencies also are not finalizing this rule in order to fill a regulatory gap because no such gap exists today. *See* 83 FR 5200, 5204. Rather, the agencies solely repeal the 2015 amendments to the above-referenced portions of the CFR and recodify the pre-existing regulatory text as it existed immediately prior to the 2015 Rule's amendments.

The agencies recognize that approved jurisdictional determinations (AJDs) issued under the 2015 Rule could potentially be affected by this final rule. An AJD is a document issued by the Corps stating the presence or absence of ''waters of the United States'' on a parcel. *See* 33 CFR 331.2. As a matter of policy, AJDs are valid for a period of five years from the date of issuance unless new information warrants revision before the expiration date or a District Engineer identifies specific geographic areas with rapidly changing environmental conditions that merit re-verification on a more frequent basis. *See* U.S. Army Corps of Engineers, Regulatory Guidance Letter No. 05–02, § 1(a), p. 1 (June 2005) (RGL 05–02). Additionally, the possessor of a valid AJD may request the Corps reassess a parcel and grant a new AJD before the five-year expiration date. An AJD constitutes final agency action pursuant to the agencies' definition of ''waters of the United States'' at the time of its issuance, *see Hawkes,* 136 S. Ct. at 1814, and therefore, this final rule does not invalidate an AJD that was issued under the 2015 Rule. As such, an AJD issued

under the 2015 Rule will remain valid until its expiration date unless one of the criteria for revision is met under RGL 05–02, or the recipient of such an AJD requests a new AJD be issued under the pre-2015 regulations and guidance pursuant to this final rule. Preliminary jurisdictional determinations (PJDs), however, are merely advisory in nature, make no legally binding determination of jurisdiction, and have no expiration date. *See* 33 CFR 331.2; *see also* U.S. Army Corps of Engineers, Regulatory Guidance Letter No. 16–01 (October 2005). As such, PJDs are unaffected by this final rule because they do not definitively state whether there are ''waters of the United States'' on a parcel. *See Hawkes,* 136 S. Ct. at 1812. However, as with AJDs, a recipient of a PJD issued under the 2015 Rule may request a new PJD be issued under the pre-2015 regulations and guidance.

The agencies note that repealing the 2015 Rule and restoring the pre-existing regulatory definition of ''waters of the United States'' does not affect the scope of waters that the Corps retains in States that have assumed the CWA section 404 dredged or fill material permit program, or the waters the Corps would retain should States and Tribes assume the program in the future. When States or Tribes assume administration of the section 404 program, the Corps retains administration of permits in certain waters. 33 U.S.C. 1344(g). The scope of CWA jurisdiction as defined by ''waters of the United States'' is entirely distinct from the scope of waters over which the Corps retains authority following State or tribal assumption of the section 404 program. The retained waters are identified during approval of a State or tribal section 404 program and any modifications are approved through a formal EPA process. 40 CFR 233.36. The way in which the Corps identifies waters to be retained was most recently addressed on July 30, 2018, in a memorandum from R.D. James, Assistant Secretary of the Army (Civil Works).[58] The EPA also intends to clarify the issue in a separate ongoing rulemaking process designed to facilitate State and tribal assumption of the section 404 program.

The agencies proposed a revised definition of ''waters of the United States'' on February 14, 2019, *see* 84 FR 4154, as the second step of the comprehensive two-step process consistent with the Executive Order signed on February 28, 2017, ''Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States Rule.' '' The agencies proposed to interpret the term ''waters of the United States'' to encompass: Traditional navigable waters, including the territorial seas; tributaries that contribute perennial or intermittent flow to such waters; certain ditches; certain lakes and ponds; impoundments of otherwise jurisdictional waters; and wetlands adjacent to other jurisdictional waters. The public comment period for the proposed revised definition of ''waters of the United States'' closed on April 15, 2019, and the agencies are reviewing and considering approximately 620,000 comments they received. If finalized, the revised definition of ''waters of the United States'' will replace the regulations that the agencies are finalizing in this notice.

VIII. Statutory and Executive Order Reviews

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

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

While the economic analysis is informative in the rulemaking context, the agencies are not relying on the economic analysis performed pursuant to Executive Orders 12866 and 13563 and related procedural requirements as a basis for this final rule. *See, e.g., NAHB,* 682 F.3d at 1039–40 (noting that the quality of an agency's economic analysis can be tested under the APA *if* the ''agency decides to rely on a cost-benefit analysis as part of its rulemaking'').

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

This rule is an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this rule can be found in the economic analysis in the docket for this rule.

C. Paperwork Reduction Act

This rule does not impose any new information collection burdens under the Paperwork Reduction Act.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

The repeal of the 2015 Rule and recodification of the prior regulations is a deregulatory action because the 2015 Rule exceeded the agencies' statutory authority. This action avoids the imposition of potentially significant adverse economic impacts on small entities in the future. Details on the estimated cost savings of this rule can be found in the economic analysis published with this rule. Accordingly, after considering the potential economic impacts of the final rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, an agency must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated cost to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205 of the UMRA, the agency must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the agency to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. This action does not contain any unfunded mandate as described in the UMRA and does not significantly or uniquely affect small governments. The definition of ''waters of the United States'' applies broadly to CWA programs. The action imposes no enforceable duty on any State, local, or tribal governments, or the private sector, and does not contain regulatory requirements that significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

Executive Order 13132 requires the agencies to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct

[58] The memorandum is available at *https://www.army.mil/e2/c/downloads/525981.pdf.*

effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agencies may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local government, or the agencies consult with State and local officials early in the process of developing the proposed regulation. The agencies also may not issue a regulation that has federalism implications and that preempts state law unless the agencies consult with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it returns the relationship between the Federal government and the States to the longstanding and familiar distribution of power and responsibilities established in the CWA for many years prior to the 2015 Rule. Thus, the requirements of section 6 of the Executive Order do not apply to this final rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 9, 2000), requires the agencies to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. This final rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, because it returns the relationship between the Federal government and the Tribes to the longstanding and familiar distribution of power and responsibilities that existed under the CWA for many years prior to the 2015 Rule. Thus, Executive Order 13175 does not apply to this final rule. Consistent with Executive Order 13175, however, the agencies have consulted with tribal officials, as appropriate, as part of the separate rulemaking on a proposed revised definition of ''waters of the United States.'' As part of the tribal consultation process for the proposed revised definition, some Tribes commented on this rulemaking to repeal the 2015 Rule and restore the pre-existing regulations, including in letters to the agencies and during outreach and consultations meetings.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, Apr. 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that an agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency. This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. This rule does not involve technical standards.

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

This final rule repealing the 2015 Rule and recodifying the pre-2015 regulations currently in effect in those States where the 2015 Rule is enjoined will maintain the longstanding regulatory framework that was in place nationwide for many years prior to the promulgation of the 2015 Rule. The agencies therefore believe that this action does not have disproportionately high and adverse human health or environmental effects on minority, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, Feb. 16, 1994).

L. Congressional Review Act (''CRA'')

This action is subject to the CRA, and the agencies will submit a rule report to each House of the Congress and to the Comptroller General of the United States. OMB has concluded that it is a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

33 CFR Part 328

Environmental protection, Administrative practice and procedure, Navigation (water), Water pollution control, Waterways.

40 CFR Part 110

Environmental protection, Oil pollution, Reporting and recordkeeping requirements.

40 CFR Part 112

Environmental protection, Oil pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 116

Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 117

Environmental protection, Hazardous substances, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 230

Environmental protection, Water pollution control.

40 CFR Part 232

Environmental protection, Intergovernmental relations, Water pollution control.

40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Occupational safety and health, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

40 CFR Part 401

Environmental protection, Waste treatment and disposal, Water pollution control.

Dated: September 12, 2019.

Andrew R. Wheeler,

Administrator, Environmental Protection Agency.

Dated: September 5, 2019.

R.D. James,

Assistant Secretary of the Army (Civil Works).

Title 33—Navigation and Navigable Waters

For the reasons set out in the preamble, title 33, chapter II of the Code of Federal Regulations is amended as follows:

PART 328—DEFINITION OF WATERS OF THE UNITED STATES

■ 1. The authority citation for part 328 is revised to read as follows:

Authority: 33 U.S.C. 1344.

■ 2. Section 328.3 is amended by revising paragraphs (a) through (e) and adding paragraph (f) to read as follows:

§ 328.3 Definitions.

* * * * *

(a) The term *waters of the United States* means

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) All interstate waters including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) Which are used or could be used for industrial purpose by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as waters of the United States under the definition;

(5) Tributaries of waters identified in paragraphs (a)(1) through (4) of this section;

(6) The territorial seas;

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1) through (6) of this section.

(8) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

(b) The term *wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(c) The term *adjacent* means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are ''adjacent wetlands.''

(d) The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

(e) The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(f) The term *tidal waters* means those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

Title 40—Protection of Environment

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

PART 110—DISCHARGE OF OIL

■ 3. The authority citation for part 110 is revised to read as follows:

Authority: 33 U.S.C. 1321(b)(3) and (b)(4) and 1361(a); E.O. 11735, 38 FR 21243, 3 CFR Parts 1971–1975 Comp., p. 793.

■ 4. Section 110.1 is amended by revising the definition of ''Navigable waters'' and adding the definition of ''Wetlands'' in alphabetical order to read as follows:

§ 110.1 Definitions.

* * * * *

Navigable waters means the waters of the United States, including the territorial seas. The term includes:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(3) That are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as navigable waters under this section;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this section, including adjacent wetlands; and

(f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this section: Provided, That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States;

Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

* * * * *

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

PART 112 —OIL POLLUTION PREVENTION

■ 5. The authority citation for part 112 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.;* 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

■ 6. Section 112.2 is amended by revising the definition of ''Navigable waters'' and adding the definition of ''Wetlands'' in alphabetical order to read as follows:

§ 112.2 Definitions.

* * * * *

Navigable waters of the United States means ''navigable waters'' as defined in section 502(7) of the FWPCA, and includes:

(1) All navigable waters of the United States, as defined in judicial decisions prior to passage of the 1972 Amendments to the FWPCA (Pub. L. 92–500), and tributaries of such waters;

(2) Interstate waters;

(3) Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and

(4) Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

* * * * *

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

* * * * *

PART 116—DESIGNATION OF HAZARDOUS SUBSTANCES

■ 7. The authority citation for part 116 is revised to read as follows:

Authority: Secs. 311(b)(2)(A) and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*).

■ 8. Section 116.3 is amended by revising the definition of ''Navigable waters'' to read as follows:

§ 116.3 Definitions.

* * * * *

Navigable waters is defined in section 502(7) of the Act to mean ''waters of the United States, including the territorial seas,'' and includes, but is not limited to:

(1) All waters which are presently used, or were used in the past, or may be susceptible to use as a means to transport interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, and including adjacent wetlands; the term *wetlands* as used in this regulation shall include those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevelance of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas; the term *adjacent* means bordering, contiguous or neighboring;

(2) Tributaries of navigable waters of the United States, including adjacent wetlands;

(3) Interstate waters, including wetlands; and

(4) All other waters of the United States such as intrastate lakes, rivers, streams, mudflats, sandflats and wetlands, the use, degradation or destruction of which affect interstate commerce including, but not limited to:

(i) Intrastate lakes, rivers, streams, and wetlands which are utilized by interstate travelers for recreational or other purposes; and

(ii) Intrastate lakes, rivers, streams, and wetlands from which fish or shellfish are or could be taken and sold in interstate commerce; and

(iii) Intrastate lakes, rivers, streams, and wetlands which are utilized for industrial purposes by industries in interstate commerce.

Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

* * * * *

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

■ 9. The authority citation for part 117 is revised to read as follows:

Authority: Secs. 311 and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), (''the Act'') and Executive Order 11735, superseded by Executive Order 12777, 56 FR 54757.

■ 10. Section 117.1 is amended by revising paragraph (i) to read as follows:

§ 117.1 Definitions.

* * * * *

(i) *Navigable waters* means ''waters of the United States, including the territorial seas.'' This term includes:

(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) Interstate waters, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams, (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as navigable waters under this paragraph;

(5) Tributaries of waters identified in paragraphs (i)(1) through (4) of this section, including adjacent wetlands; and

(6) Wetlands adjacent to waters identified in paragraphs (i)(1) through (5) of this section (''Wetlands'' means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally included playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds): *Provided,* That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

* * * * *

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 11. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 12. Section 122.2 is amended by:

■ a. Lifting the suspension of the last sentence of the definition of ''Waters of the United States'' published July 21, 1980 (45 FR 48620).

■ b. Revising the definition of ''Waters of the United States''.

■ c. Suspending the last sentence of the definition of ''Waters of the United States'' published July 21, 1980 (45 FR 48620).

■ d. Adding the definition of ''Wetlands''.

The revision and addition read as follows:

§ 122.2 Definitions.

* * * * *

Waters of the United States or *waters of the U.S.* means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate ''wetlands;''

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, ''wetlands,'' sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) ''Wetlands'' adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.] Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

* * * * *

PART 230—SECTION 404(b)(1) GUIDELINES FOR SPECIFICATION OF DISPOSAL SITES FOR DREDGED OR FILL MATERIAL

■ 13. The authority citation for part 230 is revised to read as follows:

Authority: Secs. 404(b) and 501(a) of the Clean Water Act of 1977 (33 U.S.C. 1344(b) and 1361(a)).

■ 14. Section 230.3 is amended by:

■ a. Redesignating paragraph (o) as paragraph (s).

■ b. Revising newly redesignated paragraph (s).

■ c. Redesignating paragraph (n) as paragraph (r).

■ d. Redesignating paragraph (m) as paragraph (q-1).

■ e. Redesignating paragraphs (h) through (l) as paragraphs (m) through (q).

■ f. Redesignating paragraphs (e) and (f) as paragraphs (h) and (i).

■ g. Redesignating paragraph (g) as paragraph (k).

■ h. Redesignating paragraphs (b) through (d) as paragraphs (c) through (e).

■ i. Adding reserved paragraphs (f), (g), (j), and (l).

■ j. Adding paragraphs (b) and (t).

The revision and additions read as follows:

§ 230.3 Definitions.

* * * * *

(b) The term *adjacent* means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes, and the like are ''adjacent wetlands.''

* * * * *

(s) The term *waters of the United States* means:

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) All interstate waters including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as waters of the United States under this definition;

(5) Tributaries of waters identified in paragraphs (s)(1) through (4) of this section;

(6) The territorial sea;

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (s)(1) through (6) of this section; waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(t) The term *wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

PART 232—404 PROGRAMS DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS

■ 15. The authority citation for part 232 is revised to read as follows:

Authority: 33 U.S.C. 1344.

■ 16. Section 232.2 is amended by revising the definition of ''Waters of the United States'' and adding the definition of ''Wetlands'' to read as follows:

§ 232.2 Definitions.

* * * * *

Waters of the United States means:

All waters which are currently used, were used in the past, or may be susceptible to us in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

All interstate waters including interstate wetlands.

All other waters, such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which would or could affect interstate or foreign commerce including any such waters:

Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

Which are used or could be used for industrial purposes by industries in interstate commerce.

All impoundments of waters otherwise defined as waters of the United States under this definition;

Tributaries of waters identified in paragraphs (g)(1)–(4) of this section;

The territorial sea; and

Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (q)(1)–(6) of this section.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Act (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 17. The authority citation for part 300 is revised to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p.306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

■ 18. Section 300.5 is amended by revising the definition of ''Navigable waters'' to read as follows:

§ 300.5 Definitions.

* * * * *

Navigable waters as defined by 40 CFR 110.1, means the waters of the United States, including the territorial seas. The term includes:

(1) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(2) Interstate waters, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters;

(i) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(iii) That are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as navigable waters under this section;

(5) Tributaries of waters identified in paragraphs (a) through (d) of this definition, including adjacent wetlands; and

(6) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this definition: Provided, that waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

(7) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

* * * * *

■ 19. In appendix E to part 300, section 1.5 is amended by revising the definition of ''Navigable waters'' to read as follows:

Appendix E to Part 300—Oil Spill Response

* * * * *

1.5 Definitions. * * *

Navigable waters as defined by 40 CFR 110.1 means the waters of the United States, including the territorial seas. The term includes:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; and

(3) That are used or could be used for industrial purposes by industries in interstate commerce.

(d) All impoundments of waters otherwise defined as navigable waters under this section;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition, including adjacent wetlands; and

(f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this definition: Provided, that waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

(g) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

* * * * *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

■ 20. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

■ 21. Section 302.3 is amended by revising the definition of ''Navigable waters'' to read as follows:

§ 302.3 Definitions.

* * * * *

Navigable waters or *navigable waters of the United States* means waters of the United States, including the territorial seas;

* * * * *

PART 401—GENERAL PROVISIONS

■ 22. The authority citation for part 401 is revised to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307 (b) and (c) and 316(b) of the Federal Water Pollution Control Act, as amended (the ''Act''), 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317 (b) and (c) and 1326(c); 86 Stat. 816 *et seq.;* Pub. L. 92–500.

■ 23. Section 401.11 is amended by revising paragraph (l) to read as follows:

§ 401.11 General definitions.

* * * * *

(l) The term *navigable waters* includes: All navigable waters of the United States; tributaries of navigable waters of the United States; interstate waters; intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce; and intrastate lakes, rivers, and streams which are utilized for industrial purposes by industries in interstate commerce. Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

* * * * *

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