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[NRC–2019–0170]

RIN 3150–AK37

Organizational Changes and Conforming Amendments

Correction

In rule document 2019–25847, appearing on pages 65639 through 65646, in the issue of Friday, November 29, 2019 make the following correction:

On page 65639, in the third column, in the **DATES** section, on the second line, ''December 30, 2020'' should read ''December 30, 2019''.

[FR Doc. C1–2019–25847 Filed 12–4–19; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AH16

Small Business Size Standards: Calculation of Annual Average Receipts

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is modifying its method for calculating average annual receipts used to prescribe size standards for small businesses. Specifically, in accordance with the Small Business Runway Extension Act of 2018, SBA is changing its regulations on the calculation of average annual receipts for all of SBA's receipts-based size standards, and for other agencies' proposed receipts-based size standards, from a 3-year averaging period to a 5-year averaging period, outside of the SBA Business Loan and Disaster Loan Programs. SBA intends to seek comment on the Business Loan and Disaster Loan Programs in a proposed rule through a separate rulemaking. For all other programs, SBA adopts a transition period through January 6, 2022, during which firms may choose between using a 3-year averaging period and a 5-year averaging period.

DATES: This rule is effective January 6, 2020.

FOR FURTHER INFORMATION CONTACT: Khem R. Sharma, Ph.D., Chief, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

Background Information

Public Law 115–324 (the ''Small Business Runway Extension Act of 2018'') amended section 3(a)(2)(C)(ii)(II) of the Small Business Act, 15 U.S.C. 632(a)(2)(C)(ii)(II), to modify the requirements for proposed small business size standards prescribed by an agency without separate statutory authority to issue size standards.

Under section 3(a)(2)(C)(ii) of the Small Business Act, as amended, an agency without separate statutory authority to issue size standards must satisfy three requirements to prescribe a size standard. First, the agency must propose the size standard with an opportunity for public notice and comment. Second, the agency must provide for determining the size of a manufacturing concern based on a 12-month average of the concern's employment, the size of a services concern based on a 5-year average of gross receipts, and the size of another business concern on the basis of data of not less than 3 years. Third, the agency must obtain approval of the contemplated size standard from the SBA Administrator.

In contrast to agencies subject to section 3(a)(2)(C), SBA has independent statutory authority to issue size standards. Under section 3(a)(2)(A) of the Small Business Act, the SBA Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of SBA's programs or any other Federal Government program. Section 3(a)(2)(B) of the Small Business Act further provides that such definitions may utilize the number of employees, dollar volume of business, net worth, net income, a combination thereof, or other appropriate factors. To determine eligibility for Federal small business assistance, SBA establishes detailed size definitions for small businesses (usually referred to as ''size standards'') that vary from industry to industry reflecting differences among the various industries. SBA typically uses two primary measures of business size for size standards purposes: (i) Average annual gross receipts for businesses in services, retail trade, agricultural, and construction industries, and (ii) average number of employees for businesses in all manufacturing, most mining and utilities industries, and some transportation, information and research and development (R&D) industries. SBA uses financial assets for certain financial industries and refining capacity, in addition to employees, for the petroleum refining industry to measure business size standards purposes.

The SBA's size standards are used to establish eligibility for a variety of Federal small business assistance programs, including for Federal Government contracting and business development programs designed to assist small businesses in obtaining Federal contracts and for SBA's loan guarantee programs, which provide access to capital for small businesses that are unable to qualify for and receive conventional loans elsewhere. The Federal Government contracting programs that use SBA's size standards include the SBA's 8(a) Business Development (BD) program, the Historically Underutilized Business Zones (HUBZone) program, the Service Disabled Veteran-Owned Small Business (SDVOSB) program, the Women-Owned Small Business (WOSB) program, and the Economically Disadvantaged Women-Owned Small Business (EDWOSB) program. SBA's Small Business Investment Company (SBIC), Certified Development Company (CDC/504), and 7(a) loan programs use either the industry-based size standards or tangible net worth and net income based alternative size standards to determine eligibility for those programs.

SBA has long interpreted section 3(a)(2)(C) of the Small Business Act as not applying to SBA's size standards issued under section 3(a)(2)(A). In the preambles to the proposed and final

rules implementing 3(a)(2)(C), SBA explained that the Small Business Act requires that other Federal agencies either use SBA's size standards *or* use their own size standards that meet the requirements as set forth in that section. 65 FR 4176 (Jan. 26, 2000) and 67 FR 13714 (March 26, 2002). In the final implementation in 2002, SBA interpreted section 3(a)(2)(C) as applying only to non-SBA agencies, stating, ''Unless a statute specifies size standards for an agency's program or gives an agency direct authority to establish size standards, the agency must use the applicable size standards established by SBA.'' However, the Act allows an agency to ''prescribe a size standard for categorizing a business concern as a small business concern (*see* sec. 3(a)(2)(C) of the Act) provided that the contemplated size standard meets certain criteria, and the agency obtains approval of the SBA Administrator.'' 67 FR 13714. For further details on section 3(a)(2)(C) not applying to SBA's size standards, see the proposed rule (84 FR 29399).

Nevertheless, to promote consistency government-wide on small business size standards, on June 24, 2019 (84 FR 29399), SBA issued for comments a proposed rule to change its method for calculating average annual receipts for all SBA's receipts-based size standards and other agencies' proposed receipts-based size standards for firms in services industries from a 3-year averaging period to a 5-year averaging period.

SBA determined that it would be confusing for a service-industry business concern to use a 3-year average for SBA's receipts-based size standards and switch to a 5-year average for another agency's receipts-based size standards. Similarly, it would be confusing to apply SBA's size standards for a business that is engaged in both service- and non-service industries to use a 5-year average for determining small business status in a service industry but switch to a 3-year average for a non-service industry. Thus, although section 3(a)(2)(C), as amended, permits another agency to use a 3-year average outside of the service industries, SBA is adopting a 5-year averaging period for calculating the annual receipts of businesses for all industries that are subject to its receipts-based size standards, including the retail trade, agricultural, and construction industries.

In accordance with Public Law 115–324, SBA proposed to change the averaging period for calculating annual receipts for other agencies' receipts-based size standards for firms in services-industries from 3 years to 5 years and to maintain the 3-year averaging period for calculating the size for non-services firms. To promote consistency and avoid confusion, in this final rule, SBA is adopting the same 5-year averaging period for all receipts-based size standards issued by other agencies as well. More than 40 comments to the proposed rule, as discussed below, expressed support for adopting the same 5-year averaging period for all SBA receipts-based size standards. Of those, 3 also recommended using the same averaging period for all receipts-based size standards prescribed by other agencies.

This final rule carries out the intent of Public Law 115–324, as expressed in the Report of the House Committee on Small Business, H. Rpt. 115–939, with respect to Federal procurement opportunities. The Committee report states that, to help advanced small businesses successfully navigate the middle market as they reach their small business size thresholds, the bill would lengthen the time in which the SBA measures size through revenue, from the average of the past 3 years to the average of the past 5 years. The Committee report states that the bill would reduce the impact on small businesses from rapid growth in some years which would result in spikes in revenue that may prematurely eject a small business out of their small business status. The Committee report adds that the bill would allow small businesses at every level more time to grow and develop their competitiveness and infrastructure, before entering the open marketplace. The bill, as the Committee report states, would also protect Federal investment in SBA's small business procurement programs by increasing chances of success in the middle market for newly graduated firms, resulting in enhanced competition against large prime contractors.

As stated in the Committee report, during the period when annual revenues are rising, the 5-year average will generally be lower than the 3-year average, thereby allowing: (i) Mid-sized businesses who have just exceeded size standards to regain their small business status, and (ii) advanced small businesses close to exceeding the size standard to retain their small business status for a longer period. In the proposed rule, SBA noted that, when annual revenues are declining, the 5-year average may be higher than the 3-year average. This would cause small businesses near the size thresholds to lose their small business status sooner under the 5-year average than under the 3-year average. This is more likely to happen during economic downturns. Businesses that lose their small business status under the 5-year average may be disadvantaged further because they may have to wait several years more to regain their small business status, as compared to under a 3-year average. The proposed rule added that newly established firms that have been in business for less than 5 years will receive no benefit from a change to a 5-year average. A firm that has been in business for less than the averaging period simply annualizes the receipts from its full existence.

Additionally, SBA also stated in the proposed rule that by enabling mid-size businesses to regain small business status and by lengthening the small business status of advanced and successful larger small businesses, the longer averaging period may disadvantage smaller small businesses in more need of Federal assistance than their more advanced and larger counterparts in competing for Federal opportunities. Similar to concerns from mid-size businesses that they lack necessary resources, past performance qualifications, and expertise to be able to compete against very large businesses in the full and open market, SBA has also received concerns from smaller small businesses that they also lack resources, past performance qualifications, and expertise to be able to compete against more resourceful, qualified, and experienced larger small businesses for Federal opportunities for small businesses.

In its June 24, 2019 proposed rule, SBA sought comments on its proposal to change the averaging period for the calculation of average annual receipts for all receipts-based size standards from 3 years to 5 years.

1. SBA sought feedback, along with supporting facts and analyses, on whether the Agency should calculate average annual receipts over 5 years for all industries subject to receipts-based size standards and on whether it should use a 5-year average annual receipts for businesses in services industries only and continue using a 3-year average annual receipts for other businesses. SBA was concerned that the latter option may create confusion for both businesses in reporting their size based on average annual receipts and contracting personnel in verifying the size of bidders to Federal contracts.

2. SBA sought input on how the use of average annual receipts over 5 years instead of 3 years would impact both smaller small businesses and more advanced, larger small businesses in terms of getting access to Federal opportunities for small businesses.

Additionally, SBA requested comments on its clarification of how annual receipts should be calculated in connection with the acquisition or sale of a division. The proposed rule provided that the annual receipts of a concern would not be adjusted where the concern sells or acquires a segregable division during the applicable period of measurement. This is distinct from how SBA treats the sale or acquisition of a subsidiary that is a separate legal entity.

In this final rule, SBA adopts the changes as stated in the proposed rule, with two modifications. First, in response to comments, SBA is not including the 7(a) Loan Program, the Microloan Program, the Intermediary Lending Pilot Program, and the Development Company Loan Program (collectively, the ''Business Loan Programs'') in this present change. SBA also is not including Physical Disaster Business Loans, Economic Injury Disaster Loans, Military Reservist Economic Injury Disaster Loans, and Immediate Disaster Assistance Program loans (collectively, the ''Disaster Loan Programs''). At a later date, SBA will issue a proposed rule to seek additional input to assess the impact of any changes to the Business Loan and Disaster Loan Programs. Second, for all other SBA programs, including the Federal procurement programs, SBA adopts a two-year transition period through January 6, 2022. During the transition period, a firm may choose between calculating receipts using a 3-year average or a 5-year average.

Discussion of Comments

SBA received a total of 217 comments to the proposed rule, of which 5 were not pertinent to the scope of the proposed rule. Of the 212 comments that were pertinent, 140 commenters (including more than 10 trade associations, small and mid-size business groups, and small business advocacy organizations) fully supported the proposed rule; 5 comments supported the change to a 5-year averaging period but opposed SBA's proposal not to adjust receipts for the sale or acquisition of a segregable division; 28 comments did not oppose the change to a 5-year averaging period but opposed the use of 5 years of tax returns to analyze any loan program requirement other than size; 37 comments opposed the change to a 5-year averaging period; and 2 comments could not be categorized as either supporting or opposing the proposed rule. All of these comments are available at *www.regulations.gov* (RIN 3245–AH16), are summarized and discussed below in terms of various categories of comments, and are accompanied by SBA's responses.

Comments on Using a 5-Year Averaging Period for All Receipts-Based Size Standards

SBA requested comments on whether it should use a 5-year averaging period for all of its receipts-based standards (*i.e.,* for both services industries and non-services industries) or only for services industries. Forty-one commenters responded to this issue, all of which supported using the 5-year averaging period for all SBA's receipt-based size standards. Three of those comments also supported using the 5-year averaging period for other agencies' size standards for non-services industries that are subject to receipts-based size standards.

Commenters expressed support for expanding the 5-year averaging period to all receipt-based size standards for a variety of reasons. For example, one organization agreed with SBA that using different formulas for calculating size in different industries may create confusion, adding that ''using different formulas could incentivize NAICS appeals as contractors jockey for a code that not only uses their preferred size standard, but also their preferred number of years in the calculation of size.'' Similarly, another organization supported the expansion of the 5-year averaging period for all receipts-based size standards because maintaining a separate averaging period for non-services industries would lead to confusion for small firms in that some firms would be small under one NAICS code but other-than-small under another NAICS code with the same or higher size standard. The organization explained that maintaining a 3-year averaging period for non-services industries would ''leave companies that have multiple capabilities to potentially be small under their services NAICS code, but not under other NAICS of work they perform.'' Another organization supported applying the 5-year averaging period to all receipts-based size standards because it would ''reduce the burden on small businesses in determining which size standard to apply to a given procurement.''

However, some commenters opposed the move to a 5-year averaging period on the grounds that this would increase paperwork and compliance burden on lenders and borrowers of the SBA's loans. These commenters suggested, as discussed below, that SBA retain the current 3-year averaging period for calculating annual revenues for services firms for the SBA's financial assistance programs, if SBA decides to adopt the proposed 5-year averaging period elsewhere.

SBA's response:

SBA agrees with the commenters that, in applying SBA's size standards, separating out services industry firms from non-services firms would cause confusion and create a greater compliance burden on firms that participate in both services industries and non-services industries. SBA also agrees that using a 5-year averaging period for services industries and a 3-year averaging period for non-services industries can lead to an inconsistent result of making a business small in one NAICS code and other than small in another NAICS code with a same or higher size standard. SBA also finds that it will be equally confusing to use, in the same industry, a 5-year averaging period for the SBA's size standard and a 3-year averaging period for other agencies' size standards. To avoid such confusion and inconsistency, in this final rule, SBA is adopting the 5-year averaging period for calculating the average annual receipts for all SBA's receipts-based size standards. For the same reason, SBA is also adopting the same 5-year averaging period for both services and non-services industries when approving receipt-based size standards by other federal agencies.

Comments on Moving From a 3-Year Averaging Period to a 5-Year Averaging Period

Comments Supporting the 5-Year Averaging Period

Of the 212 pertinent comments received, 173 (or approximately 82%) supported the SBA's proposal to change its method for calculating annual receipts from a 3-year averaging period to a 5-year averaging period, although some of those comments rejected other aspects of the proposed rule. Commenters expressed support for the proposed change for a variety of reasons, as discussed below.

A vast majority of commenters maintained that the proposed change would benefit small businesses that are either about to exceed or have just exceeded the relevant size standards (often referred to as ''mid-size businesses'') by allowing them more time to develop capabilities, strengthen and diversify experience, and build resources, thus enabling them to compete successfully for unrestricted opportunities in the full-and-open market with very large businesses that have extensive capabilities, experience, and past-performance qualifications. Several commenters shared that a

transition from ''small'' to ''other-than-small'' status is much more difficult than a transition from ''very small'' to ''small'' status. Some indicated that a longer lookback period would also ameliorate the current dilemma growing small businesses face in the Federal market when they exceed their size standards: Deciding whether to restrain growth to remain small (and avoid the difficulty of competing in a full-and-open environment), sell, or go out of business.

Another common comment was that the change from a 3-year averaging period to a 5-year averaging period will be very helpful to small businesses of every size, especially those that have successfully grown to revenues above the 3-year average for their respective NAICS codes. Some commenters expressed support for the proposed change because the 5-year averaging method would promote fairness and increase the accuracy of size representation. For example, one commenter explained that ''one abnormally successful year could cause a small business to size out of the standard. Amortizing a year of success over five years instead of three will likely lengthen a small business' eligibility period and be a more accurate reflection of that business' true operations.'' Another commenter explained that a firm's temporary spike in revenue ''may not have resulted in increased infrastructure for the firm such that it will be ready to compete in the open market.'' Several other commenters expressed support for the proposed rule because it would give advanced small firms more time to take advantage of SBA small business assistance programs. Similarly, another commenter explained that ''Nurturing small business capabilities is important because it results in more price competition, it spurs innovation, and helps create jobs.'' Other commenters expressed that growing small businesses should be rewarded for their success with a longer lookback averaging period.

Commenters also expressed support for the proposed change because it would increase the total number of small businesses and strengthen the Federal small business industrial or supplier base. Several commenters maintained that, with the availability of more businesses qualifying as small, the move to a 5-year averaging period would increase set-aside opportunities for all small businesses as the agencies are likely to set aside more contracts for small businesses. Other commenters expressed that an expanded pool of small businesses would benefit the Federal government by providing a larger and more stable pool of qualified small businesses in the Federal procurement market. The Federal government also will benefit from lower prices for its procurements due to increased competition, and from reduced risks by allowing agencies to retain their trusted and qualified incumbent small business contractors for a longer period. Several commenters also maintained that, with more businesses qualifying as small under the 5-year receipts average, the change also would provide large prime contractors with a robust pool of qualified small businesses to draw from to meet their small business subcontracting requirements.

Several commenters also expressed support for the proposed change because it would reduce the impacts of unusual spikes in revenues in some years on growing small businesses and enable them to adjust to revenue swings due to fluctuations in economic conditions, business environment, and changes in the Federal market. For example, one commenter explained that it is increasingly common for the government to utilize larger and longer indefinite delivery, indefinite quantity (IDIQ) contract vehicles, where one high-valued contract or task order can throw a small business out of its small business status. Some commenters supporting the proposed rule also stated that, under the 5-year averaging period, growing small businesses will be able to maintain their small business status for a longer period and, as a consequence, achieve and sustain growth. A number of comments also supported the SBA's proposal to remove ''Schedule K'' from the definition of receipts.

SBA's response:

SBA agrees with commenters that this rule will benefit small businesses, the Federal Government, and large businesses. With an expanded pool of small businesses, the Federal Government will have more qualified small businesses to choose from, and as a result, likely will set aside more contracts for small businesses. SBA also agrees with commenters that the 5-year averaging period will allow more small firms to benefit from SBA's small business assistance programs by extending their small business status for a longer period. The change would also enable small businesses that have just exceeded their size standards to regain their small business status and to benefit from Federal small business assistance. SBA believes that the change to a 5-year averaging period will expand benefits to all small businesses over the long-run, although the proposed change would have led to some negative impacts in the short-run. Accordingly, in this final rule, except for the Business Loan and Disaster Loan Programs, SBA is amending its regulations on the calculation of average annual receipts for all receipts-based SBA size standards from a 3-year averaging period to a 5-year averaging period, with a transition period through January 6, 2022, during which firms (and their affiliates) can choose either a 3-year or a 5-year averaging period. SBA is also removing ''Schedule K'' from the definition of receipts, as proposed.

Opposing Comments

Of 212 pertinent comments that SBA received, 37 opposed the change to the averaging period for annual receipts calculation from 3 years to 5 years. Comments that opposed the proposed rule mostly focused on one or more of the following three issues: (1) Disadvantages to firms with declining revenues, (2) undue advantages to ''larger'' small businesses, and (3) additional burden on borrowers and lenders. Below, SBA summarizes each of the three comment categories listed above.

(1) Disadvantages to Firms with Declining Revenues. Of the 37 comments opposing the shift to a 5-year averaging period, 7 commenters opposed the rule based on the reason that a 5-year averaging period would disadvantage firms with declining revenues. Of these 7 commenters, 2 affirmatively stated that their firm's size status would change from small to other-than-small as a result of the shift to a 5-year averaging period. Several commenters opposing the proposed rule observed that it will take longer for small businesses to qualify as small again once they have exceeded the size standard. Other commenters noted that the proposed rule would harm small firms with declining revenues, causing them to lose their small business size status sooner under the 5-year average receipts as compared to the 3-year receipts. One commenter explained that ''while increasing the receipts lookback period from 3 years to 5 years will benefit many growing companies, it could also be detrimental to businesses that have experienced declining revenues, as it would cause many such businesses to lose their small business status despite declining receipts.'' Another commenter stated that it was unfair for small businesses to be ''penalized'' for having declining revenues. The commenter explained that business concerns that face a downturn ''should not be penalized, by being excluded from eligibility for SBA's small business programs. . . .

Such an outcome would be an unintended negative consequence of the Act.'' Some commenters contended that the proposed change primarily benefits growing and more successful larger small businesses by enabling them to maintain their small business status longer and better prepare for a successful transition to the full-and-open market, but it hurts emerging and smaller small businesses that are in need of the SBA assistance the most.

SBA's response:

SBA acknowledges that the move from a 3-year averaging period to a 5-year averaging period could, as an unintended negative impact, cause some small businesses that are close to their size standard to lose their small business status immediately or subsequently during the period of declining annual revenues. SBA agrees that a firm that exceeds the size standard based on a 5-year average, but then has subsequent years of declining revenues, will face a longer period before regaining its small business status. In order to mitigate this impact, in this final rule, except for the Business Loan and Disaster Loan Programs, SBA is providing a transition period until January 6, 2022, during which firms will be allowed to choose either the 3-year receipts average or 5-year receipts average for size eligibility purposes.

(2) Undue Advantages to ''Larger'' Small Businesses. Of the 37 comments opposing the shift to a 5-year averaging period, 5 comments opposed the proposed rule on the grounds that it may give an undue advantage to ''larger'' small businesses near the industry size threshold to the detriment of ''smaller'' small businesses in competing for small business opportunities. One commenter expressed concerns that the move to the 5-year averaging period lacked benefits for ''smaller'' small firms that need SBA's assistance the most. The commenter explained that by extending the measurement period, it only allows for companies to resist growth, control revenue and continue to be small. This process, if extended, will only provide a further advantage to those who are on the upper limit but does nothing to help those who are truly small.

A number of commenters opposed the rule because it will allow companies to continue to be small businesses after the period at which those businesses should transition to other-than-small business status, making it difficult for smaller small businesses to compete against their larger counterparts under the 5-year averaging period. One commenter, expressing concerns about this issue, explained that the proposed rule would ''keep start-up small businesses from competing for small business set-aside opportunities . . . and allow 'extended' small businesses with contracts to out compete those businesses that are truly 'small.' '' Some of these commenters raised industry-specific concerns.

SBA's response:

SBA acknowledges that smaller small firms could face some disadvantages in competing for set-aside contracts against a larger pool of small firms, especially against the newly qualified larger small businesses and advanced small businesses who are able to remain small for a longer period. However, as detailed in SBA's benefit-cost analysis of the proposed rule, the change from a 3-year averaging period to a 5-year averaging period will increase the total number of small businesses, which would, because of greater potential small business competition for government contracts, likely lead to expansion of set-aside opportunities for all small businesses. In addition, as some commenters stated, that ''smaller'' small firms may not be in direct competition with ''larger'' small firms due to differences in their missions, capabilities, and resources, and therefore, would not face negative impacts from an increase in the number of ''larger'' small firms. As one organization commenting on the proposed rule explained, ''these emerging small companies tend to have their own swim lanes, and do not typically compete against 'larger' small businesses directly and in some cases do not compete in the federal market all.''

The contracts awards data also shows that in most industries the majority of small business contract dollars go to businesses that are substantially smaller than their size standards. The results from some industries with recent large increases to size standards also reveal that small businesses under the previous size standards continue to receive the same amount of contract dollars as before the increase. SBA agrees that the move to a 5-year averaging method is likely to benefit advanced small businesses that have just exceeded or are about to exceed their size standards more than their smaller counterparts in the short-run, but in the long-run it will benefit all small businesses at every level as they continue to grow and approach the size standard.

(3) *Additional Burden on Borrowers and Lenders.* Of the 37 comments opposing the shift to a 5-year averaging period, 23 (including one trade association representing lenders serving small businesses under the SBA CDC/504 loan program) opposed the move to the 5-year average because the change would cause undue additional burden on borrowers and lenders under the Business Loan Programs. An additional 28 commenters (including another trade association representing lenders serving small businesses under the SBA's 7(a) loan program) also expressed similar concern that the 5-year averaging would result in an undue additional burden on borrowers and lenders participating in the Business Loan Programs, but they did not specifically oppose the shift to a 5-year averaging period for SBA's revenue-based size standards.

A majority of these commenters included members of those two trade associations in support of the position of their respective associations. Some commenters opposed the rule on the basis that it may require SBA Lenders to collect and review two additional years of tax returns or financial statements to establish eligibility for the SBA's loan programs. Some of these commenters expressed concerns that this will add costs to loan processing, increase turn-around times, and discourage small businesses from participating in the SBA's loan programs. One trade association commented that ''the process for obtaining an SBA loan already requires extensive documentation from a small business, and this additional requirement increases that burden without any underlying benefit to the small business.'' The trade association requested that SBA ''give consideration to allowing the service-industry size standard calculation to remain at its current 3-year averaging period for the SBA loan guarantee programs.''

Some commenters noted that a central premise of the proposed change appears to address the concern that the current 3-year averaging method ''ejects'' growing small businesses from Federal small business contracting programs before they are ready to compete in the full and open market. They stated that there is no such concern as it relates to the SBA's loan programs, as small businesses seeking or obtaining SBA's loans are rarely ''ejected'' from eligibility due to size.

Several commenters asked that SBA clarify that the 5-year averaging period is intended to apply only to SBA's receipts-based size standards, not for any other loan application purpose. One trade association commented that ''Tax return information is used for multiple purposes related to the loan application process,'' including verifying an applicant's historical cash flow, income, or tax payment history. The trade association further explained, ''None of those purposes would require or

substantially benefit from a look-back period greater than 3 years.'' A trade association and a number of other commenters asked that SBA exempt the SBA's loan programs from the change, allowing SBA lenders to continue to apply a 3-year receipts average. Other commenters (including a trade association representing 7(a) lenders) requested that SBA's final rule ''*[S]pecifically* include language clarifying that the longer 5-year period is intended to apply only for purposes of determining size for loan applicants using SBA's traditional revenue-based sized standards, and not for any other loan application purpose.''

SBA's response:

In response to comments regarding the burden of the rule on SBA Lenders and loan applicants, SBA has determined that the Business Loan and Disaster Loan Programs should not be included in this final rule. SBA included the Business Loan and Disaster Loan Programs in the proposed rule's cost-benefit analysis, but, otherwise, the initial proposed rule did not discuss the effect that the rule would have on SBA Lenders and loan program participants. Based on the comments expressing that SBA Lenders and loan program applicants would experience burden, SBA will seek additional comment and public input through a proposed rule at a later date to determine how best to consider changes to size eligibility in the Business Loan and Disaster Loan Programs. Through this later proposed rule, SBA intends to ask for data and additional detail about the burden faced by SBA Lenders and applicants, and for comment on any benefit that applicants might obtain through a longer averaging period for determining eligibility for SBA's Business Loan and Disaster Loan Programs.

Comments on Calculating of Average Receipts After the Sale or Acquisition of a Segregable Division

SBA received 20 comments responding to its proposed clarification on the calculation of the annual receipts of a concern where the concern sells or acquires a segregable division during the applicable period of measurement. Of those 20 comments, 3 comments agreed with SBA's proposed clarification, 5 comments disagreed, 11 comments requested further clarification, and 1 comment was not clear as to its stance on this issue.

The 3 commenters who agreed with SBA's proposed treatment of the sale or acquisition of a segregable division emphasized that the receipts of a division remain the receipts of the selling concern even after it is sold and that the receipts of an acquired division prior to the acquisition do not become the receipts of the acquiring concern after the acquisition. One association commenting on the proposed rule stated that it supports SBA's position because it ''provides clarity to the community with regard to the application of the former affiliate rule.'' The same association also requested that SBA expand the scope of its clarification to include segregable divisions and ''other assets not held as a separate legal entity.'' The association stated that such an expansion would ''ensure that SBA's clarification applies to the sale or purchase of non-segregable assets as well, *e.g.,* when an entity acquires the assets performing a specific contract.''

The 5 commenters who disagreed with SBA's proposed treatment of the sale or acquisition of a segregable division stated that (1) it elevates form over substance in distinguishing between a division and a subsidiary that is a separate legal entity, (2) it would create a burden for businesses seeking to benefit from selling off a division by moving all of its assets to a newly created subsidiary, (3) it would harm businesses that relied on current SBA policy when selling segregable divisions and were small as a result of the sale, and (4) it would create unpredictability and uncertainty in good-faith size status calculations.

The 11 commenters who requested further clarification all stated (1) that they would have liked to see proposed regulatory text, and (2) that the Office of Hearings and Appeals (OHA) cases that SBA cited in the proposed rule do not make a distinction between divisions and subsidiaries. One commenter cited two additional OHA decisions which it believes contradict SBA's distinction between a division and subsidiary. The commenter stated that in the proposed rule, ''SBA cites a quotation from such a decision which provides that 'a firm which acquires most of the assets of a *subsidiary or division* of a larger firm is affiliated only with that *subsidiary or division,* and not with the entire parent company' (emphasis added). As such, it appears that SBA's Office of Hearings and Appeals does not, in fact, make a distinction between divisions and subsidiaries.''

SBA's response:

SBA agrees with the commenters who stated that the receipts of a sold division remain the receipts of the selling concern after the sale, just as the receipts of an acquired division prior to its acquisition should not be treated as the receipts of the acquiring concern prior to the acquisition. SBA believes that it is not logical to allow a firm to exclude the receipts of a former division just because that division was sold, since those receipts accrued to the concern.

SBA believes that there really is a difference between the sale or acquisition of a segregable division as opposed to the sale or acquisition of a separate legal entity. The sale or acquisition of a division is not a question of affiliation. It simply represents an addition or subtraction to the concern itself. This is distinct from the sale or acquisition of a separate legal entity, which implicates questions of affiliation.

Regarding the OHA cases cited by the commenters, none of these decisions speak specifically to how receipts should be calculated after the sale or acquisition of a segregable division. However, as stated by several commenters, SBA is not obligated to follow OHA decisions when putting forth changes to its regulations.

For all the reasons above, SBA is adding the language to §§ 121.104(d)(4) and 121.106(b)(4)(ii) to clarify that the former affiliate rule does not permit a concern to adjust its receipts when the concern sells a segregable division that is not a separate legal entity.

Comments on the Exemption From the 5-Year Averaging Period

Although not specifically requested in the proposed rule, SBA received 31 comments requesting some sort of alternative option which would allow firms to use either a 3-year average or 5-year average of annual receipts depending on which one would be more advantageous to them. The comments proposing such an option suggested that the 3-year vs. 5-year option be for available for a specific period or be made permanent. Of the 31 total comments addressing this issue, 13 commenters recommended using a transition period of 2 years or less; 12 recommended a transition of 3 or more years; 4 suggested making the transition period permanent; and 2 did not specify a duration.

In support of the transition period were commenters both for and against the shift to a 5-year averaging period for calculating annual receipts. Of the 31 comments supporting a transition period, 20 supported the proposed rule; 5 opposed the proposed rule; 5 supported some elements while opposing others; and 1 comment did not express support or opposition to the move from a 3-year averaging period to a 5-year averaging period but recommended that SBA consider the transition period as an alternative to mitigate the impact on businesses that

are currently small under the 3-year receipts average but would become other-than-small under the 5-year average receipts.

SBA found that these commenters supported the adoption of a transition period for two reasons: (1) To ensure an organized and transparent implementation of the final rule, and (2) to minimize harm to small firms with declining revenues or to those becoming other than small under the 5-year receipts upon the implementation of the final rule.

For example, one commenter suggested that SBA implement a 2-year transition period to reduce confusion and uncertainty for small firms that have occurred since the Small Business Runway Extension Act was signed into law. The commenter explained that ''some firms have been submitting proposals using a 3-year average in accordance with the SBA's guidance, while others have used a 5-year average in accordance with the new law. Due to this uncertainty, [Commenter] recommends allowing a two-year transition period for small companies . . .'' Another commenter recommended that SBA ''provide for a reasonable transition period for implementation . . . to allow government systems to be updated and to give the contractor community time to properly implement the size calculation change.''

One commenter, expressing concern regarding the proposed rule's impact on firms with declining revenues, explained that ''While increasing the look-back period from 3 years to 5 years will provide a benefit to many growing companies, it could be detrimental to businesses that have experienced declining revenue.'' The commenter further stated that ''SBA should consider a hybrid approach whereby contractors are permitted to calculate revenues under both the 3-year period and the 5-year period and use the lower of the two results to determine its size status. This approach would be beneficial to both those small contractors that are experiencing a period of revenue growth, as well as those facing declining revenues.''

SBA's response:

SBA agrees with the comments supporting a temporary transition period under which firms still could choose to use a 3-year averaging period. A plurality of commenters asked for a 2-year transition period or less, and SBA agrees that a 2-year period is appropriate because 2 years is an adequate time to allow firms to prepare for a permanent transition to a 5-year averaging period. Therefore, for the SBA programs affected by this rule, SBA will allow firms to choose either a 3-year or 5-year averaging period through January 6, 2022. After that date, firms with at least 5 years of receipts will be required to use a 5-year averaging period. A firm with fewer than 5 years of receipts will average its annual receipts over its existence.

SBA does not believe that allowing for alternate averaging periods on a permanent basis would be beneficial. Using multiple averaging periods in the long term will result in confusion about how to determine size for Federal opportunities, including procurements. Within a single contract competition, businesses would be able to determine size on a separate basis. After the transition period, there is not sufficient reason to justify maintaining two separate averaging periods.

Other Comments

SBA received some additional comments that addressed issues which did not fit into any of the above categories. One commenter requested that SBA change its regulations at 13 CFR 124.112(e)(2) to allow an 8(a) Business Development (BD) Program participant to change its primary industry classification using the last 5 completed fiscal years, instead of the current 3 completed fiscal years. This commenter stressed the advantage of reconciling this primary industry classification calculation period with the size determination calculation period, especially at the 5th year annual update for an 8(a) BD Program participant.

SBA also received a few comments concerning the timeline for the implementation of the final rule. Most of these commenters suggested that SBA implement the final rule as soon as possible. One commenter stated that it is unlawful to delay the implementation of the new law, and the comment from one trade association suggested that SBA make the final rule retroactive to December 17, 2018, the date of enactment of Public Law 115–324. Another commenter recommended delaying the implementation of the final rule until January 1, 2021 if SBA decides to not grant a grace period to use the 3-year lookback. The commenter stated, ''dropping the 3-year rule 'grace period' in the middle of the year will only confuse and complicate the implementation of the rule.''

One commenter suggested that SBA establish a 5-year averaging period for employee-based size standards as well.

SBA's response:

The comment that SBA update its regulations at 13 CFR 124.112(e)(2) is outside the scope of establishing and reviewing size standards. This rule is only concerned with the method of calculation of annual receipts for size standards purposes. The comment regarding 13 CFR 124.112(e)(2) concerns a calculation related to the primary industry classification under 8(a) BD Program and that is outside the scope of this rule. Similarly, this rule does not affect the application of a 3-year average in the ''economic dependence'' test under 13 CFR 121.103(f)(2).

With respect to the comments concerning the implementation timeframe of the final rule, Public Law 115–324 did not include an effective date for the averaging change. Section 3(a)(2)(C) of the Small Business Act requires SBA to provide an opportunity for public notice and comment through the rulemaking process prior to implementing changes to size standards prescribed through section 3(a)(2). Accordingly, on December 21, 2018, SBA issued an Information Notice (6000–180023) advising that, until SBA makes necessary changes to its regulations, businesses must report their receipts based on a 3-year average. Thus, making the rule retroactive to the December 17, 2018, enactment date would not only run counter to SBA's guidance, but also would require corrections to contracts awards data in the Federal Procurement Data System-Next Generation (FPDS–NG) to reflect changes in size status of contractors due to the change in the averaging period. Conversely, delaying the implementation date would be against the interests of many small businesses and Federal agencies that want to see the final rule being implemented as soon as possible. Accordingly, this final rule will be effective after 30 days from the date of its publication in the **Federal Register**.

Lastly, this rule does not change the calculation period for employee-based size standards. SBA does not find sufficient reason from the comments to a propose a change to the period for employee-based size standards.

Conclusions

Based on the analyses of impacts using the latest relevant industry and Federal contracting data available to SBA when the proposed rule was prepared and thorough evaluation of all public comments on the proposed rule, as discussed above, SBA is taking the following actions in this final rule, except for the Business Loan and Disaster Loan Programs:

(i) Adopting the 5-year averaging period for calculating annual revenues of firms and revenues of their affiliates

in all industries that are subject to SBA's receipts-based size standards;

(ii) Adopting the 5-year averaging period for calculating annual revenues of firms (including affiliates, if any) in all industries for prescribing receipts-based size standards by other Federal agencies; and

(iii) Providing a transition period until January 6, 2022, allowing firms (and their affiliates, if any) to choose either a 3-year averaging period or a 5-year averaging period for calculating average annual receipts for size standards purposes.

Section-by-Section Analysis

Section 121.104

The final rule removes ''Schedule K'' from the definition of receipts. SBA has found that reviewing Schedule K is generally not useful, but SBA reserves the ability to request a Schedule K as part of SBA's review of the other Internal Revenue Service (IRS) forms listed in § 121.104(a).

For consistency with the size standard averaging period being changed in § 121.903, for the purposes of applying SBA's receipts-based size standards, the final rule changes the averaging period for a business that has been in business for 5 or more fiscal years to a 5-year period, *i.e.,* the business calculates its total receipts over the 5-year period and divides by 5. Under the final rule, if a business has been in business for less than 5 complete fiscal years, the business calculates its total receipts, divides by the number of weeks in business, and multiplies by 52. This is the same process SBA currently uses when a business has less than 3 completed fiscal years. If a business has a short year as one of its 5 years, the business calculates its total receipts over the 5-year period, divides by the number of weeks in the short year and its other 4 fiscal years, and multiplies by 52. This too is the same process SBA currently uses.

The 5-year averaging period in § 121.104 would not distinguish between firms in service industries and other firms subject to receipts-based size standards. SBA believes that, in applying SBA's own size standards, separating out service-industry firms would cause confusion and create a greater compliance burden on firms that participate in both services industries and non-services industries (such as agriculture, construction, and retail trade) with receipts-based size standards.

This final rule only would affect the application of SBA's new size standard rules after its effective date. Thus, until the effective date of a final rule, SBA will continue to apply the 3-year averaging period in the present § 121.104 for calculating average annual receipts for all SBA's receipts-based size standards. Since size is determined as of the date when a firm certifies its size as part of its initial offer which includes price, the 3-year calculation period will apply to any offer submitted prior to the effective date of the final rule. Thus, even if SBA receives a request for a size determination or size appeal after the effective date of the final rule, SBA will still use a 3-year calculation period if the determination or appeal relates to a certification submitted prior to the final rule's effective date. Misrepresentations made under the existing calculation period are material for the purposes of criminal, civil, or administrative actions.

SBA also clarifies how it believes annual receipts should be calculated in connection with the acquisition or sale of a division. Specifically, the final rule provides that the annual receipts of a concern would not be adjusted where the concern sells or acquires a segregable division during the applicable period of measurement or before the date on which it self-certified as small. This would be different from how SBA treats the sale or acquisition of a subsidiary. In the case of a subsidiary, SBA's regulations provide that ''[t]he annual receipts of a former affiliate are not included if affiliation ceased before the date used for determining size. This exclusion of annual receipts of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.'' 13 CFR 121.104(d)(4).

SBA believes that the sale or acquisition of a division is different from buying or selling a separate legal entity and, as such, should be treated differently. Any receipts attributable to a specific division of a concern are certainly receipts earned by the concern. Even if that division is later sold, its receipts were always part of the receipts directly received by the concern itself, and SBA believes that those receipts should remain a part of the concern's receipts after the sale for purposes of determining the concern's size. Similarly, where a concern acquires a segregable division from another business entity during the applicable period of measurement, SBA would not increase the concern's overall receipts by the amount of receipts attributable to that division.

SBA understands that some may feel that distinguishing the sale of a division from that of a subsidiary would elevate form over substance, and would merely require a seller to move assets into a separate subsidiary and then sell that subsidiary in order to bring the transaction under the rule. However, as noted above, SBA believes that there really is an important distinction between a division and a separate legal entity.

The Final Rule adds a transition period through January 6, 2022, during which a firm may calculate its receipts and the receipts of its affiliates using either a 3-year average or a 5-year average. The Final Rule adds a paragraph (c)(4) to use a 3-year averaging period for the Business Loan Programs, which are the 7(a) Loan Program, the Microloan Program, the Intermediary Lending Pilot Program, and the Development Company Loan Program (''504 Loan Program''), and the Disaster Loan Programs, which are Physical Disaster Business Loans, Economic Injury Disaster Loans, Military Reservist Economic Injury Disaster Loans, and Immediate Disaster Assistance Program loans. SBA intends to seek comment on the Business Loan and Disaster Loan Programs in a proposed rule through a separate rulemaking.

Section 121.903

As required by Public Law 115–324, SBA is amending the requirements for agencies that seek to propose and adopt size standards for their own programs, instead of applying SBA's size standards. Under the final rule, a non-SBA agency's receipts-based size standard, whether applying to services or non-services firms, must be proposed with a 5-year averaging period.

Section 3(a)(2)(ii)(III) of the Small Business Act still provides that other agencies prescribe size standards for industries other than services or manufacturing using ''data over a period of not less than 3 years.'' While Congress did not change this statutory language, SBA believes that it also can require other agencies establishing size standards for industries other than services or manufacturing to use data over a 5-year period and specifically solicited comment on whether to make such a change. SBA received strong support for applying the 5-year averaging period for all industries. To avoid confusion from using the 5-year average receipts for SBA's size standards and 3-year average receipts for other agencies' size standards and promote consistency in measuring business size across the Federal government, in this final rule, SBA is also adopting the same 5-year averaging period for all receipts-based size

standards proposed by other Federal agencies.

This new calculation period does not affect existing non-SBA size standards that specify a 3-year average unless the responsible agency proposes and finalizes changes to the existing specification of a 3-year average. This is consistent with the change in Public Law 115–324 to the requirements for prescribing a non-SBA size standard, given the lack of any restrictions in the Small Business Act or Public Law 115–324 on applying an existing size standard. In adopting or proposing a change to the averaging period for its existing size standard, the responsible agency should coordinate with SBA using the procedure in § 121.903.

Response to Office of Advocacy Comments

In response to the Proposed Rule, the Office of Advocacy of the SBA (Office of Advocacy) requested that the SBA update its Initial Regulatory Flexibility Analysis (IRFA) to include more relevant alternatives to the proposed regulatory change to mitigate negative impacts on small businesses. Specifically, the Office of Advocacy suggested that SBA allow the public to consider at least 2 specific alternatives: (1) A 2-year transition period during which firms could use either a 3-year or 5-year averaging period, or (2) allowing a small business that has been awarded a contract to recertify its small business size status through any option periods.

As suggested by the Office of Advocacy, SBA has adopted a 2-year transition period that will end January 6, 2022. During that period, firms will choose either a 3-year or 5-year averaging period. Thus, firms that wish to continue using a 3-year average for certifying or assessing small business size status may continue to do so until January 6, 2022.

With regard to updating the IRFA, SBA does not believe that it is practical to issue a revised IRFA for public comment at this time. There is an urgent need to implement the intent of Congress and a further delay would result in more uncertainty and confusion for small businesses and the Federal contracting community. A number of comments to the proposed rule urged SBA to implement the final rule as soon as possible. In addition, SBA has adopted one of the relevant alternatives discussed by the Office of Advocacy, a 2-year transition period during which firms could use either a 3-year or a 5-year averaging period. Thus, issuing a revised IRFA for public comment would be superfluous. Accordingly, SBA is declining to issue a revised IRFA for public comment with the alternatives proposed by the Office of Advocacy.

With regard to recertification, SBA believes it would be extremely complicated to allow a firm that has already been awarded a contract to recertify its size status, after the transition period, using either the 3-year or 5-year averaging period through the length of that contract and any options. This would create extensive tracking and recordkeeping requirements that would also result in uncertainty and unpredictability for firms trying to determine their size status after the end of the 2-year transition period created in this rule. Thus, even if a firm initially certified for a contract under a 3-year averaging period, a firm must use a 5-year average when it submits a new certification or recertification for that contract after the end of the transition period.

Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

A. Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is not a significant regulatory action for purposes of Executive Order 12866. Nonetheless, as required by section 3(a)(6) of the Small Business Act, 15 U.S.C. 632(a)(6), in the next section, SBA provides a benefit-cost analysis of this final rule, including: (1) A statement of the need for the proposed action, and (2) an evaluation of the benefits and costs—both quantitative and qualitative—of this regulatory action. This rule is also not a ''major rule'' under the Congressional Review Act, 5 U.S.C. 800, *et seq.*

a. Benefit-Cost Analysis

1. What is the need for this regulatory action?

As stated elsewhere, the Small Business Act delegates to SBA's Administrator the responsibility for establishing small business size definitions (usually referred to as ''size standards''). Recently, Public Law 115–324 modified the requirements for proposed small business size standards prescribed by an agency without separate statutory authority to issue size standards.

The need of this final rule is to carry out the intent of Public Law 115–324 and to ensure consistency in the calculation of average annual receipts for size standards across the Federal Government.

SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and counseling, and disaster assistance programs. This regulatory action promotes the Administration's goals and objectives and meets the SBA's statutory responsibility to implement a new law impacting size definitions for small businesses. One of SBA's goals in support of promoting the Administration's objectives is to help small businesses succeed through access to capital, Federal Government contracts and purchases, and management, technical and disaster assistance.

2. What are the potential benefits and costs of this regulatory action?

Changing the period for calculating average annual receipts from 3 years to 5 years may enable some mid-size businesses that have just exceeded size standards to regain small business status. Similarly, it could also allow some advanced and larger small businesses about to exceed size standards to retain their small business status for a longer period. However, as stated in the June 24, 2019, proposed rule, it could also result in some advanced small businesses having a 5-year receipts average that happens to be higher than the 3-year receipts average, thus ejecting them out of their small business status sooner. Detailed impacts of the proposed change are discussed below.

It is difficult to determine the actual number of small and mid-size businesses that would be impacted by Public Law 115–324 and this regulatory action because there is no annual data on receipts of businesses. The annual receipts data from the Economic Census special tabulation are only available once every 5 years. Similarly, the System for Award Management (SAM) only records the data on 3-year average annual receipts of businesses over their 3 preceding fiscal years, but not their annual receipts for each fiscal year. For example, the receipts data for year 2018 is an average of annual receipts for 2017, 2016, and 2015. Similarly, the receipts data for 2017 is an average of annual receipts for 2016, 2015, and 2014, and so on. A 5-year receipts average for 2018 would be an average of annual receipts for 2017, 2016, 2015, 2014, and 2013.

Given the lack of annual receipts for each year, SBA approximated a firm's 5-year average annual revenue for 2018 as follows:

$$AvgRevenue_{2013-17}$$

$$= \frac{1}{5} * \{(2 * AvgRevenue_{2015\,(SAM)}) + (3 * AvgRevenue_{2018\,(SAM)})\}$$

where:

$$AvgRevenue_{2015\,(SAM)} = AvgRevenue_{2012-14} =$$

$$= \frac{1}{3} * (Revenue_{2012} + Revenue_{2013} + Revenue_{2014})$$

and

$$AvgRevenue_{2018\,(SAM)} = AvgRevenue_{2015-17} =$$

$$= \frac{1}{3} * (Revenue_{2015} + Revenue_{2016} + Revenue_{2017}).$$

This result may slightly underestimate the 5-year revenue average when annual revenues are rising (*i.e.,* 2014 revenue > 2013 revenue > 2012 revenue) and overestimate it if annual revenues are declining (*i.e.,* 2014 revenue < 2013 revenue < 2012 revenue).

To estimate the 5-year receipts average for 2018 using the above formula, SBA analyzed the 2018 SAM extracts (as of September 1, 2018) and 2015 SAM extracts (as of September 1, 2015). The above 5-year average annual receipts formula would only work for businesses that were present in both 2015 and 2018 SAM extracts. One challenge was that some businesses found in 2018 SAM could not be found in 2015 SAM and vice versa. Excluding entities registered in SAM for purposes other than government contracting and entities ineligible for small business consideration (such as foreign governments and state-controlled institutions of higher learning), there were a total of 346,958 unique business concerns in SAM subject to at least one receipts-based size standard. Of these concerns, 293,524 (or about 84.6 percent) were ''small'' in all North American Industry Classification System (NAICS) industries, 9,990 (or 2.9 percent) were ''small'' in some industries and ''not small'' in other industries, and 43,444 (or 12.5 percent) were ''not small'' in any industry.

Excluding entities with ''null'' or ''zero'' receipts values, 194,686 firms (or about 56 percent) appeared both in 2018 SAM and in 2015 SAM and were included in the 5-year average annual receipts approximation and calculation of number of businesses impacted. Of those 194,686 matched firms subject to a receipts-based size standard, 154,220 (or about 79 percent) were ''small'' in all NAICS industries, 8,049 (or 4.1 percent) were ''small'' in some industries and other than small (''not small'') in other industries, and 32,417 (or about 17 percent) were ''not small'' in any industry. In other words, 303,514 (or 87.5 percent) of 346,958 total concerns in SAM 2018 and 162,269 (or 83.3 percent) of 194,686 total matched firms were small in at least one NAICS industry with a receipts-based size standard. These results are summarized in Table 1, ''Size Status of Businesses in Industries Subject to Receipts-Based Size Standards,'' below.

TABLE 1—SIZE STATUS OF BUSINESSES IN INDUSTRIES SUBJECT TO RECEIPTS-BASED SIZE STANDARDS

Size status	Total firms in 2018 SAM subject to least one receipts-based standard		Firms in both 2015 SAM and 2018 SAM (matched)		% Matched	Total to matched ratio *
	Number of firms	%	Number of firms	%		
Small in at least one industry	303,514	87.5	162,269	83.3	53.5	1.809
Small in all industries	293,524	84.6	154,220	79.2	52.5	1.903
Small in some and not small in others	9,990	2.9	8,049	4.1	80.6	1.241
Large in all industries	43,444	12.5	32,417	16.7	74.6	1.340
Total	346,958	100.0	194,686	100	56.1	1.782

* To be used to translate the results from the matched data to overall 2018 SAM data.

According to Table 2, ''Distribution of Business Concerns Subject to Receipts-Based Size Standards by Number of NAICS Codes,'' below, the distribution of firms by the number of NAICS codes in the matched data is very similar to that for the overall 2018 SAM data. About 42–44 percent of firms were in only one NAICS code that has a receipts-based size standard, about 35 percent in 2–5 NAICS codes, about 12 percent in 6–10 NAICS codes, and about 8–10 percent in more than 10 NAICS codes. In other words, 56–58 percent of firms were in multiple NAICS codes with receipts-based size standards. Thus, it is quite possible that the proposed change may impact a firm's

small business status in multiple industries. For purposes of this analysis, an impacted firm is defined as one that would be impacted by the change in terms of gaining, regaining, extending, or losing small business status in at least one industry with a receipts-based size standard.

TABLE 2—DISTRIBUTION OF BUSINESS CONCERNS SUBJECT TO RECEIPTS-BASED SIZE STANDARDS BY NUMBER OF NAICS CODES

Number of NAICS codes	Total firms in 2018 SAM with at least one receipts-based NAICS code		Matched firms between 2018 and 2015 SAM	
	Count	%	Count	%
1 NAICS code	153,184	44.2	82,082	42.2
2 to 5 NAICS codes	123,277	35.5	68,458	35.2
6 to 10 NAICS codes	41,518	12.0	24,529	12.6
>10 NAICS codes	28,979	8.4	19,617	10.1
Total	346,958	100.0	194,686	100.0

Note: A business concern is defined in terms of a unique local (vendor) DUNS number.

A central premise of Public Law 115–324 is that a 5-year annual receipts average (as opposed to a 3-year annual receipts average) would enable some mid-size businesses who have recently exceeded the size standard to regain small business status and some advanced small businesses close to exceeding the size standard to retain their small business status for a longer period. However, this premise would only hold true when businesses' annual revenues are rising. When businesses' annual revenues are declining, due to economic downturns or other factors, the 5-year annual receipts average could be higher than the 3-year annual receipts average, thereby causing small businesses close to their size standards to lose their small business status sooner. To mitigate such negative impacts on small businesses, SBA has decided, in consideration of public comments and the results from its own analysis, to provide a 2-year transition period in which firms will be allowed to elect either a 5-year or 3-year averaging period in calculating their average annual receipts.

b. Impacts on Businesses From the Change

By comparing the approximated 5-year annual receipts average with the current receipts-based size standard for each of the 194,686 matched business concerns in each NAICS code subject to a receipts-based size standard, in the proposed rule, SBA identified the following 4 possible impacts from changing the averaging period for annual revenues from 3 years to 5 years:

i. The number of mid-size businesses that have exceeded the size standard and would regain small business status in at least one NAICS industry with a receipts-based size standard (*i.e.,* 3-year average > size standard ≥ 5-year average)—positive impact;

ii. the number of advanced small businesses within 10 percent below the size standard that would have their small business status extended for a longer period in at least one NAICS industry with a receipts-based standard (5-year average < 3-year average ≤ size standard *and* 0.9*size standard < 3-year average ≤ size standard)—positive impact;

iii. the number of currently small businesses that would lose their small business status in at least one NAICS industry subjected to at least one receipts-based size standard (*i.e.,* 3-year average ≤ size standard < 5-year average)—negative impact; and

iv. the number of advanced small businesses within 10 percent below the size standard that would have their small business status shortened in at least one NAICS industry subject to a receipts-based standard (3-year average < 5-year average ≤ size standard *and* 0.9*size standard < 3-year average ≤ size standard)—negative impact.

In this final rule, SBA is changing the period for calculation of average annual receipts for all of its as well as other agencies' receipts-based size standards from 3 years to 5 years. The purpose of Public Law 115–324 is to allow small businesses more time to grow and develop competitiveness and infrastructure so that they are better prepared to succeed under full and open competition once they outgrow the size threshold. However, as stated in the proposed rule, a longer 5-year averaging period may not always and necessarily provide relief to every small business concern. As discussed in the proposed rule, when annual revenues are declining or when annual revenues for the latest 3 years are lower than those for the earliest 2 years of the 5-year period, the 5-year average would be higher than the 3-year average, thereby ejecting some advanced small businesses out of their small business status sooner or rendering some small businesses under the 3-year average not small immediately.

In the proposed rule, SBA described 4 different types of impacts on small businesses from changes to the averaging period for annual receipts from 3 years to 5 years as follows: (i) Enabling current large or mid-size businesses to gain small business status (impact i); (ii) enabling current advanced small businesses to lengthen their small business status (impact ii); (iii) causing current small businesses to lose their small business status (impact iii); and (iv) causing current small businesses to shorten their small business status (impact iv).

However, with the SBA's decision to provide a 2-year transition period thereby allowing firms to choose either their 5-year average annual receipts or their 3-year average annual receipts, the two negative impacts (namely impact (iii) and impact (iv)) do not apply to this final rule. Accordingly, this final rule provides the analysis of the two positive impacts (namely impact (i) and impact (ii)) only.

Table 3, 'Percentage Distribution of Impacted Firms by the Number of NAICS Codes,' below, provides these results based on the 2018 SAM—2015 SAM matched firms.

TABLE 3—PERCENTAGE DISTRIBUTION OF IMPACTED FIRMS BY THE NUMBER OF NAICS CODES

Impact *	Number of impacted firms	% Distribution of impacted firms by number of NAICS codes				
		1 NAICS code	2–5 NAICS codes	6–10 NAICS codes	>10 NAICS codes	Total
Currently large in all NAICS codes						
Impact (i)	914	36.0	36.1	13.6	14.3	100.0
Currently small in all NAICS codes						
Impact (ii)	1,255	25.3	39.6	16.3	18.8	100.0
Currently small in some NAICS and not small in others						
Impact (i)	1,640	0.0	24.6	24.2	51.2	100.0
Impact (ii)	1,138	0.0	25.0	26.0	49.0	100.0
Total Impact by Impact Type						
Impact (i)	2,554	12.9	28.7	20.4	38.0	100.0
Impact (ii)	2,393	13.3	32.6	20.9	33.2	100.0
Total positive impact	4,687	13.8	31.8	20.7	33.8	100.0

* Impact (i) = Current large businesses gaining small business status; and Impact (ii) = Current small businesses extending small business status.

It is highly notable that the distribution of impacted firms by the number of NAICS codes, as shown in Table 3, is very different as compared to a similar distribution based on the overall matched and total 2018 SAM data (*see* Table 2), especially with respect to firms with only one NAICS code and those with more than 5 NAICS codes. For example, as shown in Table 2, above, more than 40 percent of all firms in the overall data were associated with only one NAICS code, as compared to less than 15 percent among impacted firms in Table 3. Similarly, firms with more than 5 NAICS codes accounted for about 20 percent of all firms in the original data, as compared to more than 50 percent among impacted firms. It is also notable that NAICS Sectors 54, 56, and 23 together accounted for more than 70 percent of impacted firms, with Sector 54 (Professional, Scientific and Technical Services) accounting for about 35 percent, followed by Sector 23 (Construction) about 25 percent, and Sector 56 (Administrative and Support, Waste Management and Remediation Services) about 12–13 percent.

Each of these impacts was then multiplied by an applicable factor or ratio, as shown in the last column of Table 1, to obtain the respective impacts corresponding to all firms in 2018 SAM subject to at least one receipts-based size standard. These results are presented below in Table 4, ''Impacts from Changing the Averaging Period for Receipts from 3 Years to 5 Years.'' The last column of the table shows the percent of firms impacted relative to all business concerns in 2018 SAM.

Because the SAM data only captures businesses that are primarily interested in Federal procurement opportunities, the SAM-based results do not capture the impacts the proposed change may have on businesses participating in various non-procurement programs that apply SBA's receipts-based size standards, such as exemptions from compliance with paperwork and other regulatory requirements.

TABLE 4—IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR RECEIPTS FROM 3 YEARS TO 5 YEARS

Impact [1]	Firms impacted in matched dataset	Total to matched ratio (Table 1)	Total firms impacted in 2018 SAM	Total firms in 2018 SAM	% Impacted
Entities other than small under all NAICS code(s)					
Impact (i)	914	1.340	1,225	43,444	2.8
Entities small under all NAICS code(s)					
Impact (ii)	1,255	1.903	2,389	293,524	0.8
Entities small in some NAICS code(s) and other than small in other(s)					
Impact (i)	1,640	1.241	2,035	9,990	20.4
Impact (ii)	1,138	1.241	1,412	9,990	14.1
Total positive impact by impact type					
Impact (i)	2,554		3,260	53,434	6.1
Impact (ii)	2,393		3,801	303,514	1.3
Overall total positive impact [2]	4,687		6,690	346,958	1.9

[1] Impact (i) = Current large businesses gaining small business status; and Impact (ii) = Current small businesses extending small business status.

[2] Number of firms under total positive impacts refer to the number of unique firms. Some firms could appear in both impact types and hence individual impacts may not add up to overall impact.

The Economic Census, combined with the Census of Agriculture and County Business Patterns Reports, provides for each NAICS code information on the number of total small and large businesses subjected to a receipts-based size standard. Based on the matched SAM data, SBA computed percentages of businesses impacted under each impact category for each NAICS industry subject to a receipts-based size standard. By applying such percentages

to the 2012 Economic Census tabulation, SBA estimated the number of all businesses impacted under each impact type for each NAICS code subject to a receipts-based size standard. These results are presented in Table 5, ''Impacts from Changing the Averaging Period for Receipts from 3 Years to 5 Years (2012 Economic Census),'' below.

TABLE 5—IMPACTS FROM CHANGING THE AVERAGING PERIOD FOR RECEIPTS FROM 3 YEARS TO 5 YEARS

[2012 Economic Census]

Impact [1]	Total firms	Estimate of impacted firms	% Impacted
Impact (i)	271,505	7,822	2.9
Impact (ii)	6,896,633	62,822	0.9
Overall positive impact	7,168,138	70,644	1.0

[1] Impact (i) = Current large businesses gaining small business status; and Impact (ii) = Current small businesses extending small business status.

Currently large or mid-size businesses regaining small business status would get various benefits as small business concerns, including access to Federal set-aside contracts, and exemptions from various compliance and paperwork requirements. With their small business status extended, advanced small businesses would continue to receive such benefits for a longer period. However, the change from 3-year average receipts to 5-year average may also harm some small businesses by causing them to lose or shorten their small business status in at least one receipts-based size standard, thereby depriving them of access to small business assistance, especially Federal set-aside opportunities. To mitigate such impacts, SBA is allowing businesses to elect either the 3-year average annual receipts or the 5-year average annual receipts for 2 years through January 6, 2022. SBA intends to seek comment on implementation in the Business Loan and Disaster Loan Programs in a proposed rule through a separate rulemaking.

c. The Baseline

For this new regulatory action modifying an existing regulation (such as changing the average annual receipts calculation from 3 years to 5 years), a baseline assuming no change to the regulation (*i.e.,* maintaining the status quo) generally provides an appropriate benchmark for evaluating benefits, costs, or transfer impacts of proposed regulatory changes and their alternatives.

Based on the 2012 Economic Census special tabulations (the latest available), 2012 County Business Patterns Reports (for industries not covered by the Economic Census), and 2012 Agricultural Census tabulations (for agricultural industries), of a total of about 7.2 million firms in all industries with receipts-based size standards, about 96 percent are considered small and 4 percent other-than-small under the 3-year annual receipts average. Similarly, of 346,958 businesses that were subject to at least one receipts-based size standard and eligible for Federal contracting, 87.5 percent were small in at least one NAICS code and 12.5 percent other than small in all NAICS codes.

Based on the data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2015–2017 (the latest available when the proposed rule was prepared), on average, about 88,770 unique firms in industries subject to receipts-based size standards received at least one Federal contract during that period, of which 83 percent were small. Businesses subject to receipts-based standards received $182 billion in average annual Federal contract dollars during that period, of which nearly $64 billion or about 35 percent went to small businesses. Of total dollars awarded to small businesses subject to receipts-based size standards, $45 billion or 71 percent was awarded through various small business set-aside programs and another 29 percent was awarded through non-set aside contracts.

Table 6, ''Baseline Analysis of Receipts-Based Size Standards,'' below, provides these baseline results. SBA's proposed rule included an estimate of the number and total dollar amount of loans issued through the Business Loan Programs and the Economic Injury Disaster Loan (EIDL) program. These estimates are not presented in this final rule because SBA intends to issue a separate rulemaking to consider changes to size eligibility for the Business Loan and Disaster Loan Programs.

Besides set-aside contracting and financial assistance discussed above, small businesses also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through Federal agencies that use SBA's size standards. However, SBA has no data to estimate the number of small businesses receiving such benefits. Similarly, due to the lack of data, SBA is not able to determine impacts the final rule will have on small businesses participating in other agencies' programs that are subject to their own size standards based on average annual receipts.

TABLE 6—BASELINE ANALYSIS OF RECEIPTS-BASED SIZE STANDARDS

Measure	Value
Total industries subject to receipts-based standards	518
Total firms subject to at least one receipts-based standard (million)—2012 Economic Census	7.17
Total small firms subject to at least one receipts-based standard (million)—2012 Economic Census	6.9
Total small firms subject to at least one receipts-based standard as % of total firms—2012 Economic Census	96.2
Total business concerns in SAM [1] (as of September 1, 2018)	420,381
Total business concerns subject to a receipts-based size standard in at least one NAICS code [2] (SAM)	346,958
Total businesses that are small in at least one NAICS code subject to a receipts-based size standard	303,514
Small business concerns as % of total business concerns subject to receipts-based standards (2018 SAM)	87.5
Average total number of unique Eligible vendors getting Federal contracts [1]—FPDS–NG (2015–2017)	126,500
Average total number of unique firms with receipts-based size standards getting Federal contracts [2]—FPDS–NG (2015–2017)	88,770

TABLE 6—BASELINE ANALYSIS OF RECEIPTS-BASED SIZE STANDARDS—Continued

Measure	Value
Average total contract dollars awarded to business concerns, subject to receipts-based standards ($ billion)	$182
Average total small business contract dollars awarded to businesses subject to receipts-based standards ($ billion)	$63.7
Small business dollars as % of total dollars awarded to firms subject to receipts-based standards	34.9

[1] Entities in SAM and FPDS–NG presented above only include business concerns that can be eligible to qualify as small for Federal contracting. That is, entities that can never qualify as small (*e.g.,* foreign, not-for-profit and government entities) are excluded as they are not impacted by this rule.

[2] A business concern could appear in multiple NAICS industries involving both receipts-based and size standards and those based on other measures (such as employees). Similarly, a business could be small in some industries and other-than-small in others.

Businesses that would regain or expand their small business status can be identified by comparing the estimate of their 5-year receipts average with the size standard. That is, if the 5-year receipts average of a firm currently above the size standard is lower than the applicable size standard, that firm will gain or regain small business status. To estimate the number of small businesses that would benefit by having their small business status extended for a longer period or would be penalized by having their small business status shortened, SBA considered small businesses whose 3-year average annual receipts was within 10 percent below their receipts-based size thresholds. Depending upon whether their annual receipts are growing or declining, small businesses that are not immediately impacted may be impacted, either positively (*i.e.,* gaining small business status) or negatively (*i.e.,* losing small business status) someday as they continue to grow and approach the size standard threshold as in the current 3-year averaging method. However, SBA is not able to quantify such impacts now.

d. Benefits

The most significant benefits to businesses from the change in the period for calculation of average annual receipts from 3 years to 5 years include: (i) Enabling some mid-size businesses currently categorized above their corresponding size standards to gain or regain small business status and thereby qualify for participation in Federal assistance intended for small businesses, and (ii) allowing some advanced and larger small businesses close to their size thresholds to lengthen their small business status for a longer period and thereby continue their participation in Federal small business programs. These include Federal procurement programs intended for small businesses. Federal procurement programs provide targeted, set-aside opportunities for small businesses under SBA's various business development and contracting programs, including 8(a)/BD, HUBZone, WOSB, EDWOSB, and SDVOSB programs. Benefits accruing to businesses gaining and extending small business status are presented below in Table 7, ''Positive Impacts of Changing the Averaging Period for Receipts from 3 Years to 5 Years.'' The results in Table 7 pertain to businesses and industries subject to SBA's receipts-based size standards only.

As shown in Table 7, of 43,444 firms not currently considered small in any receipts-based size standards, 3,260 (or 7.5 percent) would benefit from the proposed change by gaining or regaining small business status under the 5-year receipts average in at least one NAICS industry that is subject to a receipts-based size standard. Additionally, about 3,800 or 1.3 percent of small businesses within 10 percent below size standards would see their annual receipts decrease under the 5-year averaging period, consequently enabling them to keep their small business status for a longer period.

Using the 2012 Economic Census, SBA estimated that about 7,800 or 2.9 percent of currently large businesses would gain or regain small business status and more than 62,800 or 0.9 percent of total small businesses would see their small business status extended for a longer period as the result of this proposed rule. These results are shown in Table 7, below.

TABLE 7—POSITIVE IMPACTS OF CHANGING THE AVERAGING PERIOD FOR RECEIPTS FROM 3 YEARS TO 5 YEARS

Impact of proposed change	Firms gaining small business status	Firms extending small business status	Total positive impact
No. of impacted industries	372	361	[1] 420
No. of large firms becoming small or/and small firms extending small business status—SAM (as of Sept 1, 2018)	3,260	3,801	[2] 6,690
Large firms becoming small or/and small firms with extended small business status as % of total large or/and small firms in the baseline—SAM (as of Sept 1, 2018)	7.5	1.3	1.9
No. of large firms becoming small or/and small firms extending small business status—2012 Economic Census	7,822	62,822	70,644
Large firms becoming small or/and small firms extending small business status as % of total large or/and small firms in the baseline—2012 Economic Census	2.9	0.9	1.0
No. of large firms becoming small or/and small firms extending small business status for small business contracts (FPDS–NG)	910	838	[2] 1,700
Additional small business dollars available to newly qualified firms or/and current small firms with extended small business status ($ million)	$961	$133	$1,094
Additional small business dollars as % total small business contract dollars in the baseline	1.5	0.2	1.7

[1] Total impact represents total unique industries impacted to avoid double counting as some industries have large firms gaining small business status and small firms extending small business status.

[2] Total impact represents total unique firms impacted to avoid double counting as some firms may gain small business status in at least one NAICS code, while extending small business status in at least one other NAICS code.

With more businesses qualifying as small under the 5-year receipts average, Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs. Growing small businesses that are close to exceeding the current size standards will be able to retain their small business status for a longer period under the 5-year receipts average, thereby enabling them to continue to benefit from the small business programs.

Based on the FPDS–NG data for fiscal years 2015–2017, as shown in Table 7, SBA estimates that those newly qualified small businesses (*i.e.,* large businesses gaining small business status) under this final rule, if adopted, could receive $961 million in small business contract dollars annually under SBA's small business, 8(a)/BD, HUBZone, WOSB, EDWOSB, and SDVOSB programs. That represents a 1.5 percent increase to total small business contract dollars from the baseline. Additionally, small businesses could receive approximately $133 million in additional small business contract dollars because of extension of their small business status, which is about a 0.2 percent increase from the total small business contract dollars in the baseline. That is, businesses gaining or extending small business status could receive about $1.1 billion in additional small business contract dollars, which is a 1.7 percent increase to the total small business dollars in the baseline.

The added competition from more businesses qualifying as small may result in lower prices to the Federal Government for procurements set aside or reserved for small businesses, but SBA cannot quantify this impact. Costs could be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to a larger pool of small businesses under the proposed change, HUBZone firms might actually end up getting more set-aside contracts and fewer full and open contracts, thereby resulting in some cost savings to agencies. While SBA cannot estimate such costs savings, as it is impossible to determine the number and value of unrestricted contracts to be otherwise awarded to HUBZone firms that will be awarded as set-asides, such cost savings are likely to be relatively small as only a small fraction of full and open contracts are awarded to HUBZone businesses.

Additionally, the newly defined small businesses, as well as those with a longer small business status, would also benefit from reduced fees, less paperwork, and fewer compliance requirements but SBA has no data to quantify this impact.

The change from a 3-year averaging period to a 5-year averaging period will also address some of the challenges and uncertainties small businesses face in the open market once they graduate from their small business status. Small and mid-size businesses experience a considerable disadvantage in competing for full and open contracts against large businesses, including the largest in the industry. These large businesses have several competitive advantages over small and mid-size firms, including vast past performance qualifications and experience, strong brand-name recognition, a plethora of professional certifications, security clearances, and greater financial and marketing resources. Small and mid-size businesses cannot afford to maintain these resources, leaving them at a considerable disadvantage.

With contracts getting bigger, one large set-aside contract could throw a firm out of its small business status, thereby subjecting it to certain requirements that apply to other-than-small firms, such as developing subcontracting plans. That firm may not have the infrastructure, existing business processes, and/or other resources in place in order to comply with such requirements.

By allowing smaller mid-size companies that have just exceeded the size threshold to regain small business status and advanced small businesses close to size standards to prolong their small business status for a longer period, using the 5-year receipts average can expand the pool of qualified small firms for agencies to draw from to meet their small business requirements.

e. The Costs

As stated in the proposed rule, the change enacted under Public Law 115–324 may not always and necessarily benefit every small business concern. When businesses' annual revenues are declining or when annual revenues for the latest 3 years are lower than those for the earliest 2 years of the 5-year period, the 5-year average would be higher than the 3-year average, thereby ejecting small businesses out of their small business status sooner or rendering some small businesses other than small immediately. Similarly, small businesses that lose their small business status would have to wait longer to qualify as small again. Such small businesses would no longer be eligible for Federal small business opportunities, such as Federal small business contracts and other Federal benefits (such as reduced fees and exemptions from certain paperwork and compliance requirements) available to small businesses. However, the SBA's decision to grant a 2-year transition period allowing businesses to elect to use either the 5-year receipts average or the 3-year average receipts will mitigate such impacts. SBA believes the transition period provides small businesses with enough time to make a permanent transition to the 5-year averaging method without facing such impacts.

By enabling mid-size businesses to regain small business status and lengthening the small business status of advanced and successful larger small businesses, the final rule may disadvantage smaller small businesses in more need of Federal assistance than their larger counterparts in competing for Federal opportunities. SBA frequently receives concerns from smaller small businesses that they also lack resources, past performance qualifications and expertise to be able to compete against more resourceful, qualified and experienced larger small businesses for Federal opportunities for small businesses. With a larger pool of businesses qualifying as small, SBA expects Federal agencies to set aside more contracts to small businesses thereby expanding opportunities for all small businesses. SBA believes that overall benefits to small businesses from this rule change outweigh the costs to small businesses.

Besides having to register in SAM to be able to participate in Federal contracting and update the SAM profile annually, small businesses incur no direct costs to gain or retain their small business status. All businesses willing to do business with the Federal Government have to register in SAM and update their SAM profiles annually, regardless of their size status. SBA believes that a vast majority of businesses that are willing to participate in Federal contracting are already registered in SAM.

The change to the 5-year receipts average may entail some additional administrative costs to the Federal Government because more businesses may qualify as small for Federal small business programs. For example, there will be more firms eligible for enrollment in the Dynamic Small Business Search (DSBS) database or in *certify.sba.gov;* more firms seeking certification as 8(a)/BD or HUBZone firms or qualifying for small business, WOSB, EDWOSB, and SDVOSB status; and more firms applying for SBA's 8(a)/BD and All Small Mentor-Protégé

programs. With an expanded pool of small businesses, it is likely that Federal agencies will set aside more contracts for small businesses under the new rule. One may surmise that this might result in a higher number of small business size protests and additional processing costs to agencies. However, the SBA's historical data on size protests actually shows that the number of size protests decreased after an increase in the number of businesses qualifying as small as a result of size standards revisions as part of the first 5-year review of size standards. Specifically, on an annual basis, the number of size protests dropped from about 600 during fiscal years 2011–2013 (review of most receipts-based size standards was completed by the end of fiscal year 2013) to about 500 during fiscal years 2014–2016. However, with more years of data to be reviewed, 5-year averaging may increase time needed by size specialists to process a size protest.

Additionally, some Federal contracts may possibly have higher costs. With a greater number of businesses defined as small under the 5-year averaging method, Federal agencies may choose to set aside more contracts for competition among small businesses only instead of using full and open competition. The movement of contracts from unrestricted competition to small business set-aside contracts might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers under the proposed change. However, the additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside for small businesses under the 8(a)/BD, HUBZone, WOSB, EDWOSB, or SDVOSB programs only if awards are expected to be made at fair and reasonable prices.

Costs may also be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to the availability of a larger pool of small businesses under the 5-year receipts average, HUBZone firms might actually end up getting fewer full and open contracts, thereby resulting in some cost savings to agencies. However, such cost savings are likely to be minimal as only a small fraction of unrestricted contracts are awarded to HUBZone businesses.

f. Transfer Impacts

The change from a 3-year averaging period to a 5-year averaging period may result in some redistribution of Federal contracts between businesses gaining or extending small business status and large businesses, and between businesses gaining or extending small business status and other existing small businesses. However, it would have no impact on the overall economic activity since the total Federal contract dollars available for businesses to compete for will not change. While SBA cannot quantify with certainty the actual outcome of the gains and losses from the redistribution of contracts among different groups of businesses, it can identify several probable impacts in qualitative terms. With the availability of a larger pool of small businesses under the proposed change, some unrestricted Federal contracts may be set aside for small businesses. As a result, large businesses may lose access to some Federal contracts. Similarly, some currently small businesses may obtain fewer set-aside contracts due to the increased competition from some large businesses now qualifying as small and advanced small businesses remaining small for a longer period. This impact may be offset by a greater number of procurements being set aside for all small businesses. With large businesses qualifying as small and advanced larger small businesses remaining small for a longer period under the proposed rule, smaller small businesses could face some disadvantages in competing for set-aside contracts against their larger counterparts. However, SBA cannot quantify these impacts.

B. Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have retroactive or preemptive effect.

C. Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this final rule 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, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

D. Executive Order 13563

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, is included above in the Benefit-Cost Analysis under Executive Order 12866. Additionally, Executive Order 13563, Section 6, calls for retrospective analyses of existing rules.

Following the enactment of Public Law 115–324, SBA issued a public notice advising business and contracting communities that SBA must go through a rulemaking process to implement the new law and that businesses still must report their receipts based on a 3-year average until SBA changes its regulations. SBA updated the Small Business Procurement Advisory Council (SBPAC) at its March 26, 2019, April 23, 2019, and August 26, 2019, meetings about SBA's rulemaking process to implement Public Law 115–324. On April 18, 2019, SBA also presented an update on the implementation of Public Law 115–324 at the 2019 Annual Government Procurement Conference. Through phone calls and emails, SBA also advised business and contracting communities and other interested parties about the SBA's process to implement the new law.

Additionally, SBA issued a revised white paper titled ''Small Business Size Standards: Revised Size Standards Methodology'' and published a notice in the April 27, 2018, issue of the **Federal Register** (83 FR 18468) to advise the public that the document is available for public review and comments. The Revised Size Standards Methodology explains how SBA establishes, reviews, and modifies its receipts-based and employee-based small business size standards. On April 11, 2019, SBA published a **Federal Register** Notice (84 FR 14587) advising the public that the Agency has issued the revised final white paper.

E. Executive Order 13771

This rule is not expected to be an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

F. Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this final rule may have a significant economic impact on a substantial number of small businesses in industries subject to receipts-based size standards. As described above, this rule may affect small businesses in those industries seeking Federal contracts and assistance under other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this final rule to address the following questions: (1) What is the need for and objective of the rule?; (2) What is SBA's description and estimate of the number of small businesses to which the rule will apply?; (3) What are the projected reporting, record-keeping, and other compliance requirements of the rule?; (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule?; and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What is the need for and objective of the rule?

Recently, Public Law 115–324 amended section 3(a)(2)(C)(ii)(II) of the Small Business Act by modifying the period for calculating average annual receipts for prescribing size standards for business concerns in services industries by an agency without separate statutory authority to issue size standards from 3 years to 5 years. This final rule implements the intent of Public Law 115–324 and makes consistent changes to SBA's definition of annual receipts by amending the SBA's regulations on the calculation of average annual receipts for all receipts-based standards from over 3 years to over 5 years, except for the Business Loan Programs and Disaster Loan Programs.

2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

This final rule applies to all small businesses that are subject to a receipts-based size standard. Based on the 2012 Economic Census special tabulations, 2012 County Business Patterns Reports, and 2012 Agricultural Census tabulations, of a total of about 7.2 million firms in all industries with receipts-based size standards to which this final rule will apply, 6.9 million or about 96.0 percent are considered small under the 3-year annual receipts average. Of 346,958 total concerns in SAM 2018 to which the rule will apply, about 303,500 or 87.5 percent were small in at least one NAICS industry with a receipts-based size standard. Similarly, based on the data from FPDS–NG for fiscal years 2015–2017, on average, about 88,770 unique firms in industries subject to receipts-based size standards received at least one Federal contract during that period, of which 83 percent, or 73,825 were small.

3. What are the projected reporting, record-keeping and other compliance requirements of the rule?

The final rule changes existing reporting or record-keeping requirements for small businesses. In reporting receipts to SBA for an SBA size determination after the final rule's effective date, businesses will report a 5-year average rather than a 3-year average which requires minimal effort. To qualify for Federal procurement and a few other programs, businesses are required to register in SAM and to self-certify that they are small at least once annually. Therefore, businesses opting to participate in those programs must comply with SAM requirements. There are no costs associated with SAM registration or certification. The change from a 3-year averaging period to a 5-year averaging period may result in some redistribution of Federal contracts between businesses gaining or extending small status and large businesses, and between businesses gaining or extending small status and other existing small businesses. However, it would have no impact on the overall economic activity since the total Federal contract dollars available for businesses to compete for will not change.

4. What are the relevant Federal rules which may duplicate, overlap or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(C), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act, 5 U.S.C. 601(3), authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration.

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures or changing a measurement period, no practical alternative exists to the systems of numerical size standards. As stated elsewhere, the objective of this final rule is to change SBA's regulations on the calculation of business size in terms of average annual receipts to implement Public Law 115–324.

This rule is expected to affect a substantial number of small entities, but the effects are not expected to be significant. However, to mitigate unintended negative impacts of a 5-year averaging period on small businesses and to allow small businesses more time to prepare for a switch to the 5-year receipts average, in this final rule, SBA is allowing, through January 6, 2022, businesses to elect to calculate average annual receipts using either a 3-year averaging period or a 5-year averaging period. SBA also decided that the Business Loan Programs and Disaster Loan Programs are not included in this final rule and will instead be considered in a future proposed rule.

G. Paperwork Reduction Act

SBA has determined that as a result of this final rule, an information collection will need to be revised.

1 . SBA Form 355, Information for Small Business Size Determination. SBA submitted this information collection to OMB for approval of the changes described below and received conditional approval pending any change as a result of public comments. The final information collection package will be resubmitted to OMB concurrent with publication of this final rule. Changes have been made to Parts III and IV of the form to address the change from 3 years to 5 years for calculating average annual receipts. Other revisions to the form have been made to delete unnecessary questions, clarify certain previously approved requests for information, and in some instances, to request additional information where SBA has determined there is a programmatic need. As noted in the proposed rule and the OMB submission, these deletions and clarifications, though not required by the statute, will alleviate the additional burden posed by changing from 3 years to 5 years for calculating average annual receipts.

(a) SBA amended the General Instructions section to define ''concern'' and ''principal stockholders''; state that separate affiliation rules apply in some of SBA's loan and research programs; remove obsolete information about industries with special size standards; state that dormant or inactive firms must be disclosed; and to include in the certification a statement that accompanying documentation is true and correct.

(b) In Part 1, SBA clarified that the information relates to the applicant business; added a checkbox for the firm to identify its corporate organization structure; required a firm to disclose whether it is organized for profit; and removed various obsolete or unnecessary information regarding county/city, purpose of the size determination, the contracting agency, the business's major products or services and shares of sales, addresses of owners or officers, and recently completed mergers. Part 1 was also amended to request ownership information for owners that are entities until the respondent identifies the ultimate owners that are natural persons.

(c) In Part II, SBA limited the information requested about employees to businesses that are being evaluated under an employee-based size standard.

(d) In Part III, SBA limited the information request about receipts to businesses that are being evaluated under a receipts-based size standard. SBA also added two additional lines to the entries for annual receipts so that a business that has been in business for 5 years can provide information about its most recently completed 5 fiscal years. SBA added a question to allow the concern to elect a 3-year average or a 5-year average during the transition period that ends January 6, 2022.

(e) In Part IV, SBA added that the business must provide information for any business that the applicant's owner reports on a Schedule C or Schedule E of the owner's personal tax returns if the owner or an immediate family member has a controlling interest in the business; removed the request for addresses of individual owners and managers; requested ownership information for owners that are entities until the respondent identifies the ultimate owners that are natural persons; limited the request for employee information to applicants being evaluated under an employee-based size standard; limited the information request for receipts information to applicants being evaluated under a receipts-based size standard; and added two rows to the receipts table so that the receipts of acknowledged affiliates are reported based on a 5-year average.

(f) In Part V, SBA removed requests about acknowledged affiliates that are covered in Part IV; deleted questions about performance of work on the contract, financial impact of termination for default, and specific terms and conditions of the contract; and added a question about actual or proposed subcontracts between the applicant and any of its alleged affiliates.

SBA determined that these changes to the Form 355 will not impact the paperwork burden following the transition period, and it will remain at 4 hours. The changes require a business in an industry with a receipts-based size standard, if selecting to use the 5-year average during the transition period or if certifying after the transition period, to gather information about the business's 5 prior fiscal years and complete information about its 5 prior fiscal years and the 5 prior fiscal years for acknowledged affiliates. However, a business with a receipts-based size standard will not complete information about its number of employees. Similarly, a business with an employee-based size standard will not complete information about its receipts. Additionally, SBA has removed all requests for the addresses of individual owners and managers, and deleted 3 questions from Part V.

The title, summary of the amended information collection, description of respondents, and an estimate of the reporting burden are discussed below. Included in the estimate is the time for reviewing instructions, searching existing data, and completing and reviewing each collection of information.

Title and Description: SBA Form 355, Information for Small Business Size Determination. The information provided in this form will be used by SBA for a size determination of a business applying for assistance available to small businesses under any program administered by this Agency, except for its SBIC Program which uses SBA Form 480, or at the request of another Federal agency for purposes of its small business program.

Need and Purpose: This information collection is necessary for SBA to, among other things, evaluate the eligibility of an applicant for SBA's small business programs.

OMB Control Number: 3245–0101.

Description of and Estimated Number of Respondents: This information will be collected from small businesses seeking an SBA determination of size. Based on historical information, SBA estimates this number to be between 500 and 600 each year.

Estimated Response Time: 4 hours.

Total Estimated Annual Hour Burden: 2,000–2,400.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

■ 2. Amend § 121.104 by revising the second sentence of paragraph (a) introductory text and by revising paragraphs (c) and (d)(2) through (4) to read as follows:

§ 121.104 How does SBA calculate annual receipts?

(a) * * * Generally, receipts are considered ''total income'' (or in the case of a sole proprietorship ''gross income'') plus ''cost of goods sold'' as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships) * * *

* * * * *

(c) *Period of measurement.* (1) Except for the Business Loan and Disaster Loan Programs, annual receipts of a concern that has been in business for 5 or more completed fiscal years means the total receipts of the concern over its most recently completed 5 fiscal years divided by 5. For certifications submitted on or before January 6, 2022, rather than using the definitions in this paragraph (c), a concern submitting a certification may elect to calculate annual receipts and the receipts of affiliates using either the total receipts of the concern or affiliate over its most recently completed 5 fiscal years divided by 5, or the total receipts of the concern or affiliate over its most recently completed 3 fiscal years divided by 3.

(2) Except for the Business Loan and Disaster Loan Programs, annual receipts

of a concern which has been in business for less than 5 complete fiscal years means the total receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52.

(3) Except for the Business Loan and Disaster Loan Programs, where a concern has been in business 5 or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts means the total receipts for the short year and the 4 full fiscal years divided by the total number of weeks in the short year and the 4 full fiscal years, multiplied by 52.

(4) For the Business Loan and Disaster Loan Programs, annual receipts of a concern that has been in business for three or more completed fiscal years means the total receipts of the concern over its most recently completed three fiscal years divided by three. Annual receipts of a concern which has been in business for less than three complete fiscal years means the total receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52. Where a concern has been in business three or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts means the total receipts for the short year and the two full fiscal years divided by the total number of weeks in the short year and the two full fiscal years, multiplied by 52. For the purposes of this section, the Business Loan Programs consist of the 7(a) Loan Program, the Microloan Program, the Intermediary Lending Pilot Program, and the Development Company Loan Program (''504 Loan Program''). The Disaster Loan Programs consist of Physical Disaster Business Loans, Economic Injury Disaster Loans, Military Reservist Economic Injury Disaster Loans, and Immediate Disaster Assistance Program loans.

(d) * * *

(2) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the annual receipts used in determining size status includes the receipts of the acquired or acquiring concern. This aggregation applies for the entire period of measurement, not just the period after the affiliation arose. However, if a concern has acquired a segregable division of another business concern during the applicable period of measurement or before the date on which it self-certified as small, the annual receipts used in determining size status do not include the receipts of the acquired division prior to the acquisition.

(3) Except for the Business Loan and Disaster Loan Programs, if the business concern or an affiliate has been in business for a period of less than 5 years, the receipts for the fiscal year with less than a 12-month period are annualized in accordance with paragraph (c)(2) of this section. Receipts are determined for the concern and its affiliates in accordance with paragraph (c) of this section even though this may result in using a different period of measurement to calculate an affiliate's annual receipts.

(4) The annual receipts of a former affiliate are not included if affiliation ceased before the date used for determining size. This exclusion of annual receipts of such former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased. However, if a concern has sold a segregable division to another business concern during the applicable period of measurement or before the date on which it self-certified as small, the annual receipts used in determining size status will continue to include the receipts of the division that was sold.

* * * * *

■ 3. Amend § 121.106 by revising paragraph (b)(4)(ii) to read as follows:

§ 121.106 How does SBA calculate number of employees?

* * * * *

(b) * * *

(4) * * *

(ii) The employees of a former affiliate are not counted if affiliation ceased before the date used for determining size. This exclusion of employees of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased. However, if a concern has sold a segregable division to another business concern during the applicable period of measurement or before the date on which it self-certified as small, the employees used in determining size status will continue to include the employees of the division that was sold.

■ 4. Amend § 121.903 by revising paragraphs (a)(1)(ii) and (iii) to read as follows:

§ 121.903 How may an agency use size standards for its programs that are different than those established by SBA?

(a) * * *

(1) * * *

(ii) The size of a services concern by its average annual receipts over a period of at least 5 years, determined according to § 121.104;

(iii) The size of other concerns on data over a period of at least 5 years, determined according to § 121.104; or,

* * * * *

Dated: November 25, 2019.

Christopher M. Pilkerton,

Acting Administrator.

[FR Doc. 2019–26041 Filed 12–4–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0321; Product Identifier 2019–NM–013–AD; Amendment 39–19794; AD 2019–23–01]

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 A318 series airplanes; A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N and –271N airplanes; and A321 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 January 9, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 9, 2020.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@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 *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0321.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0321; 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: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0288, dated December 21, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318, A319, A320 and A321 series airplanes. Model A320–215 airplanes are not certified by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0321.

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 A318 series airplanes; A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N and –271N airplanes; and A321 series airplanes. The NPRM published in the **Federal Register** on May 9, 2019 (84 FR 20303). 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 fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity 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 comments received on the NPRM and the FAA's response to each comment. Delta Airlines (DAL) stated that it supports the NPRM.

Request for a Reporting Requirement

DAL requested that we add a reporting requirement to the proposed AD. DAL recommended that the proposed AD state that all crack findings, along with corrective actions performed, be reported to Airbus via the Airbus Tech Request system within 30 days. DAL commented that the philosophy of the fatigue-related inspections is that they are in places where cracking might be found in the future, and if cracking is found, then the task in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 2—Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 07, dated June 13, 2018, will be removed and become its own service information and AD; therefore, mandatory reporting must be part of this process. DAL also stated that they could not locate information regarding where to submit reports and the timeframe for reporting.

The FAA would like to clarify the intent of the referenced damage-tolerant task in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 2—Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 07, dated June 13, 2018. Unlike airplanes that follow a Supplemental Structural Inspection Program that requires reporting (those with an older certification basis that does not include damage tolerance criteria), the airplanes specified in paragraph (c) of this AD comply with 14 CFR 25.571 damage tolerance criteria. Section 25.571 requires applicants to evaluate all structures that could contribute to catastrophic failure of the airplane with respect to its susceptibility to fatigue cracking, corrosion, and accidental damage. Applicants must establish inspections or other procedures (also referred to as maintenance actions) as necessary to avoid catastrophic failure during the operational life of the airplane based on the results of these evaluations. It is intended that all maintenance actions required to address fatigue cracking, corrosion, and accidental damage are identified in the structural-maintenance program. All inspections and other procedures (*e.g.,* modification times, replacement times) that are necessary to prevent a catastrophic failure due to fatigue are included in the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA), as required by 14 CFR 25.1529. Therefore, reporting is not needed to comply with this AD.

FAA Advisory Circular 25.571–1D provides guidance for compliance with the provisions of 14 CFR 25.571, pertaining to the requirements for damage-tolerance and fatigue evaluation of transport category aircraft structure, and may be referenced for further information.

While airplane manufacturers may benefit from receiving information from the outcome of the ALI inspections, the EASA did not make reporting a requirement in EASA AD 2018–0288. The FAA concurs with the EASA, and therefore, this AD does not include a reporting requirement. However, operators may report the findings, as an option, to Airbus as specified in paragraph 6., ''Reporting,'' of Section 1 of Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 2—Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 07, dated June 13, 2018, that indicates reports should be sent to *MPDtask.Reports@airbus.com.* This AD has not been changed in this regard.

Request To Add an Alternative Methods of Compliance (AMOC)

Airbus requested that AIR–676–19–235, dated June 3, 2019, which is an AMOC for paragraphs (g) and (l)(2)(i) of AD 2018–25–02, Amendment 39–19513 (83 FR 62690, December 6, 2018), be allowed as an AMOC for the requirements of paragraph (j) of the proposed AD.

The FAA agrees with the commenter's request. The agency finds that the provisions of AMOC AIR–676–19–235, which is limited to certain airplanes, are acceptable for all corresponding provisions of this AD. Therefore, the FAA has added paragraph (j)(1)(iii) to this AD to allow AIR–676–19–235, dated June 3, 2019, as an acceptable method of compliance for the corresponding provisions of this AD.

Changes Made to This Final Rule

The FAA has determined that Airbus SAS Model A320–252N airplanes were inadvertently omitted from the Applicability of the proposed AD. Therefore, the FAA has updated paragraph (c)(3) of this AD to add those airplanes. Since there are currently no domestic operators of this product, additional notice and opportunity for public comment before issuing this AD are unnecessary.

Conclusion

The FAA reviewed the relevant data, considered the comments 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 Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 2—Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 07, dated June 13, 2018. This service information describes damage tolerant airworthiness limitations. 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 1,463 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 agency 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):

2019–23–01 Airbus SAS: Amendment 39–19794; Docket No. FAA–2019–0321; Product Identifier 2019–NM–013–AD.

(a) Effective Date

This AD is effective January 9, 2020.

(b) Affected ADs

This AD affects AD 2018–25–02, Amendment 39–19513 (83 FR 62690, December 6, 2018) (''AD 2018–25–02'').

(c) Applicability

This AD applies to Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before June 13, 2018.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N and –271N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

(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 A318/A319/A320/A321

Airworthiness Limitations Section (ALS) Part 2–Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 07, dated June 13, 2018. The initial compliance time for doing the tasks is at the time specified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 2–Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 07, dated June 13, 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 or 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 Action for AD 2018–25–02

Accomplishing the actions required by this AD terminates all requirements of AD 2018–25–02.

(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.*

(i) 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.

(ii) AMOCs approved previously for AD 2018–25–02 are approved as AMOCs for the corresponding provisions of this AD, provided there is no change in description, threshold and interval of the applicable tasks.

(iii) AMOC AIR–676–19–235, dated June 3, 2019, is approved as an AMOC for the corresponding provisions of this AD.

(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 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.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2018–0288, dated December 21, 2018, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0321.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

(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 A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 2–Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 07, dated June 13, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@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, call 202–741–6030, or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on November 7, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–26231 Filed 12–4–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0479; Product Identifier 2019–NM–020–AD; Amendment 39–19790; AD 2019–22–11]

RIN 2120–AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2009–09–02, which applied to certain Bombardier, Inc., Model DHC–8–400 series airplanes. AD 2009–09–02 required repetitive inspections for damage of certain main landing gear (MLG) forward stabilizer brace assemblies, repetitive inspections for cracking of both MLG forward stabilizer braces, liquid penetrant inspections for cracking, and corrective actions if necessary. This AD retains the existing actions and also requires installation of an elbow restrictor. This AD was prompted by reports of failures of the aft hinge of the MLG forward stabilizer brace due to fatigue cracks. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 9, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 9, 2020.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of May 6, 2009 (74 FR 18121, April 21, 2009).

ADDRESSES: For service information identified in this final rule, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com;* internet *https://dehavilland.com.* You may view this referenced 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 *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0479.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0479; 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: Andrea Jimenez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2009–11R2, dated May 31, 2018 (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model DHC–8–400 series airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0479.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2009–09–02, Amendment 39–15888 (74 FR 18121, April 21, 2009) (''AD 2009–09–02''). AD 2009–09–02 applied to certain Bombardier Model DHC–8–400 series airplanes. The NPRM published in the **Federal Register** on July 12, 2019 (84 FR 33185). The NPRM was prompted by reports of failures of the aft hinge of the MLG forward stabilizer brace due to fatigue cracks. The NPRM proposed to continue to require inspections for damage (including excessive wear, corrosion, foreign object damage, and cracking) of certain MLG forward stabilizer brace assemblies and applicable corrective actions; and repetitive inspections for cracking of both MLG forward stabilizer braces, applicable liquid penetrant inspections for cracking, and corrective actions if necessary. The NPRM also proposed to require installation of an elbow restrictor. The FAA is issuing this AD to address failure of the stabilizer brace, which could result in the collapse of the MLG. 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 comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

Air Line Pilots Association, International (ALPA) stated its support for the NPRM.

Request To Exclude Certain Service Information Procedures

Horizon Air requested that paragraphs (h) and (k) of the proposed AD refer specifically to paragraph 3.B., ''Procedure,'' in the Accomplishment Instructions of the referenced service information rather than ''the Accomplishment Instructions.'' Horizon Air stated that the ''Job-Set Up'' and ''Close Out'' procedures in the Accomplishment Instructions of the applicable service information do not directly correct the unsafe condition.

The FAA agrees with the commenter's request for the reason provided above. The FAA has revised paragraphs (h) and (k) of this AD to require accomplishment of paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of the applicable service information.

Explanation of Additional Change Made to This Final Rule

The FAA has revised this final rule to identify the legal name of the manufacturer, De Havilland Aircraft of Canada Limited, as published in the most recent type certificate data sheet for the affected airplane model.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes 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

Bombardier has issued the following service information.

- Bombardier Service Bulletin 84–32–69, Revision C, dated January 20, 2011, which describes procedures for replacing the standard elbow fitting with a new restrictor elbow fitting.
- Bombardier Service Bulletin 84–32–76, Revision B, dated August 1, 2018, which describes procedures for replacing the standard elbow fitting with a new restrictor elbow fitting and introduction of a new configuration stabilizer brace assembly.
- Bombardier Repair Drawing 8/4–32–099, Issue 4, dated September 4, 2018, which describes, among other actions, procedures for inspections for cracking of the apex lug stop on the MLG forward stabilizer brace assembly.
- UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018, which describes, among other actions, procedures for inspections for excessive wear of the apex pins on the MLG forward stabilizer brace assembly.

This AD also requires the following service information, which the Director of the Federal Register approved for incorporation by reference as of May 6, 2009 (75 FR 18121, April 21, 2009).

- Bombardier Q400 All Operator Message 338, dated February 23, 2009.
- Bombardier Repair Drawing 8/4–32–099, Issue 1, dated March 10, 2009.
- Goodrich Service Concession Request 026–09, Revision B, dated March 10, 2009.

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 54 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2009–09–02	8 work-hours × $85 per hour = $680	$0	$680	$36,720
New actions	19 work-hours × $85 per hour = $1,615	10,867	12,482	674,028

The FAA has received no definitive data that would enable it to provide cost estimates for the on-condition actions specified in this AD.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

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

The FAA determined that 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 removing Airworthiness Directive (AD) 2009–09–02, Amendment 39–15888 (74 FR 18121, April 21, 2009), and adding the following new AD:

2019–22–11 De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–19790; Docket No. FAA–2019–0479; Product Identifier 2019–NM–020–AD.

(a) Effective Date

This AD is effective January 9, 2020.

(b) Affected ADs

This AD replaces AD 2009–09–02, Amendment 39–15888 (74 FR 18121, April 21, 2009) (''AD 2009–09–02'').

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001, 4003, and subsequent, equipped with main landing gear (MLG) forward stabilizer brace part number (P/N) 46401–7.

(d) Subject

Air Transport Association (ATA) of America Code 32, Main landing gear.

(e) Reason

This AD was prompted by reports of failures of the aft hinge of the MLG forward stabilizer brace due to fatigue cracks. The FAA is issuing this AD to address failure of the stabilizer brace, which could result in the collapse of the MLG.

(f) Compliance

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

(g) Retained Inspection and Corrective Actions, With Revised Service Information and Removed Reporting Requirement

This paragraph restates the requirements of paragraph (f) of AD 2009–09–02, with new service information and removed reporting requirement. Unless already done, do the following actions:

(1) At the applicable time specified in one of paragraphs (g)(1)(i) through (iv) of this AD: Perform non-destructive inspections for damage of the MLG forward stabilizer brace assemblies P/N 46401–7, in accordance with Bombardier Repair Drawing 8/4–32–099, Issue 1, dated March 10, 2009, and Goodrich Service Concession Request 026–09, Revision B, dated March 10, 2009; or Bombardier Repair Drawing 8/4–32–099, Issue 4, dated September 4, 2018, and UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018. Repeat the inspection thereafter at intervals not to exceed 2,000 flight cycles. As of the effective date of this AD, use Bombardier Repair Drawing 8/4–32–099, Issue 4, dated September 4, 2018, and UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018, for the actions required by this paragraph.

(i) For airplanes with MLG forward stabilizer braces that have accumulated 12,000 or more total flight cycles as of May 6, 2009 (the effective date of AD 2009–09–02): Inspect within 50 flight cycles after May 6, 2009.

(ii) For airplanes with MLG forward stabilizer braces that have accumulated 9,000 or more total flight cycles but fewer than 12,000 total flight cycles as of May 6, 2009 (the effective date of AD 2009–09–02): Inspect before the accumulation of 12,050 total flight cycles, or within 500 flight cycles after May 6, 2009, whichever occurs earlier.

(iii) For airplanes with MLG forward stabilizer braces that have accumulated 4,500 or more total flight cycles but fewer than 9,000 total flight cycles as of May 6, 2009 (the effective date of AD 2009–09–02): Inspect before the accumulation of 9,500 total flight cycles, or within 1,500 flight cycles after May 6, 2009, whichever occurs earlier.

(iv) For airplanes with MLG forward stabilizer braces that have accumulated fewer than 4,500 total flight cycles as of May 6, 2009 (the effective date of AD 2009–09–02): Inspect before the accumulation of 6,000 total flight cycles.

(2) If any damage is found during any inspection required by paragraph (g)(1) of this AD, before further flight, do all applicable corrective actions in accordance with Goodrich Service Concession Request 026–09, Revision B, dated March 10, 2009; or UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018; except as provided by paragraphs (g)(3) through (6) of this AD. As of the effective date of this AD, use UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018, for the actions required by this paragraph.

(3) For airplanes on which step 24. of Goodrich Service Concession Request 026–09, Revision B, dated March 10, 2009, has been done: Within 1,200 flight cycles after May 6, 2009 (the effective date of AD 2009–

09–02), rework the MLG forward stabilizer brace, and except for airplanes on which the rework has been done, within 600 flight cycles after May 6, 2009, do a detailed visual inspection for damage of the stabilizer brace apex lugs, in accordance with Goodrich Service Concession Request 026–09, Revision B, dated March 10, 2009; or UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018. If any damage is found, repair before further flight in accordance with Section C of Goodrich Service Concession Request 026–09, Revision B, dated March 10, 2009; or Section C of UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018. As of the effective date of this AD, use UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018, for the actions required by this paragraph.

(4) At the applicable time specified in one of paragraphs (g)(4)(i) through (iii) of this AD, replace the forward stabilizer brace assembly, in accordance with Goodrich Service Concession Request 026–09, Revision B, dated March 10, 2009; or UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018. As of the effective date of this AD, use UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018, for the actions required by this paragraph.

(i) For airplanes on which cracking is found during any inspection required by this AD, and the cracking exceeds the limit specified in paragraph (g)(4)(i)(A) or (B) of this AD, as applicable: Replace the assembly before further flight.

(A) For cracking found before the effective date of this AD: The limit specified in Section C of Goodrich Service Concession Request 026–09, Revision B, dated March 10, 2009.

(B) For cracking found on or after the effective date of this AD: The limit specified in Section C or Section D of UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018.

(ii) For airplanes on which any cracking is found after the rework specified in Section C of Goodrich Service Concession Request 026–09, Revision B, dated March 10, 2009; or specified in Section C or Section D of UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018: Replace the assembly before further flight.

(iii) For airplanes on which no cracking is found after the rework specified in Section C of Goodrich Service Concession Request 026–09, Revision B, dated March 10, 2009; or specified in Section C or Section D of UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018: Replace the assembly within 2,700 flight cycles after doing the rework.

(5) If foreign object damage is found during any inspection required by this AD, or if damage is found to a forward stabilizer brace lug or stop bracket retention hole apex bushing, before further flight, repair using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO); or De Havilland Aircraft of Canada Limited's TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(6) If any crack is found during the visual inspection under 10X magnification, repair before further flight, in accordance with Goodrich Service Concession Request 026–09, Revision B, dated March 10, 2009; or UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018. As of the effective date of this AD, use UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018, for the actions required by this paragraph.

(7) Before the accumulation of 6,000 total flight cycles on the MLG forward stabilizer braces, or within 600 flight hours after May 6, 2009 (the effective date of AD 2009–09–02), whichever occurs later: Do a detailed visual inspection for cracking of both MLG forward stabilizer braces and do all applicable liquid penetrant inspections for cracking, in accordance with Bombardier Q400 All Operator Message 338, dated February 23, 2009. Repeat the inspection thereafter at intervals not to exceed 600 flight hours. If any cracking is found during any inspection required by this paragraph, repair before further flight in accordance with Bombardier Repair Drawing 8/4–32–099, Issue 1, dated March 10, 2009, and Goodrich Service Concession Request 026–09, Revision B, dated March 10, 2009; or Bombardier Repair Drawing 8/4–32–099, Issue 4, dated September 4, 2018, and UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018. As of the effective date of this AD, use Bombardier Repair Drawing 8/4–32–099, Issue 4, dated September 4, 2018, and UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018, to repair cracking found during any inspection required by this paragraph.

(h) New Requirement of This AD: Installation of Elbow Restrictor

Within 2,000 flight hours or 12 months, whichever occurs first, from the effective date of this AD: Install an elbow restrictor, P/N 46610–1, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–32–69, Revision C, dated January 20, 2011.

(i) Terminating Actions

(1) Installation of an elbow restrictor as required by paragraph (h) of this AD terminates the repetitive inspection requirements of paragraphs (g)(1) and (7) of this AD.

(2) Installation of an elbow restrictor as required by paragraph (h) of this AD terminates the replacement of the forward stabilizer brace assembly requirement of paragraph (g)(4)(iii) of this AD.

(j) New Requirement of This AD: Revised Repetitive Inspections of the MLG Forward Stabilizer Brace

(1) Within 2,000 flight cycles after the installation specified in paragraph (h) of this AD, or within 12 months after the effective date, whichever occurs later, do the non-destructive inspection, in accordance with Bombardier Repair Drawing 8/4–32–099, Issue 4, dated September 4, 2018, and UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018. Thereafter, repeat the non-destructive inspection at the times specified in paragraph (j)(2) of this AD.

(2) Repeat the non-destructive inspection required in paragraph (j)(1) of this AD at the applicable intervals specified in paragraphs (j)(2)(i) through (iii) of this AD.

(i) For forward stabilizer braces, P/N 46401–7, that have not had any required rework done, as specified in Goodrich or UTC Aerospace Systems Service Concession Request 026–09, Section C or D, and have had Bombardier Service Bulletin 84–32–69 or Bombardier Service Bulletin 84–32–76 incorporated: Do the non-destructive inspection at intervals not to exceed 6,000 flight cycles.

(ii) For forward stabilizer braces, P/N 46401–7, that have been reworked in accordance with Goodrich or UTC Aerospace Systems Service Concession Request 026–09, Section D, and have had Bombardier Service Bulletin 84–32–69 or Bombardier Service Bulletin 84–32–76 incorporated: Do the non-destructive inspection at intervals not to exceed 6,000 flight cycles.

(iii) For forward stabilizer braces, P/N 46401–7, that have been reworked in accordance with Goodrich or UTC Aerospace Systems Service Concession Request 026–09, Section C, and have had Bombardier Service Bulletin 84–32–69 or Bombardier Service Bulletin 84–32–76 incorporated: Do the non-destructive inspection at intervals not to exceed 3,000 flight cycles.

(k) Acceptable Method of Compliance for Paragraph (h) of This AD

Replacing the standard elbow fitting at the retract port of the lock actuator with a new custom elbow fitting in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–32–76, Revision B, dated August 1, 2018, is an acceptable method of compliance for the installation required by paragraph (h) of this AD.

(l) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using the service information in one of paragraphs (l)(1)(i) through (iii) of this AD.

(i) Bombardier Service Bulletin 84–32–69, dated June 30, 2009.

(ii) Bombardier Service Bulletin 84–32–69, Revision A, dated August 19, 2009.

(iii) Bombardier Service Bulletin 84–32–69, Revision B, dated September 17, 2009.

(2) This paragraph provides credit for actions specified in paragraph (j) of this AD, if those actions were performed before the effective date of this AD using the service information in one of paragraphs (l)(2)(i) through (iii) of this AD.

(i) Bombardier Repair Drawing 8/4–32–099, Issue 1, dated March 10, 2009, and Goodrich Service Concession Request 026–09, Revision B, dated March 10, 2009.

(ii) Bombardier Repair Drawing 8/4–32–099, Issue 2, dated April 20, 2009, and

Goodrich Service Concession Request 026–09, Revision C, dated April 17, 2009.

(iii) Bombardier Repair Drawing 8/4–32–099, Issue 3, dated December 3, 2009, and Goodrich Service Concession Request 026–09, Revision D, dated November 27, 2009.

(3) This paragraph provides credit for actions performed using the method of compliance specified in paragraph (k) of this AD, if those actions were performed before the effective date of this AD using the service information in paragraph (l)(3)(i) or (ii) of this AD.

(i) Bombardier Service Bulletin 84–32–76, dated May 20, 2010.

(ii) Bombardier Service Bulletin 84–32–76, Revision A, dated June 19, 2014.

(m) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO 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 manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch. AMOCs approved previously in accordance with AD 2009–09–02 are approved as AMOCs for the corresponding requirements in paragraph (g) of this AD.

(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, New York ACO Branch, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO; or De Havilland Aircraft of Canada Limited's TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2009–11R2, dated May 31, 2018, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0479.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (o)(5) and (6) of this AD.

(o) 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.

(3) The following service information was approved for IBR on January 9, 2020.

(i) Bombardier Repair Drawing 8/4–32–099, Issue 4, dated September 4, 2018.

(ii) Bombardier Service Bulletin 84–32–69, Revision C, dated January 20, 2011.

(iii) Bombardier Service Bulletin 84–32–76, Revision B, dated August 1, 2018.

(iv) UTC Aerospace Systems Service Concession Request 026–09, Revision H, dated August 29, 2018.

(4) The following service information was approved for IBR on May 6, 2009 (75 FR 18121, April 21, 2009).

(i) Bombardier Q400 All Operator Message 338, dated February 23, 2009. The issue date is specified on only the first page of this document.

(ii) Bombardier Repair Drawing 8/4–32–099, Issue 1, dated March 10, 2009. The issue date is specified on only the first page of this document.

(iii) Goodrich Service Concession Request 026–09, Revision B, dated March 10, 2009. Pages 1 through 8 of this document are identified as Revision B, dated March 5, 2009; pages 9 through 22 are identified as Revision B, dated March 10, 2009.

(5) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com;* internet *https://dehavilland.com.*

(6) 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.

(7) 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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on November 7, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–26232 Filed 12–4–19; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 775

[Docket No. USN–2018–HQ–0001]

RIN 0703–AB01

Policies and Responsibilities for Implementation of the National Environmental Policy Act Within the Department of the Navy

AGENCY: Department of the Navy, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DON) revises portions of its internal regulations that establish the responsibilities and procedures for complying with the National Environmental Policy Act (NEPA). An agency may determine that certain classes of actions normally do not individually or cumulatively have significant environmental impacts and therefore do not require further review under NEPA. Establishing these categories of activities, called categorical exclusions (CATEXs), in the agency's NEPA implementing procedures is a way to reduce unnecessary paperwork and delay. This revision clarifies what types of activities fall under CATEXs and normally do not require additional NEPA analysis.

DATES: Effective January 6, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. J. Dan Cecchini, Office of the Deputy Assistant Secretary of the Navy (Environment), 703–614–1173.

SUPPLEMENTARY INFORMATION:

Process Used by the DON in the Development of the Proposed Revisions

In 2015, the Office of the Deputy Assistant Secretary of the Navy for Environment directed a review of 32 CFR 775.6(e) and (f), which address the DON's procedures for applying CATEXs. A review panel (hereinafter ''panel'') was formed to provide administrative support and expertise to inform the efforts. The professionals comprising the panel were current DON environmental practitioners with numerous years of NEPA planning and compliance experience, including the preparation of environmental documentation such as CATEX decision documents, environmental assessments (EAs), environmental impact statements (EISs), findings of no significant impact, and records of decision. The panel was supported by a legal working group comprising experienced environmental law attorneys from the DON's Office of the General Counsel and Office of the Judge Advocate General with advanced education and experience providing legal and policy advice to Federal agency decision makers, managers, and practitioners on environmental planning and compliance responsibilities.

The panel reviewed and analyzed the supporting rationale, scope, applicability, and wording of each existing CATEX and extraordinary circumstance set forth in 32 CFR 775.6(e) and (f). The panel developed and deliberated on each proposed new CATEX and extraordinary circumstance

change, balancing the resulting increase in administrative efficiency in NEPA implementation and compliance against the risk of misinterpretation and misapplication. During that process, numerous environmental professionals, representing various constituencies within the DON, supported the panel's review and participated in meetings and conference calls over the course of 18 months to reach agreement on the proposed rule (84 FR 12170).

In accordance with Council on Environmental Quality (CEQ) regulations and CEQ's 2010 CATEX guidance, ''Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act,'' the DON substantiated the proposed new and revised CATEXs by reviewing EA and EIS analyses to identify the environmental effects of previously implemented actions; benchmarking other Federal agencies' experiences; and leveraging the expertise, experience, and judgment of DON professional staff. The panel noted that other Department of Defense (DoD) entities and numerous other Federal agencies have CATEXs for activities that are similar in nature, scope, and impact on the human environment as those undertaken by the DON. The panel reviewed many of those CATEXs before proposing changes to 32 CFR 775.6(e) and (f).

In addition, the panel recognized that all Federal agencies, including the DoD as a whole, with very few limitations, must meet the same requirements to consider environmental issues in decision making with an ultimate goal to protect the environment. Based on experience with, or on behalf of, other Federal agencies, the panel determined that the characteristics of many of the DON's activities were not significantly different from those performed by other Federal agencies, including other entities within the DoD.

The CEQ was integral in the process to ensure that proposed changes to the DON's CATEXs meet NEPA requirements. The DON provided the CEQ with proposed draft changes and justifications for each proposed change to 32 CFR 775.6(e) and (f). Many of the changes that the DON is proposing are administrative in nature to clarify application of a particular CATEX. On July 7, 2017, the CEQ concurred with the DON proceeding to rulemaking on these proposed changes.

Summary of Comments and Responses

The DON published the proposed rule (84 FR 12170) on April 1, 2019, and received comments regarding the rule until May 1, 2019. In total, the DON received five (5) comment submissions on the proposed rule from members of the general public, the Natural Resources Defense Council (NRDC), and Buchalter law firm.

In general, the comments received could be placed into one of four (4) categories: (1) Comments beyond the scope of the proposed rule; (2) comments regarding the introductory language change for ''extraordinary circumstances'' under 32 CFR 775.6(e); (3) comments regarding how the proposed change to 32 CFR 775.6 may interact with the Marine Mammal Protection Act (MMPA); and, (4) comments regarding proposed CATEX #47, which allows for the ''modernization (upgrade) of range and training areas, systems, and associated components . . . that support current testing and training levels and requirements.''

Comments Beyond the Scope of the Proposed Rule

The DON received comments expressing disagreement and lack of support for general naval operations, as well as dissatisfaction with Federal protections for marine mammals. The DON also received feedback regarding existing CATEXs, specifically CATEXs #44 and #45 (now numbered #43 and #44 in this final rule). The proposed rule did not change or alter these CATEXs. These comments were deemed to be outside the scope of this rulemaking and are therefore not addressed further.

Modifications to 32 CFR 775.6(e)

The DON received comments expressing concern that the proposed modifications to the text of 32 CFR 775.6(e) would ''eliminate'' the extraordinary circumstances exception to the use of a CATEX, contravening CEQ guidance. The DON stresses that the proposed changes to the criteria disallowing the application of a listed CATEX (hereafter ''extraordinary circumstances'') do not eliminate the requirement to demonstrate that an action has no significant effect on the human environment, either individually or cumulatively, prior to applying a CATEX. Rather, the rulemaking provides discretion in circumstances where one or more extraordinary circumstances are present but in which only negligible or insignificant impacts are expected. Under this rulemaking, the decision maker may determine that the CATEX is appropriate, notwithstanding the presence of one or more extraordinary circumstances, based on an evaluation of the action's effects in terms of context and intensity. This change aligns with CEQ's 2010 CATEX guidance (page 6) which allows for the consideration of both ''the presence of the factor and the impact on that factor.'' Further, this language mirrors the extraordinary circumstances introductory language already contained in similar NEPA regulations of the U.S. Forest Service and the National Oceanic and Atmospheric Administration (NOAA)'s NEPA manual.

Some commenters also expressed concern that the modifications to 32 CFR 775.6(e) could lead to environmental degradation if the DON sought to apply a CATEX under 32 CFR 775.6(f) to an action which on its face appeared to have negligible impacts, but cumulatively or over time could have more substantial negative environmental impacts. Again, consistent with CEQ guidance, the DON's CATEXs can only be applied to actions that, both individually and cumulatively, have no significant impacts on the human environment. Under the new 32 CFR 775.6(e)(2), if a decision is made to apply a CATEX to a proposed action that is more than administrative in nature, the decision must be formally documented consistent with existing Navy and Marine Corps policy.

Some commenters were concerned that the new language proposed under 32 CFR 775.6(e) would allow the DON to apply CATEXs for ''routine training and evaluation'' and ''routine military training'' (existing CATEXs renumbered as #43 and #44 in this final rule) to virtually all testing and training activities, thereby circumventing Federal law. The language, however, does not remove the requirement to demonstrate that such training and testing have no significant impacts on the human environment either individually or cumulatively. Moreover, it does not negate the DON's responsibility to obtain legally required permits and/or approvals from regulatory agencies outside of the DON, many of which have their own NEPA review obligation. Finally, if a decision is made to apply a CATEX to a proposed action even though one or more extraordinary circumstances are present, a copy of the executed CATEX decision document must be forwarded to headquarters for review before the action can be implemented. These decisions then face a higher level of scrutiny which ensures the appropriate level of NEPA analysis is completed.

To address the above comments regarding changes to 32 CFR 775.6(e), the DON will adopt the following language under 32 CFR 775.6(e) to clarify its position that application of a CATEX is inappropriate unless the

action is determined not to have a significant impact on the human environment either individually or cumulatively: ''A categorical exclusion (CATEX), as defined and listed in this regulation *and 40 CFR 1508.4,* may be used to exclude a proposed action from further analysis. . . Before applying a CATEX, the decision maker must consider whether the proposed action *would individually or cumulatively:* . . .'' (emphasis added).

Further, in response to comments, the DON will also remove the sunset provision previously included in the proposed rule for actions falling under 32 CFR 775.6(e)(1)(v)(A). The proposed rule terminated the requirement to forward CATEXs to headquarters for actions where one or more extraordinary circumstances were present after two years from the date of this final rule. Under the final rule, CATEXs for these actions will be forwarded to the headquarters level for review with no sunset provision. The purpose of this change is to ensure the highest level of scrutiny is dedicated to those actions which impact federally protected species.

Finally, certain commenters took issue with the DON's word choice. Examples of disputed wording include the use of ''context and intensity'' in 32 CFR 775.6(e) and ''scientifically controversial'' in 32 CFR 775.6(e)(1)(ii). The consideration of ''context and intensity'' of an action contemplated for a CATEX where one or more extraordinary circumstances is present is simply meant to provide guidance to decision makers in determining whether an action has the potential for significant effects under 40 CFR 1508.4. As noted previously, the consideration of ''context and intensity'' when determining whether a CATEX is appropriate aligns with CEQ's 2010 CATEX guidance. The term ''scientifically controversial'' is in the DON's existing NEPA regulations and has not been altered by this rulemaking.

Interaction With the MMPA

The DON also received comments expressing concern that the DON would rely on the language changes under 32 CFR 775.6 to circumvent certain procedures, approvals, or authorizations required under the MMPA or other environmental statutes. Changes to the DON's CATEX regulations cannot negate the DON's independent legal responsibilities under other environmental statutes. Rather, the regulatory changes proffered by the DON in this rulemaking more clearly delineate the interplay between the DON NEPA regulations and the MMPA by linking the trigger for extraordinary circumstances to the specific regulatory threshold language of the MMPA. The DON has added language to 32 CFR 775.6(e)(1)(v)(A) to clarify a CATEX will not be used if potential impacts would rise to the level of requiring an Incidental Take Authorization under the MMPA, irrespective of whether an actual authorization is procured unless the DON determines, in accordance § 775.6(e), and after considering context and intensity, that the proposed action would not have significant environmental effects.

Further, the language change to 32 CFR 775.6 in no way affects policy external to the DON. The proposed language does not contravene National Marine Fisheries Service (NMFS) authorization requirements or NOAA NEPA requirements. That is, the DON will still be required to seek MMPA Incidental Take Authorizations from NMFS for activities which trigger NMFS jurisdiction and NOAA's issuance of those authorizations must still comply with its NEPA procedures. The DON will work closely with NMFS to ensure the appropriate level of NEPA analysis is completed to satisfy the NEPA requirements for both agencies.

CATEX #47 (Modernization (Upgrade) of Range and Training Areas, Systems, and Components That Support Current Testing and Training Levels and Requirements)

One commenter was concerned that this proposed new CATEX could enable ''later increased and potentially different uses'' of DON ranges that would never undergo NEPA analysis. This CATEX covers the modernization (upgrade) of range and training areas, systems, and associated components that support *current* (emphasis added) training and testing levels and requirements. It would be used for activities such as replacing worn out infrastructure and equipment. The language of this CATEX cannot be used to satisfy NEPA obligations for increased or potentially different uses of the range or training area that would result in additional environmental impacts. No changes were made to the text of the final rule as a result of this comment.

Miscellaneous Changes

In accordance with the comments section noted above, the DON makes minor edits to the wording of its proposed rule. The DON also makes several minor edits to improve the clarity, grammar, consistency and brevity of the regulations overall including a change which deletes language from CATEX #22 that contradicts DON's changes to extraordinary circumstances criteria regarding how to account for adverse effects on historic properties.

Thereafter, for the reasons given in the proposed rule and in this document, the DON adopts the proposed rule as a final rule, with the changes discussed in this document.

Authority for This Regulatory Action

Authorities for this rule are 5 U.S.C. 301, NEPA, and 40 CFR parts 1500–1508. Under 5 U.S.C. 301, the head of a military department may prescribe regulations for the government of the department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. As noted above, NEPA requires Federal agencies to analyze their proposed actions to determine if they could have significant environmental effects. The CEQ implementing regulations (40 CFR 1507.3) require Federal agencies to adopt supplemental NEPA implementing procedures, including agency-specific CATEXs, either in the form of agency policy or a regulation, and to provide opportunity for public review prior to adoption.

Regulatory Reviews

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

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

Congressional Review Act, 5 U.S.C. 804(2)

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of $100

million or more; or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. This final rule is not a major rule because it does not reach the economic threshold or have other impacts as required under the Congressional Review Act.

Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

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

National Environmental Policy Act

The CEQ does not direct agencies to prepare a NEPA analysis before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. DON NEPA procedures assist in the fulfillment of its responsibilities under NEPA, but are not final determinations of what level of NEPA analysis is required for particular actions. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. III. 1999), aff'd, 230 F.3d 947, 954–55 (7th Cir. 2000).

Paperwork Reduction Act

This regulatory action does not contain a collection-of-information requirement subject to review and approval by the OMB under the Paperwork Reduction Act.

Regulatory Flexibility Act

The DON has determined that this action is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)).

Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This rule does not impose any mandates on small entities. This action addresses the DON's internal procedures for implementing the procedural requirements of NEPA.

Executive Order 13132: Federalism

The DON has determined that this action does not contain policies with federalism or ''takings'' implications as those terms are defined in Executive Orders 13132 and 12630, respectively. This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action contains no Federal mandates for state and local governments and does not impose any enforceable duties on state and local governments. This action addresses only internal DON procedures for implementing NEPA.

List of Subjects in 32 CFR Part 775

Environmental impact statements.

Accordingly, the DON amends 32 CFR part 775 as follows:

PART 775—POLICIES AND RESPONSIBILITIES FOR IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT WITHIN THE DEPARTMENT OF THE NAVY

■ 1. The authority for part 775 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 4321–4361; 40 CFR parts 1500–1508.

■ 2. Revise the heading for part 775 to read as set forth above.

■ 3. Amend § 775.6 by revising paragraphs (e) and (f) as follows:

§ 775.6 Planning considerations.

* * * * *

(e) A categorical exclusion (CATEX), as defined and listed in this part and 40 CFR 1508.4, may be used to satisfy NEPA, eliminating the need for an EA or an EIS. Extraordinary circumstances are those circumstances for which the DON has determined that further environmental analysis may be required because an action normally eligible for a CATEX may have significant environmental effects. The presence of one or more of the extraordinary circumstances listed in paragraph (e)(1) of this section does not automatically preclude the application of a CATEX. A determination of whether a CATEX is appropriate for an action, even if one or more extraordinary circumstances are present, should focus on the action's potential effects and consider the environmental significance of those effects in terms of both context (consideration of the affected region, interests, and resources) and intensity (severity of impacts).

(1) Before applying a CATEX, the decision maker must consider whether the proposed action would individually or cumulatively:

(i) Adversely affect public health or safety;

(ii) Involve effects on the human environment that are highly uncertain, involve unique or unknown risks, or which are scientifically controversial;

(iii) Establish precedents or make decisions in principle for future actions that have the potential for significant impacts;

(iv) Threaten a violation of Federal, State, or local environmental laws applicable to the DON; or

(v) Involve an action that may:

(A) Have more than an insignificant or discountable effect on federally protected species under the Endangered Species Act or have impacts that would rise to the level of requiring an Incidental Take Authorization under the Marine Mammal Protection Act irrespective of whether one is procured;

(B) Have an adverse effect on coral reefs or on federally designated wilderness areas, wildlife refuges, marine sanctuaries and monuments, or parklands;

(C) Adversely affect the size, function, or biological value of wetlands and is not covered by a general (nationwide, regional, or state) permit;

(D) Have an adverse effect on archaeological resources or resources listed or determined to be eligible for listing on the National Register of Historic Places (including, but not limited to, ships, aircraft, vessels, and equipment) where compliance with Section 106 of the National Historic Preservation Act has not been resolved through an agreement executed between the DON and the appropriate historic preservation office and other appropriate consulting parties; or

(E) Result in an uncontrolled or unpermitted release of hazardous substances or require a conformity determination under standards in 40 CFR part 93, subpart B (the Clean Air Act General Conformity Rule).

(2) If a decision is made to apply a CATEX to a proposed action that is more than administrative in nature, the decision must be formally documented per existing Navy and Marine Corps policy. For actions with a documented CATEX where one or more extraordinary circumstances are present, a copy of the executed CATEX decision document (*e.g.,* Record of CATEX or Decision Memorandum) must be

forwarded for review to Navy Headquarters or Marine Corps Headquarters, as appropriate, before the action is implemented. With the exception of actions that fall under paragraph (e)(1)(v)(A) of this section, the requirement to send the documented CATEX to headquarters for review will end on January 6, 2022.

(f) Subject to the criteria in paragraph (e) of this section, the following categories of actions are excluded from further analysis under NEPA. The CNO and CMC shall determine whether a decision to forego preparation of an EA or EIS on the basis of one or more categorical exclusions must be documented in an administrative record and the format for such record.

(1) Routine fiscal and administrative activities, including administration of contracts;

(2) Routine law and order activities performed by military personnel, military police, or other security personnel, including physical plant protection and security;

(3) Routine use and operation of existing facilities, laboratories, and equipment;

(4) Administrative studies, surveys, and data collection;

(5) Issuance or modification of administrative procedures, regulations, directives, manuals, or policy;

(6) Military ceremonies;

(7) Routine procurement of goods and services conducted in accordance with applicable procurement regulations, executive orders, and policies;

(8) Routine repair and maintenance of buildings, facilities, vessels, aircraft, ranges, and equipment associated with existing operations and activities (*e.g.,* localized pest management activities, minor erosion control measures, painting, refitting, general building/structural repair, landscaping, or grounds maintenance);

(9) Training of an administrative or classroom nature;

(10) Routine personnel actions;

(11) Routine movement of mobile assets (such as ships, submarines, aircraft, and ground assets for repair, overhaul, dismantling, disposal, homeporting, home basing, temporary reassignments; and training, testing, or scientific research) where no new support facilities are required;

(12) Routine procurement, management, storage, handling, installation, and disposal of commercial items, where the items are used and handled in accordance with applicable regulations (*e.g.,* consumables, electronic components, computer equipment, pumps);

(13) Routine recreational and welfare activities;

(14) Alterations of and additions to existing buildings, facilities, and systems (*e.g.,* structures, roads, runways, vessels, aircraft, or equipment) when the environmental effects will remain substantially the same and the use is consistent with applicable regulations;

(15) Routine movement, handling, and distribution of materials, including hazardous materials and wastes that are moved, handled, or distributed in accordance with applicable regulations;

(16) New activities conducted at established laboratories and plants (including contractor-operated laboratories and plants) where all airborne emissions, waterborne effluent, external ionizing and non-ionizing radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable Federal, state, and local laws and regulations;

(17) Studies, data, and information gathering that involve no permanent physical change to the environment (*e.g.,* topographic surveys, wetlands mapping, surveys for evaluating environmental damage, and engineering efforts to support environmental analyses);

(18) Temporary placement and use of simulated target fields (*e.g.,* inert mines, simulated mines, or passive hydrophones) in fresh, estuarine, and marine waters for the purpose of non-explosive military training exercises or research, development, test, and evaluation;

(19) Installation and operation of passive scientific measurement devices (*e.g.,* antennae, tide gauges, weighted hydrophones, salinity measurement devices, and water quality measurement devices) where use will not result in changes in operations tempo and is consistent with applicable regulations;

(20) Short-term increases in air operations up to 50 percent of the typical operation rate, or increases of 50 operations per day, whichever is greater. Frequent use of this CATEX at an installation requires further analysis to determine there are no cumulative impacts;

(21) Decommissioning, disposal, or transfer of naval vessels, aircraft, vehicles, and equipment when conducted in accordance with applicable regulations, including those regulations applying to removal of hazardous materials;

(22) Non-routine repair and renovation, and donation or other transfer of structures, vessels, aircraft, vehicles, landscapes, or other contributing elements of facilities listed or eligible for listing on the National Register of Historic Places;

(23) Hosting or participating in public events (*e.g.,* air shows, open houses, Earth Day events, and athletic events) where no permanent changes to existing infrastructure (*e.g.,* road systems, parking, and sanitation systems) are required to accommodate all aspects of the event;

(24) Military training conducted on or over nonmilitary land or water areas, where such training is consistent with the type and tempo of existing non-military airspace, land, and water use (*e.g.,* night compass training, forced marches along trails, roads, and highways, use of permanently established ranges, use of public waterways, or use of civilian airfields);

(25) Transfer of real property from the DON to another military department or to another Federal agency;

(26) Receipt of property from another Federal agency when there is no anticipated or proposed substantial change in land use;

(27) Minor land acquisitions or disposals where anticipated or proposed land use is similar to existing land use and zoning, both in type and intensity;

(28) Disposal of excess easement interests to the underlying fee owner;

(29) Initial real estate in grants and out grants involving existing facilities or land with no significant change in use (*e.g.,* leasing of federally owned or privately owned housing or office space, and agricultural out leases);

(30) Renewals and minor amendments of existing real estate grants for use of Government-owned real property where no significant change in land use is anticipated;

(31) Land withdrawal continuances or extensions that establish time periods with no significant change in land use;

(32) Grants of license, easement, or similar arrangements for the use of existing rights-of-way or incidental easements complementing the use of existing rights-of-way for use by vehicles (not to include significant increases in vehicle loading); electrical, telephone, and other transmission and communication lines; water, wastewater, storm water, and irrigation pipelines, pumping stations, and facilities; and for similar utility and transportation uses;

(33) New construction that is similar to or compatible with existing land use (*i.e.,* site and scale of construction are consistent with those of existing adjacent or nearby facilities) and, when completed, the use or operation of which complies with existing regulatory requirements (*e.g.,* a building within a

cantonment area with associated discharges and runoff within existing handling capacities). The test for whether this CATEX can be applied should focus on whether the proposed action generally fits within the designated land use of the proposed site;

(34) Demolition, disposal, or improvements involving buildings or structures when done in accordance with applicable regulations including those regulations applying to removal of asbestos, PCBs, and other hazardous materials;

(35) Acquisition, installation, modernization, repair, or operation of utility (including, but not limited to, water, sewer, and electrical) and communication systems (including, but not limited to, data processing cable and similar electronic equipment) that use existing rights of way, easements, distribution systems, and facilities;

(36) Decisions to close facilities, decommission equipment, or temporarily discontinue use of facilities or equipment, where the facility or equipment is not used to prevent or control environmental impacts;

(37) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site;

(38) Relocation of personnel into existing federally owned or commercially leased space that does not involve a substantial change affecting the supporting infrastructure (*e.g.,* no increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase);

(39) Pre-lease upland exploration activities for oil, gas, or geothermal reserves, (*e.g.,* geophysical surveys);

(40) Installation of devices to protect human or animal life (*e.g.,* raptor electrocution prevention devices, fencing to restrict wildlife movement onto airfields, and fencing and grating to prevent accidental entry to hazardous areas);

(41) Reintroduction of endemic or native species (other than endangered or threatened species) into their historic habitat when no substantial site preparation is involved;

(42) Temporary closure of public access to DON property to protect human or animal life;

(43) Routine testing and evaluation of military equipment on a military reservation or an established range, restricted area, or operating area; similar in type, intensity, and setting, including physical location and time of year, to other actions for which it has been determined, through NEPA analysis where the DON was a lead or cooperating agency, that there are no significant impacts; and conducted in accordance with all applicable standard operating procedures protective of the environment;

(44) Routine military training associated with transits, maneuvering, safety and engineering drills, replenishments, flight operations, and weapons systems conducted at the unit or minor exercise level; similar in type, intensity, and setting, including physical location and time of year, to other actions for which it has been determined, through NEPA analysis where the DON was a lead or cooperating agency, that there are no significant impacts; and conducted in accordance with all applicable standard operating procedures protective of the environment;

(45) Natural resources management actions undertaken or permitted pursuant to agreement with or subject to regulation by Federal, state, or local organizations having management responsibility and authority over the natural resources in question, including, but not limited to, prescribed burning, invasive species actions, timber harvesting, and hunting and fishing during seasons established by state authorities pursuant to their state fish and game management laws. The natural resources management actions must be consistent with the overall management approach of the property as documented in an Integrated Natural Resources Management Plan (INRMP) or other applicable natural resources management plan;

(46) Minor repairs in response to wildfires, floods, earthquakes, landslides, or severe weather events that threaten public health or safety, security, property, or natural and cultural resources, and that are necessary to repair or improve lands unlikely to recover to a management-approved condition (*i.e.,* the previous state) without intervention. Covered activities must be completed within one year following the event and cannot include the construction of new permanent roads or other new permanent infrastructure. Such activities include, but are not limited to: Repair of existing essential erosion control structures or installation of temporary erosion controls; repair of electric power transmission infrastructure; replacement or repair of storm water conveyance structures, roads, trails, fences, and minor facilities; revegetation; construction of protection fences; and removal of hazard trees, rocks, soil, and other mobile debris from, on, or along roads, trails, or streams;

(47) Modernization (upgrade) of range and training areas, systems, and associated components (including, but not limited to, targets, lifters, and range control systems) that support current testing and training levels and requirements. Covered actions do not include those involving a substantial change in the type or tempo of operation, or the nature of the range (*i.e.,* creating an impact area in an area where munitions had not been previously used);

(48) Revisions or updates to INRMPs that do not involve substantially new or different land use or natural resources management activities and for which an EA or EIS was previously prepared that does not require supplementation pursuant to 40 CFR 1502.9(c)(1); and

(49) DON actions that occur on another Military Service's property where the action qualifies for a CATEX of that Service, or for actions on property designated as a Joint Base or Joint Region that would qualify for a CATEX of any of the Services included as part of the Joint Base or Joint Region. If the DON action proponent chooses to use another Service's CATEX to cover a proposed action, the DON must obtain written confirmation the other Service does not object to using its CATEX to cover the DON action. The DON official making the CATEX determination must ensure the application of the CATEX is appropriate and that the DON's proposed action was of a type contemplated when the CATEX was established by the other Service. Use of this CATEX requires preparation of a Record of CATEX or Decision Memorandum.

Dated: November 27, 2019.

D.J. Antenucci,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2019–26093 Filed 12–4–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2018–0649; FRL–10001–47]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (18–2)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances that are the subject of premanufacture notices (PMNs), and Orders issued by EPA under TSCA. The SNURs require persons who intend to manufacture (defined by statute to include import) or process any of these chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required by that determination.

DATES: This rule is effective on February 3, 2020. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on December 19, 2019.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and Orders under TSCA. Importers of chemicals subject to these SNURs must certify compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule on or after January 6, 2020 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. How can I access the docket?

The docket includes information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by the docket identification (ID) number listed at the top of this document, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. 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 OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

A. What action is the Agency taking?

EPA is finalizing these SNURs under TSCA section 5(a)(2) for 28 substances which were the subject of PMNs. These SNURs require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

EPA is not finalizing one proposed SNUR at 40 CFR 721.11173 for the chemical substances P–15–442, P–15–443, P–15–444, P–15–445, P–15–446, P–15–447, P–15–525, P–15–526, P–15–527, and P–15–528, because the Agency is currently reviewing data submitted in support of a request to modify the underlying TSCA section 5(e) Order that forms the basis for the proposed SNUR. EPA will finalize that proposed SNUR after the data has been reviewed and any changes to the Order and/or SNUR have been considered and identified. In addition, the Agency has modified the underlying Order for the SNUR at 40 CFR 721.11174 to add the substances described in PMNs P–18–193, P–18–194, P–18–195, P–18–196, P–19–124, P–19–125, P–19–126, P–19–127, P–19–128, and P–19–129. All terms of the Order and proposed SNUR remain the same.

In the **Federal Register** of October 10, 2018 (83 FR 50872) (FRL–9984–67), EPA proposed a SNUR for 28 chemical substances to be added to 40 CFR part 721 subpart E. The comment period closed on November 9, 2018. More information on the specific chemical substances subject to this final rule can be found in the **Federal Register** documents for the direct final SNUR of October 10, 2018 (83 FR 50838) (FRL–9984–65). This direct final SNUR was withdrawn on December 7, 2018 (83 FR 63066) (FRL–9987–43) due to adverse public comments related to SNURs identified in the document. The record for the SNUR was established in the docket under docket ID number EPA–HQ–OPPT–2018–0649. That docket includes information considered by the Agency in developing the proposed and final rules, public comments submitted for the rule, and EPA's responses to public comments received on the proposed rule.

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

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)(i)).

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of

PMNs under TSCA section 5(a)(1)(A). These requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the use is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. In the case of a determination other than not likely to present unreasonable risk, the applicable review period must also expire before manufacturing or processing for the new use may commence. If EPA determines that the use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

When the Agency issues an Order under TSCA section 5(e), section 5(f)(4) requires that the Agency consider whether to promulgate a SNUR for any use not conforming to the restrictions of the Order or publish a statement describing the reasons for not initiating the rulemaking. TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Public Comments on Proposed Rule and EPA Responses

EPA received public comments from three entities on the proposed rule. The Agency's responses are described in a separate Response to Public Comments document that is available in the docket for this rule. As described in the Response to Public Comments document, EPA made a minor change to the final rule to be consistent with the requirements of the TSCA Section 5(e) Order for P–17–257 (40 CFR 721.11179).

V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for 28 chemical substances in 40 CFR part 721, subpart E. In Unit IV. of the original direct final SNUR of October 10, 2018 (83 FR 50838), EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) Order.
- Potentially Useful Information. This is information identified by EPA that would help characterize the potential health and/or environmental effects of the chemical substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use designated by the SNUR.
- CFR citation assigned in the regulatory text section of this rule.

The regulatory text section of each rule specifies the activities designated as significant new uses. Certain new uses, including exceedance of production volume limits (*i.e.,* limits on manufacture volume) and other uses designated in this rule, may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

These final rules include 28 PMN substances that are subject to orders issued under TSCA section 5(e)(1)(A), as required by the determinations made under TSCA section 5(a)(3)(B). Those Orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The proposed SNURs would identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying Orders, consistent with TSCA section 5(f)(4).

VI. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. of the original direct final SNUR of October 10, 2018 (83 FR 50838). Based on these findings, TSCA section 5(e) Orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. As a general matter, EPA believes it is necessary to follow TSCA section 5(e) Orders with a SNUR that identifies the absence of those protective measures as Significant New Uses to ensure that all manufacturers and processors—not just the original submitter—are held to the same standard.

B. Objectives

EPA is issuing these SNURs because the Agency wants:

- To identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying Orders, consistent with TSCA section 5(f)(4).
- To receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be able to either determine that the prospective manufacture or processing is not likely to present an unreasonable risk, or to take necessary regulatory action associated with any other determination, before the described significant new use of the chemical substance occurs.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which a NOC has not been submitted, EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA section 5(e) Orders have been issued for all the chemical substances, and the PMN submitters are prohibited by the TSCA section 5(e) Orders from undertaking activities which will be designated as significant new uses. The identities of 27 chemical substances subject to this rule have been claimed as confidential for a chemical substance covered by this action. Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

Furthermore, EPA designated October 10, 2018 (the date of public release of the proposed and direct final rules) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach has been to ensure that a person could not defeat a SNUR by initiating a significant new use before the effective date of the final rule.

In the unlikely event that a person began commercial manufacture or processing of the chemical substances for a significant new use identified as of October 10, 2018, that person will have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons will have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require developing any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, Order or consent agreement under TSCA section 4 (15 U.S.C. 2603), then TSCA section 5(b)(1)(A) (15 U.S.C. 2604(b)(1)(A)) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to them or reasonably ascertainable (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing under 40 CFR part 721, subpart E. Unit IV. of the original direct final SNUR (83 FR 50838) lists potentially useful information for all SNURs listed here. Descriptions of this information is provided for informational purposes. The potentially useful information identified in Unit IV. of the original direct final rule will inform EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance. EPA strongly encourages persons, before performing any testing, to consult with the Agency. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing on vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialogue with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

In some of the TSCA section 5(e) Orders for the chemical substances regulated under this rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of specified tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. The SNURs contain the same production volume limits as the TSCA section 5(e) Orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

Any request by EPA for the triggered and pended testing described in the Orders was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the PMN substances. Further, any such testing request on the part of EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models.

The potentially useful information identified in Unit IV. of the original direct final SNUR of October 10, 2018 (83 FR 50838) may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data or other information may increase the likelihood that EPA will take action under TSCA section 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. The EPA procedure to deal with the situation where a specific significant new use is CBI is in 721.1725(b)(1).

Under these procedures a manufacturer or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to

manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.1725(b)(1) with that under 40 CFR 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2018–0649.

XII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations-and-executive-orders.*

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

This action establishes SNURs for several new chemical substances that were the subject of PMNs and TSCA section 5(e) Orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to the PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

The information collection activities in this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including using automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 10 in FY2016, 14 in FY2017, and 18 in FY2018 and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State,

local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

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

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note) does not apply to this action.

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

XIII. Congressional Review Act (CRA)

Pursuant to the CRA (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 13, 2019.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add entries for §§ 721.11174 through 721.11181 in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.11174	2070–0012
721.11175	2070–0012
721.11176	2070–0012
721.11177	2070–0012
721.11178	2070–0012
721.11179	2070–0012
721.11180	2070–0012
721.11181	2070–0012
* * * * *	

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add §§ 721.11174 through 721.11181 to subpart E to read as follows:

Subpart E—Significant New Uses For Specific Chemical Substances

Sec.

* * * * *

721.11174 Silane-treated aluminosilicate (generic).

721.11175 Heteropolycycliccarboxylic acid, 1,3-dihydro-disubstituted-, polymer with 1,1′-methylenebis[4-isocyanatobenzene], reaction products with silica (generic).

721.11176 Carbonic acid, alkyl carbomonocyclic ester (generic).

721.11177 1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with 2-(chloromethyl)oxirane, reaction products with polyethylene-polypropylene glycol 2-aminopropyl Me ether.

721.11178 Copolyamide of an aromatic dicarboxylic acid and a mixture of diamines (generic).

721.11179 Single-walled carbon nanotubes (generic).

721.11180 Arenesulfonic acid, alkyl derivatives, metal salts (generic).

721.11181 Heteromonocycle, 2-[(bicarbomonocycle-2-substituted)alkyl]-(generic).

* * * * *

§ 721.11174 Silane-treated aluminosilicate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as silane-treated aluminosilicate (PMNs P–16–194, P–16–195, P–16–196, P–16–197, P–16–198, P–16–199, P–16–460, P–16–461, P–16–

462, P–16–463, P–16–464, P–18–193, P–18–194, P–18–195, P–18–196, P–19–124, P–19–125, P–19–126, P–19–127, P–19–128, and P–19–129) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substances after they have been completely incorporated into a polymer matrix.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (5) (respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 50) and (6) (particulate), (b) (concentration set at 0.1%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 0.1%), (f), (g)(1)(ii) through (ix), (2)(i) through (v), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture the substances without sampling and analyzing the immediate precursor used to manufacture the substances according to the terms specified in the TSCA section 5(e) Order for the following elements: Arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, manganese, mercury, nickel, selenium, silver, vanadium, and zinc. It is a significant new use to manufacture the substances at facilities other than those equipped with pollution controls, such as a bag house, that remove particulates from the air at 99% or greater efficiency. It is a significant new use to process the substances other than in an enclosed system that does not allow for the release of particulates or at facilities equipped with pollution controls, such as a bag house, that remove particulates from the air at 99% or greater efficiency.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d) and (f) through (i) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11175 Heteropolycycliccarboxylic acid, 1,3-dihydro-disubstituted-, polymer with 1,1′-methylenebis[4-isocyanatobenzene], reaction products with silica (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as heteropolycycliccarboxylic acid, 1,3-dihydro-disubstituted-, polymer with 1,1′-methylenebis[4-isocyanatobenzene], reaction products with silica (PMN P–16–307) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) through (iii), (3) and (6) (particulate), (b) (concentration set at 1.0%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set at 1.0%), (f), (g)(1)(i) and (ii), (2)(i) through (iii) and (v), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance for consumer use or for commercial uses that could introduce the substance into a consumer setting. It is a significant new use to manufacture, process, or use the substance other than in a liquid formulation. It is a significant new use to manufacture the PMN substance to contain more than 0.1% residual isocyanate by weight. It is a significant new use to manufacture, process, or use the substance in any manner that results in generation of a vapor, dust, mist or aerosol.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11176 Carbonic acid, alkyl carbomonocyclic ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carbonic acid, alkyl carbomonocyclic ester (PMN P–17–176) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iv), (3), (6)(v) and(vi), (particulate), (b) (concentration set at 1.0%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(iv), (v), (vi) and (ix), (2)(i) and (v), (3)(i) and (ii), (4) (do not release to water above 45 parts per billion), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to manufacture the chemical substance more than 3 years.

(iv) *Release to water.* Release to water requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 45.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11177 1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with 2-(chloromethyl)oxirane, reaction products with polyethylene-polypropylene glycol 2-aminopropyl Me ether.

(a) *Chemical substance and significant new used subject to reporting.* (1) The chemical substance identified as 1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with 2-(chloromethyl)oxirane, reaction products with polyethylene-polypropylene glycol 2-aminopropyl Me ether (PMN P–17–183, CAS No 1627528–04–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(ii), (2)(ii), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (o). It is a significant new use to process or use the substance in any manner way that results in generation of a vapor, dust, mist or aerosol.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (f) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11178 Copolyamide of an aromatic dicarboxylic acid and a mixture of diamines (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as copolyamide of an aromatic dicarboxylic acid and a mixture of diamines (PMN P–17–232) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture the substance with a particle size less than 10 microns.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11179 Single-walled carbon nanotubes (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as single-walled carbon nanotubes (PMN P–17–257) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance that have been embedded or incorporated into a polymer matrix that itself has been reacted (cured); embedded in a permanent solid polymer form that is not intended to undergo further processing, except mechanical processing; or incorporated into an article as defined at 40 CFR 720.3(c).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i), (3), (4), (5) (respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 50), and (6)(particulate), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (k). It is a significant new use to manufacture the chemical substance more than 6 months. It is a significant new use to process or use the substance for non-industrial use except for the confidential non-industrial use described in the TSCA section 5(e) Order. It is a significant new use to use an application method that generates a vapor, dust, mist or aerosol unless the application method occurs in an enclosed process.

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1) and (2), and (c)(1) and (2).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e) and (j) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11180 Arenesulfonic acid, alkyl derivatives, metal salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as arenesulfonic acid, alkyl derivatives, metal salts (PMN P–17–283) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii) and (3), (b)(concentration set at 1.0%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1) ((skin sensitization), (eye irritation), (lung effects), (skin corrosion)), (2)(i), (iii) and (v), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture the chemical substance more than 6 months. It is a significant new use to manufacture, process or use the substance in any manner way that results in generation of a vapor, mist, spray, or aerosol.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provision of § 721.185 apply to this section.

§ 721.11181 Heteromonocycle, 2-[(bicarbomonocycle-2-substituted)alkyl]-(generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as heteromonocycle, 2-[(bicarbomonocycle-2-substituted)alkyl]- (PMN P–17–353) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) through (iv) and (3), (b) (concentration set at 0.1%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 0.1%), (f), (g)(1), (vi), (vii), and (ix) ((mutagenicity) (eye, skin, lung, and mucous membrane irritation) (skin and lung sensitization)), (2)(i) through (iii) and (v) (avoid workplace airborne concentrations), (3)(i) and (ii), (4)(iii), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities:* Requirements as specified in § 721.80(f) and (k). It is a significant new use to process or use the substance in any manner that generates a vapor, spray, mist, or aerosol.

(iv) *Release to water.* Requirements as specified in § 721.90(b)(1) and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

[FR Doc. 2019–26225 Filed 12–4–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2018–0697; FRL–10002–30]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (18–4)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances that are the subject of premanufacture notices (PMNs), and TSCA Orders. The SNURs require persons who intend to manufacture (defined by statute to include import) or process any of these chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required by that determination.

DATES: This rule is effective on February 3, 2020. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on December 19, 2019.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and Orders under TSCA. Importers of chemicals subject to these SNURs must certify compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule on or after January 6, 2020 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. How can I access the docket?

The docket includes information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by the docket identification (ID) number listed at the top of this document, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and

Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. 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 OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

A. What action is the Agency taking?

EPA is finalizing these SNURs under TSCA section 5(a)(2) for 29 chemical substances that are the subject of PMNs. These SNURs require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

In the **Federal Register** of March 19, 2019 (84 FR 99996) (FRL–9986–83), EPA proposed a SNUR for these chemical substances in 40 CFR part 721, subpart E. More information on the specific chemical substances subject to this final rule can be found in the **Federal Register** documents for the proposed rule.

The record for the SNUR was established in the docket under docket ID number EPA–HQ–OPPT–2018–0697. That docket includes information considered by the Agency in developing the proposed and final rules, public comments submitted for the rule, and EPA's responses to public comments received on the proposed rule.

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

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)(i)). TSCA furthermore prohibits such manufacturing or processing from commencing until EPA has conducted a review of the notice, made an appropriate determination, and taken such actions as are required in association with that determination (15 U.S.C. 2604(a)(1)(B)(ii)). In the case of a determination other than not likely to present unreasonable risk, the applicable review period must also expire before manufacturing or processing for the new use may commence.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). These requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the use is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. In the case of a determination other than not likely to present unreasonable risk, the applicable review period must also expire before manufacturing or processing for the new use may commence. If EPA determines that the use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

When the Agency issues an Order under TSCA section 5(e), TSCA section 5(f)(4) requires that the Agency consider whether to promulgate a SNUR for any use not conforming to the restrictions of the Order or publish a statement describing the reasons for not initiating the rulemaking. TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four TSCA section 5(a)(2) factors listed in this unit.

IV. Public Comments on Proposed Rule and EPA Responses

EPA received public comments from seven entities on the proposed rule. The Agency's responses are described in a separate Response to Public Comments document contained in the public docket for this rule, EPA–HQ–OPPT–2018–0697. As described in the Response to Public Comments document, EPA is finalizing the SNURs as proposed, as the only changes were correcting some CFR citations in the regulatory text.

V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for these chemical substances in 40 CFR part 721, subpart E. In Unit IV. of the proposed rule (84 FR 9999; March 19, 2019), EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) Order.
- Potentially Useful Information. This is information identified by EPA that would help characterize the potential health and/or environmental effects of the chemical substance in support of a request by the PMN submitter to modify the TSCA Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use designated by the SNUR.

• CFR citation assigned in the regulatory text section of this rule.

The regulatory text section of each rule specifies the activities designated as significant new uses. Certain new uses, including exceedance of production volume limits (*i.e.,* limits on manufacture volume) and other uses designated in this rule, may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

These PMN chemical substances are subject to Orders under TSCA section 5(e)(1)(A)(ii)(I) where EPA determined that activities associated with the PMN substances may present unreasonable risk to human health or the environment. Those Orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The SNURs identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying Orders, consistent with TSCA section 5(f)(4).

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via inhalation exposure, the underlying TSCA section 5(e) Order usually requires that potentially exposed employees wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below the New Chemical Exposure Limit (NCEL). The comprehensive NCELs provisions in TSCA section 5(e) Orders include requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. No comparable NCEL provisions currently exist in 40 CFR part 721, subpart B, for SNURs. Therefore, for these cases, the individual SNURs in 40 CFR part 721, subpart E, will state that persons subject to the SNUR who wish to pursue NCELs as an alternative to the 40 CFR 721.63 respirator requirements may request to do so under 40 CFR 721.30. EPA expects that persons whose 40 CFR 721.30 requests to use the NCELs approach for SNURs that are approved by EPA will be required to comply with NCELs provisions that are comparable to those contained in the corresponding TSCA section 5(e) Order.

VI. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) Orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. As a general matter, EPA believes it is necessary to follow TSCA section 5(e) Orders with a SNUR that identifies the absence of those protective measures as Significant New Uses to ensure that all manufacturers and processors—not just the original submitter—are held to the same standard.

B. Objectives

EPA is issuing these SNURs because the Agency wants:

• To identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying Orders, consistent with TSCA section 5(f)(4).

• To receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.

• To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.

• To be able to either determine that the prospective manufacture or processing is not likely to present an unreasonable risk, or to take necessary regulatory action associated with any other determination, before the described significant new use of the chemical substance occurs.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA section 5(e) Orders have been issued for all the chemical substances, and the PMN submitters are prohibited by the TSCA section 5(e) Orders from undertaking activities which will be designated as significant new uses. The identities of 23 of the 29 chemical substances subject to this rule have been claimed as confidential. Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

Furthermore, EPA designated August 27, 2018 (the date of public release of the original direct final and proposed rules) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach has been to ensure that a person could not defeat a SNUR by initiating a significant new use before the effective date of the final rule.

In the unlikely event that a person began commercial manufacture or processing of the chemical substances for a significant new use identified as of August 27, 2018, that person will have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons will have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require developing any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, Order or consent agreement under TSCA section 4 (15 U.S.C. 2603), then TSCA section 5(b)(1)(A) (15 U.S.C. 2604(b)(1)(A)) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, Order, or consent agreement under TSCA section

4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable (40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing, under 40 CFR part 721, subpart E. In Unit IV. of the original proposed rule (84 FR 9999; March 19, 2019), lists potentially useful information to EPA's evaluation.

Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN. EPA strongly encourages persons, before performing any testing, to consult with the Agency. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing on vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

In some of the TSCA section 5(e) Orders for the chemical substances regulated under this rule, EPA has established production volume limits. These limits cannot be exceeded unless the PMN submitter submits the results of specified tests. The SNURs contain the same production volume limits as the TSCA section 5(e) Orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

Any request by EPA for the triggered and pended testing described in the TSCA Orders was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the PMN substances. Further, any such testing request on the part of EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models.

The potentially useful information identified in Unit IV. of the original proposed rule may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data or other information may increase the likelihood that EPA will take action under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests. SNUN submitters should provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1).

Under these procedures a manufacturer or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.1725(b)(1) with that under 40 CFR 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 40 CFR 721.25. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2018–0697.

XII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations-and-executive-orders.*

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

This action establishes SNURs for several new chemical substances that were the subject of PMNs and TSCA section 5(e) Orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to the PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the

Federal Register, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

The information collection activities in this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including using automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 10 in FY2016, 14 in FY2017, and 18 in FY2018 and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

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

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note) does not apply to this action.

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

XIII. Congressional Review Act (CRA)

Pursuant to the CRA (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 26, 2019.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add entries for §§ 721.11221 through 721.11246 in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.11221	2070–0012
721.11222	2070–0012
721.11223	2070–0012
721.11224	2070–0012
721.11225	2070–0012
721.11226	2070–0012
721.11227	2070–0012
721.11228	2070–0012
721.11229	2070–0012
721.11230	2070–0012
721.11231	2070–0012
721.11232	2070–0012
721.11233	2070–0012
721.11234	2070–0012
721.11235	2070–0012
721.11236	2070–0012
721.11237	2070–0012
721.11238	2070–0012
721.11239	2070–0012
721.11240	2070–0012
721.11241	2070–0012
721.11242	2070–0012
721.11243	2070–0012
721.11244	2070–0012
721.11245	2070–0012
721.11246	2070–0012
* * * * *	

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add §§ 721.11221 through 721.11246 to subpart E to read as follows:

Subpart E Significant New Uses for Specific Chemical Substances

Sec.

* * * * *

721.11221 Fatty acids, C16 and C18-unsatd., Me esters, chlorinated.
721.11222 Chlorinated complex esters (generic).
721.11223 Sodium branched chain alkyl hydroxyl and branched chain alkenyl sulfonates (generic).
721.11224 Spiro tetrafluoroborate (generic).
721.11225 2-Pyridinecarboxylic acid, 6-(4-chloro-2-fluoro-3-methoxyphenyl)-4,5-difluoro-, phenylmethyl ester.
721.11226 2-Pyridinecarboxylic acid, 4-amino-6-(4-chloro-2-fluoro-3-methoxyphenyl)-5-fluoro-, phenylmethyl ester, hydrochloride (1:1).
721.11227 1,2,4-Benzenetricarboxylic acid, 1,2,4-trinonyl ester.
721.11228 Aliphatic polyamines, polymers with bisphenol A and epichlorohydrin (generic).
721.11229 Epoxy-amine adduct, methanesulfonates (generic).
721.11230 Modified ethylene-vinyl alcohol copolymer (generic).
721.11231 Cashew, nutshell liq., polymer with acid and halohydrin (generic).
721.11232 Pentaerythritol ester of mixed linear and branched carboxylic acids (generic).
721.11233 Cashew nut shell liquid, branched polyester-polyether polyol (generic).
721.11234 Methylene diphenyl diisocyanate terminated polyurethane resin (generic).
721.11235 2-Furancarboxylic acid, tetrahydro-.
721.11236 Heteromonocycle, homopolymer, alkyl substituted carbamate, alkyl ester (generic).
721.11237 Polysiloxanes, di alkyl, substituted alkyl group terminated, alkoxylated, reaction products with alkanoic acid, isocyanate substituted-alkyl carbomonocycle and polyol (generic).
721.11238 Substituted carbomonocycle, polymer with substituted heteromonocycle and substituted polyalkylene glycol (generic).
721.11239 Alkanedioic acid, polymers with alkanoic acid-dipentaerythritol reaction products, substituted alkanedioc acid, substituted alkanoic acid, isocyanato-(isocyanatoalkyl)-alkyl substituted carbomonocycle and alkyl substituted alkanediol (generic).
721.11240 Substituted carbomonocycle, polymer with diisocyanatoalkane, substituted alkylacrylate blocked (generic).
721.11241 1,2-Ethanediol, 1,2-dibenzoate.
721.11242 Alkenoic acid, reaction products with [oxybis(alkylene)]bis[(substituted alkyl)-alkanediol], polymers with isocyanatoalkane and substituted alkanoic acid, substituted monoacrylate alkanoate-blocked (generic).
721.11243 Aromatic dicarboxylic acid, compound with alkane diamines, polymer with alkane diamine and dicarboxylic acid (generic).
721.11244 Aromatic dicarboxylic acid, compound with alkyl diamines, homopolymer (generic).
721.11245 Aspartic acid, tallow modified diester (generic).
721.11246 Substituted alkanediol, polymer with heteromonocycles, alkenoate, metal complexes (generic).

* * * * *

§ 721.11221 Fatty acids, C16 and C18-unsatd., Me esters, chlorinated.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as fatty acids, C16 and C18-unsatd., Me esters, chlorinated (PMN P–15–353, CAS No. 1642303–17–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to manufacture the substance beyond three years.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions

of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11222 Chlorinated complex esters (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as chlorinated complex esters (PMN P–15–433) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to manufacture the substance beyond three years.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11223 Sodium branched chain alkyl hydroxyl and branched chain alkenyl sulfonates (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as sodium branched chain alkyl hydroxyl and branched chain alkenyl sulfonates (PMN P–16–186) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iv), (3), (6)(v) and (vi) (particulate), (b) (concentration set at 1.0%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72 (a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (ii) and (ix) (eye irritation), (2)(i) and (v) (eye protection), (4)(i) through (iii), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to manufacture, process or use of the substance in a manner that results in inhalation exposure to vapor, dust, spray, mist, or aerosol.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11224 Spiro tetrafluoroborate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as spiro tetrafluoroborate (PMN P–16–207) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) through (5) and (6) (particulate), (b)(concentration set at 1.0%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible. For § 721.63(a)(5), respirators must provide a NIOSH assigned protection factor of at least 1000.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL is 0.2 mg/m^3 as an 8-hour time-weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(iv) and (ix), (2)(i) through (iv) and (v), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used. For § 721.72(g)(2)(iv), use respiratory protection, or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.2 mg/m^3.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11225 2-Pyridinecarboxylic acid, 6-(4-chloro-2-fluoro-3-methoxyphenyl)-4,5-difluoro-, phenylmethyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-pyridinecarboxylic acid, 6-(4-chloro-2-fluoro-3-methoxyphenyl)-4,5-difluoro-, phenylmethyl ester (PMN P–16–246, CAS No. 1391033–38–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iv), (3) through (6)(i) and (ii), (v) and (vi), (b) (concentration set at 0.1%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the

operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 50.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 0.1%), (f), (g)(1)(i) and (ii), (iv), (vi), (vii) and (ix), (2)(i) through (v), (3)(i) and (ii), (4)(iii), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to manufacture the substance beyond nine months.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) Specific requirements. The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) Recordkeeping. Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) Limitations or revocation of certain notification requirements. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11226 2-Pyridinecarboxylic acid, 4-amino-6-(4-chloro-2-fluoro-3-methoxyphenyl)-5-fluoro-, phenylmethyl ester, hydrochloride (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-pyridinecarboxylic acid, 4-amino-6-(4-chloro-2-fluoro-3-methoxyphenyl)-5-fluoro-, phenylmethyl ester, hydrochloride (1:1) (PMN P–16–516; CAS No. 2173150–90–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iv), (3) through (6)(i) and (ii), (v) and (vi), (b) (concentration set at 0.1%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 50.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set 0.1%), (f), (g)(1)(i) and (ii), (iv), (vi), (vii) and (ix), (2)(i) through (v), (3)(i) and (ii), (4)(iii), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (k). It is a significant new use to manufacture the substance beyond nine months.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) Specific requirements. The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) Recordkeeping. Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) Limitations or revocation of certain notification requirements. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11227 1,2,4-Benzenetricarboxylic acid, 1,2,4-trinonyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,2,4-benzenetricarboxylic acid, 1,2,4-trinonyl ester (PMNs P–16–271 and P–16–450, CAS No. 35415–27–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a polymer matrix.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) through (3) and (6) (particulate), (b) (concentration set at 1.0%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (iv), (vi) and (ix), (2)(i) and (v), and (4)(i) through (iii) and (v). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (p) (1,750,000 kilograms). It is a significant new use to use the substance other than as a plasticizer in wire and cable insulation.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11228 Aliphatic polyamines, polymers with bisphenol A and epichlorohydrin (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aliphatic polyamines, polymers with bisphenol A and epichlorohydrin (PMN P–16–388) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), (3) and (6)(v) and (vi) (particulate), (b) (concentration set at 1.0%) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace

policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i) ((mucous membrane irritation), (lung irritation), (eye irritation)), (2)(i) (use gloves and eye protection), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11229 Epoxy-amine adduct, methanesulfonates (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as epoxy-amine adduct, methanesulfonates (PMNs P–16–489, P–16–490, and P–16–491) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(ii), (2)(ii), (3)(i) and (ii), and (5). Alternative hazard and warning statement that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the substances resulting in inhalation exposure to vapor, mist, or aerosols.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=208 ppb.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) through (c), (f) through (h), (i), and (k) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section

§ 721.11230 Modified ethylene-vinyl alcohol copolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (2) The chemical substance identified generically as modified ethylene-vinyl alcohol copolymer (PMN P–16–509) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance with particle size less than 50 microns.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11231 Cashew, nutshell liq., polymer with acid and halohydrin (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as cashew, nutshell liq., polymer with acid and halohydrin (PMN P–16–546) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iv), (3) through (6)(v) and (vi) (particulate), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63 (a)(1) and (4) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor (APF) of at least 50, or an APF of 1000 where the PMN substance has a use involving an application method that generates vapor, mist or aerosol.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1) ((skin sensitization), (respiratory sensitization)), (2)(i) through (v), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11232 Pentaerythritol ester of mixed linear and branched carboxylic acids (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as pentaerythritol ester of mixed linear and branched carboxylic acids (PMN P–16–589) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3) and (6) (particulate), (b) (concentration set at 1.0%), and (c). When determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(iv) through (vi) and (ix), (2)(i) through (v), (4) (minimize release to water), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to manufacture or process this substance in any manner that results in inhalation exposure.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4) and (b)(4), where N=330 ppb.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11233 Cashew nut shell liquid, branched polyester-polyether polyol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as cashew nut shell liquid, branched polyester-polyether polyol (PMN P–17–116) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i), (3) and (6) (particulate), (b) (concentration set at 0.1%) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication:* Requirements as specified in § 721.72(a) through (e) (concentration set at 0.1%), (f), (g)(1) (sensitization), (2)(i) and (v), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (p) (65,000 kg), and (y)(1). It is a significant new use to manufacture the PMN substance with greater than 0.1% weight residual cashew nut oil.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11234 Methylene diphenyl diisocyanate terminated polyurethane resin (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as methylene diphenyl diisocyanate terminated polyurethane resin (PMN P–17–121) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i), (iii) and (iv), (3) through (5) and (6)(v) and (vi) (particulate), (b) (concentration set at 1.0%) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For § 721.63(a)(5), respirators must provide NIOSH assigned protection factor of at least 50.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i) and (ii) (asthma), (2)(i) through (v), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance for consumer use or for commercial uses that could introduce the substance into a consumer setting. It is a significant new use to manufacture the substance without conducting medical surveillance as specified in the Order. It is a significant new use to use the substance in a spray application that results in inhalation exposure to a vapor, dust, mist, spray, or aerosol.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11235 2-Furancarboxylic acid, tetrahydro-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-furancarboxylic acid, tetrahydro- (PMN P–17–328, CAS No. 16874–33–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i), (iii) and (iv), (3) through (5) and (6)(v) and (vi) (particulate), (b) (concentration set at 1.0%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 50.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(vi) ((severe eye irritation), (blood effects), (immunotoxicity)), (2)(i) through (iii) and (v) (eye protection), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11236 Heteromonocycle, homopolymer, alkyl substituted carbamate, alkyl ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as heteromonocycle, homopolymer, alkyl substituted carbamate, alkyl ester (PMN P–17–373, chemical A and P–13–373 chemical B) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of the TSCA Order do not apply to quantities of the substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i), (3) through (5) and (6)(v) and (vi) (particulate), (b) (concentration set at 0.1%) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 50.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 0.1%), (f), (g)(1)(i), (vii) and (ix) ((sensitization), (systemic effects)), (2)(i) through (iii) and (v), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to manufacture the substances unless the number average molecular weight is greater than or equal to 1000 Daltons. It is a significant new use to use the substances other than as an ultraviolet curable coating resin.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11237 Polysiloxanes, di alkyl, substituted alkyl group terminated, alkoxylated, reaction products with alkanoic acid, isocyanate substituted-alkyl carbomonocycle and polyol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polysiloxanes, di alkyl, substituted alkyl group terminated, alkoxylated, reaction products with alkanoic acid, isocyanate substituted-alkyl carbomonocycle and polyol (PMN P–17–374) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of the TSCA Order do not apply to quantities of the PMN substance after they have been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i), (3) through (5) and (6)(v) and (vi) (particulate), (b) (concentration set at 0.1%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures.) shall be considered and implemented to prevent exposure, where feasible. For § 721.63(a)(5), respirators must provide a NIOSH assigned protection factor of at least 50.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 0.1%), (f), (g)(1)(i), (vii) and (ix) ((sensitization), (systemic effects)), (2)(i) through (iii) and (v), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to import the substance with more than 0.1% residual isocyanate. It is a significant new use to import the substance at a number average molecular weight less than 1000 Daltons. It is a significant new use to use the substance other than as an ultraviolet curable coating resin.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=110.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11238 Substituted carbomonocycle, polymer with substituted heteromonocycle and substituted polyalkylene glycol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted carbomonocycle, polymer with substituted heteromonocycle and substituted polyalkylene glycol (PMN P–18–17) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i), (iii) and (iv), (3) through (6) (particulate), (b) (concentration set at 0.1%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 1000.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 0.1%), (f), (g)(1)(i) through (vii) and (ix) (irritation to eyes, lungs, and mucus membranes), (2)(i) through (v) (avoid eye contact), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized

System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), It is a significant new use to import the substance if the average molecular weight is less than or equal to 1000 Daltons, more than 10% is less than 500 Daltons, or more than 25% is less than 1000 Daltons. It is a significant new use to use the substance other than for primer coating for corrosion protection.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11239 Alkanedioic acid, polymers with alkanoic acid-dipentaerythritol reaction products, substituted alkanedioc acid, substituted alkanoic acid, isocyanato-(isocyanatoalkyl)-alkyl substituted carbomonocycle and alkyl substituted alkanediol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkanedioic acid, polymers with alkanoic acid-dipentaerythritol reaction products, substituted alkanedioc acid, substituted alkanoic acid, isocyanato-(isocyanatoalkyl)-alkyl substituted carbomonocycle and alkyl substituted alkanediol (PMN P–18–40) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i), (iii) and (iv), (3) through (6) (particulate), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 1000.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1)(i), (vii) and (ix) ((irritation to eyes, lungs, and mucous membranes), (dermal sensitization), (respiratory sensitization)), (2)(i) through (v), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to import the substance if the number average molecular weight is less than or equal to 1000 Daltons or greater than 20% of the acid moiety. It is a significant new use to use the substance other than as a binder for ultraviolet curable coating resins.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11240 Substituted carbomonocycle, polymer with diisocyanatoalkane, substituted alkylacrylate blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted carbomonocycle, polymer with diisocyanatoalkane, substituted alkylacrylate blocked (PMN P–18–46) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i), (iii) and (iv), (3) through (6) (particulate), (b)(concentration set at 0.1%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 1000).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 0.1%), (f), (g)(1)(i), (iv), (v), (vii) and (ix) ((irritation to eyes, lungs, and mucus membranes), (dermal and respiratory sensitization)), (2)(i) through (v) (avoid eye contact), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to import the substance if the average molecular weight is less than or equal to 1,390 Daltons, more than 11% is less than 500 Daltons, or more than 30% is less than 1,000 Daltons. It is a significant new use to use the substance other than as an ultraviolet curable resin.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11241 1,2-Ethanediol, 1,2-dibenzoate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,2-Ethanediol, 1,2-dibenzoate (PMN P–18–47, CAS No. 94–49–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely entrained in a polymer matrix.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) through (5) and (6)(v) and (vi) (particulate), (b) (concentration set at 1.0%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For § 721.63(a)(5), respirators must provide a National Institute for Occupational

Safety and Health assigned protection factor of at least 25.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(iii), (iv), (vi), (viii) and (ix) (blood effects), (2)(i) and (ii), (iv) and (v), (3)(i) and (ii), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to use the substance other than as a phlegmatizer (stabilizer for compounds susceptible to detonation) for peroxides for use with polyester and vinyl ester resins as well as with curable unsaturated polyester and methacrylic resins.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=10.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11242 Alkenoic acid, reaction products with [oxybis(alkylene)]bis[(substituted alkyl)-alkanediol], polymers with isocyanatoalkane and substituted alkanoic acid, substituted monoacrylate alkanoate-blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkenoic acid, reaction products with [oxybis(alkylene)]bis[(substituted alkyl)-alkanediol], polymers with isocyanatoalkane and substituted alkanoic acid, substituted monoacrylate alkanoate-blocked (PMN P–18–51) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i), (iii) and (iv), (3) through (5), and (6) (particulate), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 1000.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1)(i) and (ix) ((irritation to eyes, lungs, and mucous membranes), (dermal sensitization), (respiratory sensitization)), (2)(i) through (v) (avoid eye contact), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to use the substance other than as a waterborne ultraviolet curable coating resin binder for inkjet, ink, or overprint varnish. It is a significant new use to import the substance with greater than 24% of the branched alkyl acid moiety content. It is a significant new use to import the substance with greater than 0.1% isocyanate content.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=660.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11243 Aromatic dicarboxylic acid, compound with alkane diamines, polymer with alkane diamine and dicarboxylic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aromatic dicarboxylic acid, compound with alkane diamines, polymer with alkane diamine and dicarboxylic acid (PMN P–18–71) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture the substance with particle size less than 10 microns.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

§ 721.11244 Aromatic dicarboxylic acid, compound with alkyl diamines, homopolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aromatic dicarboxylic acid, compound with alkyl diamines, homopolymer (PMN P–18–79) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new use is:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture the substance with particle size less than 10 microns.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

§ 721.11245 Aspartic acid, tallow modified diester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aspartic acid, tallow modified diester (PMN P–18–82) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), and (3), (b) (concentration set at 1.0%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general

and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (ii) and (iv), (2)(i), (ii) and (v), (3)(i) and (ii), (4)(iii) (above concentration of 1 part per billion (ppb), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g). It is a significant new use to manufacture, process, or use the substance that results in inhalation exposure. It is a significant new use to manufacture, process and use the substance other than as stated in the PMN.

(iv) *Disposal.* Residuals must be recycled back into the process as stated in the PMN.

(v) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), (c)(4), where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraphs (a)(2)(iii) and (iv) of this section.

§ 721.11246 Substituted alkanediol, polymer with heteromonocycles, alkenoate, metal complexes (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted alkanediol, polymer with heteromonocycles, alkenoate, metal complexes (PMN P–18–130) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), (3) through (5) and (6)(v) and (vi) (particulate), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor (APF) of at least 50, or if spray applied an APF of 1000.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1)(i) ((sensitization), (mutagenicity)), (2)(i) through (v), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to use the substance other than as an adhesion promoter for industrial applications.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2019–0603; FRL–10002–78–OAR]

Findings of Failure To Submit a Clean Air Act Section 110 State Implementation Plan for Interstate Transport for the 2015 Ozone National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action finding that seven states have failed to submit infrastructure State Implementation Plans (SIPs) to satisfy certain interstate transport requirements of the Clean Air Act (CAA) with respect to the 2015 8-hour ozone national ambient air quality standards (NAAQS). Specifically, these requirements pertain to prohibiting significant contribution to nonattainment, or interference with maintenance, of the 2015 8-hour ozone NAAQS in other states. These findings of failure to submit establish a 2-year deadline for the EPA to promulgate Federal Implementation Plans (FIPs) to address these interstate transport requirements for a given state unless, prior to the EPA promulgating a FIP, the state submits, and the EPA approves, a SIP that meets these requirements.

DATES: Effective date of this action is January 6, 2020.

FOR FURTHER INFORMATION CONTACT: General questions concerning this document should be addressed to Mr. Thomas Uher, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–04, 109 TW Alexander Drive, Research Triangle Park, NC 27711; telephone (919) 541–5534; email: *uher.thomas@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Notice and Comment Under the Administrative Procedures Act (APA)

Section 553 of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this final agency action without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions or incomplete submissions, to meet the requirement. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

B. How can I get copies of this document and other related information?

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2019–0603. All documents in the docket are listed and publicly available at *http://www.regulations.gov*. Publicly available docket materials are also available in hard copy at the Air and Radiation Docket and Information

Center, EPA/DC, William Jefferson Clinton West 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 Office of Air and Radiation Docket and Information Center is (202) 566–1742. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at: *http://www.epa.gov/epahome/dockets.htm.*

C. How is the preamble organized?

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D. Where do I go if I have state specific questions?

The table below lists the states that failed to make a complete interstate transport SIP submittal addressing CAA section 110(a)(2)(D)(i)(I) requirements for the 2015 ozone NAAQS. For questions related to specific states mentioned in this document, please contact the appropriate EPA Regional office:

Regional offices	States
EPA Region 1: Alison Simcox, Manager, Air Quality Branch, EPA Region I, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.	Maine, Rhode Island.
EPA Region 3: Joseph Schulingkamp, Air Protection Division, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187.	Pennsylvania, Virginia.
EPA Region 6: Mary Stanton, Chief, Infrastructure and Ozone Section, EPA Region VI, 1201 Elm Street, Suite 500, Dallas, TX 75270.	New Mexico.
EPA Region 8: Adam Clark, EPA Region VIII, Air and Radiation Division, 1595 Wynkoop St., Denver, CO 80202.	South Dakota, Utah.

II. Background and Overview

A. Interstate Transport SIPs

CAA section 110(a) imposes an obligation upon states to submit SIPs that provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within 3 years following the promulgation of that NAAQS. CAA section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. The EPA refers to this type of SIP submission as an ''infrastructure'' SIP because it ensures that states can implement, maintain and enforce the new or revised air standards. Within these requirements, CAA section 110(a)(2)(D)(i) contains requirements to address interstate transport of NAAQS pollutants. A SIP revision submitted for this sub-section is referred to as an ''interstate transport SIP.'' In turn, CAA section 110(a)(2)(D)(i)(I) requires that such a plan contain adequate provisions to prohibit emissions from the state that will contribute significantly to nonattainment of the NAAQS in any other state (''prong 1'') or interfere with maintenance of the NAAQS in any other state (''prong 2''). Interstate transport prongs 1 and 2, also called collectively the ''good neighbor'' provision, are the requirements relevant to this findings document.

Pursuant to CAA section 110(k)(1)(B), the EPA must determine no later than 6 months after the date by which a state is required to submit a SIP whether a state has made a submission that meets the minimum completeness criteria established pursuant to CAA section 110(k)(1)(A). These criteria are set forth at 40 CFR part 51, appendix V. The EPA refers to the determination that a state has not submitted a SIP submission that meets the minimum completeness criteria as a ''finding of failure to submit.'' If the EPA finds a state has failed to submit a SIP to meet its statutory obligation to address CAA section 110(a)(2)(D)(i)(I), then pursuant to CAA section 110(c)(1), the EPA has not only the authority, but the obligation, to promulgate a FIP within 2 years to address the CAA requirement. This finding, therefore, starts a 2-year ''clock'' for promulgation by the EPA of a FIP, in accordance with CAA section 110(c)(1), unless prior to such promulgation the state submits, and the EPA approves, a submittal from the state to meet the requirements of CAA section 110(a)(2)(D)(i)(I). Even where the EPA has promulgated a FIP, the EPA will withdraw that FIP if a state submits and the EPA approves a SIP satisfying the relevant requirements. The EPA notes this action does not start a mandatory sanctions clock pursuant to CAA section 179 because this finding of failure to submit does not pertain to a part D plan for nonattainment areas required under CAA section 110(a)(2)(I) or a SIP call pursuant to CAA section 110(k)(5).

B. Background on 2015 Ozone NAAQS and Related Matters

On October 1, 2015, the EPA promulgated a new 8-hour primary and secondary ozone NAAQS of 70 parts per billion (ppb), which is met when the 3-year average of the annual fourth highest daily maximum 8-hour concentration does not exceed 70 ppb.[1] Pursuant to the 3-year period provided in CAA section 110(a)(1), infrastructure SIPs addressing the revised standard were due on October 1, 2018.

On September 5, 2019, the EPA announced via its website its intention to make findings that certain states have failed to submit complete interstate

[1] *See* Final Rule, National Ambient Air Quality Standards for Ozone, 80 FR 65292 (October 26, 2015).

transport SIPs for the 2015 ozone NAAQS by November 22, 2019.[2]

On September 30, 2019, the Sierra Club filed a complaint in the United States District Court for the District of Columbia (D.C. District Court) alleging that the EPA had not fulfilled its mandatory duty to make findings of failure to submit interstate transport SIPs pursuant to CAA section 110(a)(2)(D)(i)(I) with respect to the 2015 ozone NAAQS for twelve states: Arkansas, Hawaii, Louisiana, Maine, Maryland, Mississippi, New Mexico, Pennsylvania, Rhode Island, Utah, Vermont, and Virginia.[3] On October 29, 2019, the States of New Jersey and Connecticut filed a complaint in the D.C. District Court alleging that the EPA had not fulfilled its mandatory duty to make findings of failure to submit interstate transport SIPs addressing interstate transport in CAA section 110(a)(2)(D)(i)(I) with respect to the 2015 ozone NAAQS for two states: Virginia and Pennsylvania.[4]

To fulfill its statutory obligations, the EPA is taking this action for all states that have failed to submit complete SIPs addressing CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS, not just those states named in the complaints. As explained below, in total, seven states have failed to submit complete SIPs while forty-three states and the District of Columbia have submitted complete SIPs addressing CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS.

The EPA has included in the docket for this action its correspondence with states regarding the completeness of their SIP submissions. SIPs may be considered complete by either of two methods. First, the EPA may make a determination that a SIP is complete under the ''completeness criteria'' set out at 40 CFR part 51, appendix V. *See* CAA section 110(k)(1). Second, a SIP may be deemed complete by operation of law if the EPA has failed to make such a determination by 6 months after receipt of the SIP submission. *See* CAA section 110(k)(1)(B).

Five states failed to make any SIP submittal addressing interstate transport for the 2015 ozone NAAQS: Maine, New Mexico, Pennsylvania, Rhode Island, and Virginia. All of these states were identified in the Sierra Club complaint.

The EPA has evaluated the SIP submittals of two states, South Dakota and Utah, for completeness pursuant to the criteria in 40 CFR part 51, appendix V, and concluded that these are incomplete SIP submissions.[5] On November 21, 2019, the EPA sent letters to these two states explaining our incompleteness determination. These letters are included in the docket for this action. As explained in those letters, the completeness criteria under 40 CFR part 51, appendix V, section 2.1(g), require a certification that public hearing(s) were held in accordance with the information provided in the state's public notice and the State's laws and constitution, if applicable and consistent with the public hearing requirements in 40 CFR 51.102. Under § 51.102(a), states must either hold a public hearing or provide the public the opportunity to request a public hearing. South Dakota and Utah did not provide the necessary certification under section 2.1(g) of appendix V that a public hearing was held or that they had provided the opportunity for the public to request a public hearing in accordance with 40 CFR 51.102(a). As a result, the EPA determined that these SIP submissions are incomplete. Where the EPA determines that a SIP submission does not meet the appendix V completeness criteria, ''the State shall be treated as not having made the submission. . . .'' CAA section 110(k)(1)(C). Accordingly, the EPA is finding in this document that South Dakota and Utah have failed to submit complete SIP revisions addressing CAA section 110(a)(2)(D)(i)(I) as to the 2015 ozone NAAQS. These states may, if they choose, resubmit to the EPA complete SIPs, which the EPA will review and act upon at a later date.

In all other cases, the EPA has determined that the SIP submittals are complete or they have been deemed complete by operation of law. In particular, the six remaining states identified in Sierra Club's complaint filed in the D.C. District Court have made complete SIP submittals addressing the good neighbor provision for the 2015 ozone NAAQS: Arkansas, Hawaii, Louisiana, Maryland, Mississippi, and Vermont. As a result, there is no longer a basis to make findings of failure to submit for these states.

The EPA is issuing national findings of failure to submit interstate transport SIPs addressing the requirements of CAA section 110(a)(2)(D)(i)(I) as to the 2015 ozone NAAQS, for all states that have not made complete submissions as of the date of this document.

III. Findings of Failure To Submit for States That Failed To Make an Interstate Transport SIP Submission for the 2015 Ozone NAAQS

The EPA is making findings of failure to submit for seven states. The EPA finds the following states have not submitted complete interstate transport SIPs to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS: Maine, New Mexico, Pennsylvania, Rhode Island, South Dakota, Utah, and Virginia. Notwithstanding these findings, and the associated obligation of the EPA to promulgate FIPs for these states within two years of this finding, the EPA intends to continue to work with states subject to these findings in order to provide assistance as necessary to help them develop approvable SIP submittals in a timely manner.

IV. Environmental Justice Considerations

This document is making a procedural finding that certain states have failed to submit a SIP to address CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. The EPA did not conduct an environmental analysis for this action because it would not directly affect the air emissions of particular sources. Because this action will not directly affect the air emissions of particular sources, it does not affect the level of protection provided to human health or the environment. Therefore, this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

V. Statutory and Executive Order Reviews

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

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

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

This action is not an Executive Order 13771 regulatory action because it finds that seven states failed to submit a SIP to meet their statutory obligation to address CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS.

C. Paperwork Reduction Act

This action does not impose an information collection burden under the

[2] U.S. EPA, Interstate Air Pollution Transport, *https://www.epa.gov/airmarkets/interstate-air-pollution-transport.*

[3] Complaint, *Sierra Club* v. *Wheeler,* No. 1:19–cv–02923 (D.D.C. filed Sept. 30, 2019).

[4] Complaint, *State of New Jersey* v. *Wheeler,* No. 1:19–cv–03247 (D.D.C. filed Oct. 29, 2019).

[5] Utah was identified in the Sierra Club complaint, but South Dakota was not.

provisions of the Paperwork Reduction Act. This final action does not establish any new information collection requirement apart from what is already required by law. This finding relates to the requirement in the CAA for states to submit SIPs under section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS.

D. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553 or any other statute. This action is not subject to notice and comment requirements because the agency has invoked the APA ''good cause'' exemption under 5 U.S.C. 553(b). I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The action is a finding that the named states have not made the necessary SIP submission for interstate transport to meet the requirements under section 110(a)(2)(D)(i)(I) of the CAA.

E. Unfunded Mandates Reform Act of 1995 (UMRA)

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

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. This action finds that seven states have failed to complete the requirement in the CAA to submit SIPs under section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS. No tribe is subject to the requirement to submit a transport SIP under section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern 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 is a finding that certain states have failed to submit a complete SIP that satisfies interstate transport requirements under section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS and does not directly or disproportionately affect children.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes 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. In finding that certain states have failed to submit a complete SIP that satisfies the interstate transport requirements under section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS, this action does not adversely affect the level of protection provided to human health or the environment.

L. Congressional Review Act (CRA)

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

M. Judicial Review

Section 307(b)(l) of the CAA indicates which federal Courts of Appeal have venue for petitions of review of final actions by the EPA under the CAA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if: (i) The agency action consists of ''nationally applicable regulations promulgated, or final action taken, by the Administrator,'' or (ii) such action is locally or regionally applicable, but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

This final action is nationally applicable. To the extent a court finds this final action to be locally or regionally applicable, the EPA finds that this action is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1). This final action consists of findings of failure to submit required interstate transport SIPs for the 2015 ozone NAAQS from seven states located in four of the ten EPA Regional offices and five different federal judicial circuits. This final action is also based on a common core of factual findings concerning the receipt and completeness of the relevant SIP submittals. For these reasons, this final action is nationally applicable or, alternatively, to the extent a court finds this action to be locally or regionally applicable, the Administrator has determined that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1).

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 District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of the action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed and shall not postpone the effectiveness of such rule or action. Thus, any petitions for review of this action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: November 22, 2019.

Anne L. Idsal,

Acting Assistant Administrator.

[FR Doc. 2019–26136 Filed 12–4–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0623; FRL–10000–33]

Propamocarb; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of propamocarb (also referred to as propamocarb hydrochloride (HCl) in this document) in or on guava, starfruit, the leafy greens subgroup 4–16A, the tuberous and corm vegetable subgroup 1C, and the fruiting vegetable group 8–10. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 5, 2019. Objections and requests for hearings must be received on or before February 3, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0623, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0623 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 3, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0623, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of December 21, 2018 (83 FR 65660) (FRL–9985–67), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E8692) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the propamocarb (propyl N-[3-(dimethylamino)propyl]carbamate in or on the following raw agricultural commodities: Guava at 0.05 parts per million (ppm); starfruit at 0.05 ppm; leafy greens subgroup 4–16A at 150 ppm; vegetable, tuberous and corm, subgroup 1C at 0.30 ppm; and vegetable, fruiting, group 8–10 at 4.0 ppm. The petition also requested to amend 40 CFR 180.499 by removing the established tolerances for the residues of propamocarb in or on lettuce, head at 50 ppm; lettuce, leaf at 90 ppm; potato at 0.30 ppm; and vegetable, fruiting, group 8 at 2.0 ppm. That document referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

EPA is establishing tolerances that vary slightly from what was requested to be consistent with Organization for Economic Cooperation and Development (OECD) Rounding Class Practice.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA

determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for propamocarb including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with propamocarb follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Although propamocarb is a carbamate fungicide, it doesn not inhibit cholinesterase like many other carbamate pesticides, such as *N*-methyl carbamates. Neurotoxic effects include decreased motor activity following acute exposure and vacuolization of the choroid plexus (ventricles of the brain which produce cerebral spinal fluid) following subchronic and chronic durations. Other effects observed are indicative of toxicity to the digestive and gastro-intestinal (GI) tracts in dogs (chronic erosive gastritis, vacuolization of the salivary gland and stomach), and the eye (hyporeflectivity of the fundus, retinal degeneration, and vacuolization of the retinal gland). In all species, decreased body weights, body-weight gains, and food consumption were observed following subchronic and chronic exposure.

Effects in the route-specific dermal and inhalation studies were primarily portal-of-entry effects. Dermal exposure caused dermal irritation in rats and rabbits at relatively high doses (greater than 500 mg/kg/day). Inhalation exposure caused labored breathing and the appearance of red material around the nose. Systemic effects were observed following inhalation exposure at similar doses that caused portal-of-entry effects; these included kidney cysts and changes in hematological parameters.

There was no evidence of increased quantitative pre- or postnatal susceptibility in the toxicity database for propamocarb-HCl in rats or rabbits. There was an increased qualitative susceptibility for propamocarb-HCl in rats. In the developmental rat studies, fetal effects included increased death, increased incidences of minor skeletal anomalies, increased incidences of small fetus, inter-atrial septal defects, and hemorrhage in the ears, upper GI tract, and nasopharynx/sinuses. Maternal effects consisted of decreased absolute body-weights, food consumption, post-implantation loss, and mortality. In rabbits there was an increased incidence of post-implantation loss in one of the two available studies, and no fetal effects in the second study. In the rat 2-generation reproduction studies, offspring effects consisted of decreased weights in both studies, as well as death, decreased viability and lactation indices and litter size at the limit dose (1,000 mg/kg/day) in one study. Parental effects were consistent with those previously described for adults. Reproductive effects consisted of increased vacuolization and decreased weight of the epididymides, decreased sperm counts and motility, and abnormal sperm morphology.

The Agency has classified propamocarb-HCl as ''not likely to be carcinogenic to humans'' by all routes of exposure based upon lack of evidence of carcinogenicity in rats and mice.

Specific information on the studies received and the nature of the adverse effects caused by propamocarb as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''Propamocarb Hydrochloride (HCl). Human Health Risk Assessment for Proposed Uses on Leafy Green Subgroup 4–16A, Guava, and Starfruit; and Crop Conversions for Fruiting Vegetable Group 8 to Crop Group 8–10, and Potato to Subgroup 1C (Tuberous and Corm Vegetables Subgroup)'' on pages 28–33 in docket ID number EPA–HQ–OPP–2018–0623.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticide.*

A summary of the toxicological endpoints for propamocarb used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of February 7, 2017 (82 FR 9519) (FRL–9957–68).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to propamocarb, EPA considered exposure under the petitioned-for tolerances as well as all existing propamocarb tolerances in 40 CFR 180.499. EPA assessed dietary exposures from propamocarb in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for propamocarb. In estimating acute dietary exposure, EPA used food consumption information from the

United States Department of Agriculture (USDA) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA used tolerance-level residues and assumed 100 percent crop treated (PCT) for all commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the USDA 2003–2008 NHANES/WWEIA. As to residue levels in food, EPA used tolerance-level residues and assumed 100 PCT for all commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that propamocarb does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for propamocarb. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for propamocarb in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of propamocarb. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Surface Water Concentration Calculator (SWCC) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of propamocarb for acute exposures are 4,860 parts per billion (ppb) for surface water and 73 ppb for ground water. The EDWCs of propamocarb for chronic exposures are 385 ppb for surface water and 70 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 4,860 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the water concentration of value 385 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to nonoccupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Propamocarb is registered for use on golf course turf, which may result in dermal post-application exposures. No dermal hazard was identified in the toxicity database, so there is no need to conduct a quantitative residential exposure assessment.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to propamocarb-HCl and any other substances and propamocarb-HCl does not appear to produce a toxic metabolite produced by other substances. Although a carbamate, propamocarb-HCl is not an *N*-methyl carbamate and does not cause cholinesterase inhibition. Thus, it was not included in the *N*-methyl carbamate cumulative risk assessment. For the purposes of this action, therefore, EPA has not assumed that propamocarb-HCl has a common mechanism of toxicity with other substances.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There was no evidence of increased quantitative pre- or postnatal susceptibility in the toxicity database for propamocarb-HCl in rats or rabbits. There was an increased qualitative susceptibility for propamocarb-HCl in rats. In the developmental rat studies, fetal effects included increased death, increased incidences of minor skeletal anomalies, increased incidences of small fetus, inter-atrial septal defects, and hemorrhage in the ears, upper GI tract, and nasopharynx/sinuses. Maternal effects consisted of decreased absolute body-weights, food consumption, post-implantation loss, and mortality. In rabbits there was an increased incidence of post-implantation loss in one of the two available studies, and no fetal effects in the second study. In the rat 2-generation reproduction studies, offspring effects consisted of decreased weights in both studies, as well as death, decreased viability and lactation indices and litter size at the limit dose (1,000 mg/kg/day) in one study. Parental effects were consistent with those previously described for adults. Reproductive effects consisted of increased vacuolization and decreased weight of the epididymides, decreased sperm counts and motility, and abnormal sperm morphology.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for propamocarb is complete.

ii. There are two guidelines acute neurotoxicity (ACN) and two subchronic neurotoxicity (SCN) studies for propamocarb-HCl. There was evidence of neurotoxicity (decreased motor activity and vacuolization of the choroid plexus) in several studies following propamocarb-HCl exposure, including the ACN and SCN studies; however, concern is low since the effects are well-characterized with clear NOAEL/LOAEL values and the selected endpoints are protective of the observed effects.

iii. There is no evidence of increased quantitative pre- or post-natal susceptibility following exposure to propamocarb-HCl. There is evidence of increased qualitative susceptibility in one of the rat studies in the database; however, concern for these effects is low because: (1) The effects are well characterized, (2) clear NOAELs were established, (3) the endpoints selected are protective of these effects, and (4) the effects were seen in the presence of maternal/parental toxicity.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling

used to assess exposure to propamocarb in drinking water. These assessments will not underestimate the exposure and risks posed by propamocarb.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to propamocarb will occupy 42% of the aPAD for all infants, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to propamocarb from food and water will utilize 53% of the cPAD for females 13 to 49 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of propamocarb is not expected.

3. *Short- and Intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

A short- and intermediate-term oral adverse effect was identified; however, propamocarb is not registered for any use patterns that would result in either short- or intermediate-term oral residential exposure. Short- and intermediate-term risk is assessed based on short- and intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- or intermediate-term oral residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short- or intermediate-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for propamocarb.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, propamocarb is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to propamocarb residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate gas chromatography/nitrogen-phosphorus detection (GC/NPD) method is available for enforcing the proposed tolerances. The method has undergone a successful independent laboratory validation and petition method validation and is currently listed in the Pesticide Analytical Manual (PAM) Vol. II.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex does not have maximum residue limits (MRLs) for guava and starfruit so harmonization is not an issue.

Codex does have MRLs for leaf and head lettuce at 100 ppm which is different than the U.S. tolerance being established on the leafy greens subgroup 4–16A. EPA is not harmonizing the U.S. tolerance with the Codex MRL because based on available residue data and using the OECD MRL calculation procedure, the tolerance value should be 150 ppm. EPA uses the OECD MRL calculation procedure in order to ensure that the tolerance value is not underestimated.

Codex has MRLs on eggplant at 0.3 ppm, bell pepper at 3 ppm and tomato at 2 ppm. The U.S. tolerance of 4 ppm on the fruiting vegetable group 8–10 is not harmonized with the Codex MRLs for the individual crops. Because EPA has data supporting the establishment of the crop groups and no data that indicate a need to establish separate individual commodities, the effect is that tolerances for individual commodities are not harmonized with Codex MRLs.

Codex has a potato MRL established 0.3 ppm and is harmonized with the U.S. tolerance of 0.3 ppm on the tuberous and corm vegetable subgroup 1C.

V. Conclusion

Therefore, tolerances are established for residues of propamocarb (propyl N-[3-(dimethylamino)propyl]carbamate in or on guava at 0.05 ppm; leafy greens subgroup 4–16A at 150 ppm; starfruit at 0.05 ppm; vegetable, fruiting, group 8–10 at 4 ppm; and vegetable, tuberous and corm, subgroup 1C at 0.3 ppm.

Additionally, the following tolerances are withdrawn from 40 CFR 180.499 as unnecessary due to the newly established tolerances: Lettuce, head at 50 ppm; lettuce, leaf at 90 ppm; potato at 0.30 ppm; and vegetable, fruiting, group 8 at 2.0 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 25, 2019.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.499(a):

■ a. Remove ''the following table'' and ''the following tolerance levels'' and add ''table 1 to this paragraph (a)'' and ''the tolerance levels in table 1 to this paragraph (a)'' in their places, respectively; and

■ b. Revise the table.

The revision reads as follows:

§ 180.499 Propamocarb; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Guava	0.05
Leafy greens subgroup 4–16A	150
Starfruit	0.05
Tomato, paste	5.0
Vegetable, cucurbit, group 9	1.5
Vegetable, fruiting, group 8–10	4
Vegetable, tuberous and corm, subgroup 1C	0.3

* * * * *

[FR Doc. 2019–26130 Filed 12–4–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0162; FRL–10002–00]

Fenpyroximate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fenpyroximate in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 5, 2019. Objections and requests for hearings must be received on or before February 3, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0162, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an

objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0162 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 3, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0162, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of August 14, 2018 (83 FR 40272) (FRL–9981–10), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E8665) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of fenpyroximate determined by measuring only the sum of fenpyroximate, (E)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene]amino]oxy]methyl] benzoate and its Z-isomer, (Z)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene]amino]oxy]methyl] benzoate, calculated as the stoichiometric equivalent of fenpyroximate in or on the raw agricultural commodities: banana at 1.0 parts per million (ppm); blackeyed pea, succulent shelled at 0.40 ppm; broad bean, succulent shelled at 0.40 ppm; bushberry subgroup 13–07B at 3.0 ppm; caneberry subgroup 13–07A at 3.0 ppm; chickpea, succulent shelled at 0.40 ppm; cottonseed subgroup 20C at 0.10 ppm; cowpea, succulent shelled at 0.40 ppm; crowder pea, succulent shelled at 0.40 ppm; goa bean, pods, succulent shelled at 0.40 ppm; lablab bean, succulent shelled at 0.40 ppm; leaf petiole vegetable subgroup 22B at 4.0 ppm; lima bean, succulent shelled at 0.40 ppm; nut, tree, group 14–12 at 0.10 ppm; southern pea, succulent shelled at 0.40 ppm; soybean, edible, succulent shelled at 0.40 ppm; squash/cucumber subgroup 9B at 0.40 ppm; succulent bean, succulent shelled at 0.40 ppm; and velvet bean, succulent shelled at 0.40 ppm. The petition also requested to remove the established tolerances for residues of fenpyroximate in or on the following raw agricultural commodities: Bean, snap, succulent at 0.40 ppm; cotton, undelinted seed at 0.10 ppm; cucumber at 0.40 ppm; nut, tree, group 14 at 0.10 ppm; and pistachio at 0.10 ppm. That document referenced a summary of the petition prepared by Nichino America, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Pursuant to its authority in FFDCA section 408(d)(4)(A)(i), EPA is establishing tolerances that vary slightly from what the petitioner requested. The reasons for these changes are located in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fenpyroximate including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fenpyroximate follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Following repeated oral exposures to fenpyroximate, general systemic toxicity was observed (no specific target organ/tissue identified). The most common effect observed across studies and species was decreased body weight. In dogs, clinical signs, such as diarrhea, torpor, and emaciation, and slight bradycardia were observed at similar or higher doses than those that elicited adverse decreases in body weight.

In the rat neurotoxicity battery, effects in the subchronic neurotoxicity study were limited to decreased body weights at the highest doses tested (16–18 mg/kg/day). In the acute neurotoxicity study, decreased motor activity (both sexes) and auditory startle response (females only) were observed in the absence of neuropathological findings. There were no effects seen in the delayed acute neurotoxicity study in hens up to the limit dose (5,000 mg/kg).

Following repeated dermal exposure, body weight decrements were only observed at the limit dose (1,000 mg/kg/day) in the presence of clinical signs consisting of red nose and mouth/nasal discharge in females. Increased liver weights and hepatocellular necrosis were also reported in females.

In the 4-week inhalation study in rats, clinical signs (rales and labored

breathing), increased lung weights, and histopathological findings in the nasal turbinates (squamous metaplasia and atrophy of respiratory and/or olfactory mucosa) were observed. Body-weight decrements were not observed following repeated exposure via the inhalation route.

There was no evidence of increased susceptibility following fenpyroximate exposure. There were no effects observed in the rat and rabbit developmental toxicity studies up to the highest doses tested (25 mg/kg/day and 5 mg/kg/day in the rat and rabbit, respectively). In the reproduction toxicity study, offspring and parental effects (decreased body weights for both lifestages) were observed at the same dose.

Fenpyroximate is classified as ''not likely to be carcinogenic to humans'' based on lack of evidence of carcinogenicity in rats and mice.

Specific information on the studies received and the nature of the adverse effects caused by fenpyroximate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''Fenpyroximate: Human Health Draft Risk Assessment for Registration Review and a Petition to Establish Tolerances for Residues in/on the Banana; Leaf Petiole Vegetable Subgroup 22B; Caneberry Subgroup 13–07A; Bushberry Subgroup 13–07B; Squash/Cucumber Subgroup 9B; and Succulent Shelled Beans; and Crop Group Conversions for Nut, Tree, Group 14–12; and Cottonseed Subgroup 20C'' on pages 37–41 in docket ID number EPA–HQ–OPP–2018–0162.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticide.*

A summary of the toxicological endpoints for fenpyroximate used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FENPYROXIMATE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations)	NOAEL = 37.5 mg/kg/day UF_A = 10X. UF_H = 10X FQPA SF = 1X	Acute RfD = 0.375 mg/kg/day aPAD = 0.375 mg/kg/day.	*Acute neurotoxicity study—rat.* LOAEL = 150 mg/kg based on decreased motor activity (total activity counts and total time spent in movement) in both sexes, a reduction in auditory startle response in females at 24 hours post dose, and mild dehydration in males.
Chronic dietary (All populations)	NOAEL= 1.0 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	Chronic RfD = 0.01 mg/kg/day. cPAD = 0.01 mg/kg/day.	*Combined chronic/carcinogenicity study—rat.* LOAEL = 3.1/3.8 (M/F) based on decreased body-weight gain (Note: corresponding >10% decrease in absolute body weight observed).
Cancer (Oral, dermal, inhalation).	Classification: ''Not likely to be carcinogenic to humans.''		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. NOAEL = no-observed-adverse-effect-level. PAD = population-adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fenpyroximate, EPA considered exposure under the petitioned-for tolerances as well as all existing fenpyroximate tolerances in 40 CFR 180.566. EPA assessed dietary exposures from fenpyroximate in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for fenpyroximate. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA; 2003–2008). As to residue levels in food, EPA assumed 100 percent crop treated (PCT) and tolerance-level residues using default processing factors for all commodities excluding apple, pear, and grape juice (0.11X); grape, raisin (2.7X); orange, grapefruit, tangerine, lemon, and lime juice (0.06X); tomato paste (1.0X) and puree (1.0X); dried plum (1.0X); and peppermint and spearmint oil (0.08X).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA NHANES/WWEIA (2003–2008). As to residue levels in food, EPA used percent crop treated estimates for some commodities and tolerance-level residues using default

processing factors for all commodities excluding apple, pear, and grape juice (0.11X); grape, raisin (2.7X); orange, grapefruit, tangerine, lemon, and lime juice (0.06X); tomato paste (1.0X) and puree (1.0X); dried plum (1.0X); and peppermint and spearmint oil (0.08X).

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fenpyroximate does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, and the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows:

100 PCT was assumed for the acute analyses. The chronic analysis incorporated the following average PCT: Apples, 5.0%; apricots, 1.0%; avocados, 1.0%; beans (fresh), 1.0%; cantaloupes, 2.5%; cherries, 5.0%; corn, 1.0%; cotton, 1.0%; grapefruit, 10%; grapes, table, 2.5%; grapes, raisin, 5.0%; grapes, wine, 5.0%; lemons, 2.5%; oranges, 10%; peaches, 1.0%; pears, 10%; pecans, 5.0%; peppers, 10%; plums, 5.0%; prunes, 1.0%; strawberries, 5.0%; tangerines, 5.0%; tomatoes, 1.0%; and watermelons, 1.0%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figures for each existing use are derived by combining available public and private market survey data for that use, averaging across all observations, and rounding up to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5%. In those cases, the Agency would use less than 1% or less than 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the most recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the Agency uses less than 2.5% as the maximum PCT.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which fenpyroximate may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for fenpyroximate in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fenpyroximate. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticide Water Calculator (PWC) and Pesticides in Flooded Applications Model (PFAM), the estimated drinking water concentrations (EDWCs) of fenpyroximate for acute exposures are estimated to be 18.8 parts per billion (ppb) for surface water and 43.92 ppb for ground water, and for chronic exposures are estimated to be 4.74 ppb for surface water and 43.42 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 43.92 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the water concentration of value 43.42 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fenpyroximate is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found fenpyroximate to share a common mechanism of toxicity with any other substances, and fenpyroximate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fenpyroximate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity

and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There was no evidence of increased quantitative or qualitative susceptibility in the developmental toxicity studies in rabbits or rats or the reproduction toxicity study in rats.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fenpyroximate is complete.

ii. Although decreased motor activity and startle response were observed in the acute neurotoxicity study in rats, concern is low since: (1) There was no evidence of neurotoxicity in the rest of the fenpyroximate toxicological database, including the subchronic neurotoxicity study and the acute neurotoxicity study in hens; (2) clear NOAEL/LOAEL values were identified for the effects observed in the rat acute neurotoxicity study; and (3) the selected endpoints are protective of the observed effects. Therefore, there is no residual uncertainty concerning neurotoxicity and no need to require a developmental neurotoxicity study.

iii. There is no evidence that fenpyroximate results in increased susceptibility *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary analysis is unrefined for acute dietary exposures, partially refined for chronic dietary exposures, and both acute and chronic dietary analyses incorporated upper bound modeled drinking water residues. Therefore, the dietary assessment is unlikely to underestimate exposure.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fenpyroximate will occupy 8.7% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fenpyroximate from food and water will utilize 60% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. There are no residential uses for fenpyroximate.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Short- and intermediate-term adverse effects were identified; however, fenpyroximate is not registered for any use patterns that would result in either short- or intermediate-term residential exposure. Short- and intermediate-term risk is assessed based on short- or intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short- or intermediate-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for fenpyroximate.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, fenpyroximate is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fenpyroximate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography method with nitrogen/phosphorus detection (GC/NPD), Method S19) is available to enforce the tolerance expression. Method S19 has passed an Agency validation and has a limit of quantitation (LOQ) of 0.05 ppm for the combined residues of fenpyroximate and M–1 in snap beans and avocados. A data-gathering liquid chromatography/mass spectroscopy/mass spectroscopy (LC/MS/MS) method is also available.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex MRLs are established for residues of fenpyroximate *per se* in tree nuts at 0.05 ppm, squash at 0.06 ppm, and cucumber at 0.3 ppm. These are lower than the tolerances that are being established in the United States. Harmonization with the Codex MRLs is not possible because the U.S. tolerance expression includes an additional isomer and the U.S. use patterns require higher numerical values.

C. Revisions to Petitioned-For Tolerances

EPA is establishing all the tolerances at different levels than petitioned for in order to be consistent with the Agency's rounding class practice, which is based on the rounding procedures of the Organisation for Economic Co-operation

and Development. Also, although the petitioner has petitioned for the removal of the existing tolerance for residues in ''Bean, snap, succulent,'' this tolerance is being retained in order to support the currently labeled use on this crop.

V. Conclusion

Therefore, tolerances are established for residues of fenpyroximate in or on Banana at 1 ppm; Blackeyed pea, succulent shelled at 0.4 ppm; Broad bean, succulent shelled at 0.4 ppm; Bushberry subgroup 13–07B at 3 ppm; Caneberry subgroup 13–07A at 3 ppm; Chickpea, succulent shelled at 0.4 ppm; Cottonseed subgroup 20C at 0.1 ppm; Cowpea, succulent shelled at 0.4 ppm; Crowder pea, succulent shelled at 0.4 ppm; Goa bean, pods, succulent shelled at 0.4 ppm; Lablab bean, succulent shelled at 0.4 ppm; Leaf petiole vegetable subgroup 22B at 4 ppm; Lima bean, succulent shelled at 0.4 ppm; Nut, tree, group 14–12 at 0.1 ppm; Southern pea, succulent shelled at 0.4 ppm; Soybean, edible, succulent shelled at 0.4 ppm; Squash/cucumber subgroup 9B at 0.4 ppm; Succulent bean, succulent shelled at 0.4 ppm; and Velvet bean, succulent shelled at 0.4 ppm.

Additionally, the following existing tolerances are removed as unnecessary due to the establishment of the above tolerances: Cotton, undelinted seed; Cucumber; Nut, tree, group 14; and Pistachio.

VI. Statutory and Executive Order Reviews

This action establishes and modifies tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 19, 2019.

Donna Davis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.566, amend the table in paragraph (a)(1) as follows:
■ a. Add alphabetically the entries ''Banana''; ''Blackeyed pea, succulent shelled''; ''Broad bean, succulent shelled''; ''Bushberry subgroup 13–07B''; ''Caneberry subgroup 13–07A''; ''Chickpea, succulent shelled''; and ''Cottonseed subgroup 20C'';
■ b. Remove the entry for ''Cotton, undelinted seed'';
■ c. Add alphabetically the entries ''Cowpea, succulent shelled'' and ''Crowder pea, succulent shelled'';
■ d. Remove the entry for ''Cucumber'';
■ e. Add alphabetically the entries ''Goa bean, pods, succulent shelled''; ''Lablab bean, succulent shelled''; ''Leaf petiole vegetable subgroup 22B''; ''Lima bean, succulent shelled''; and ''Nut, tree, group 14–12'';
■ f. Remove the entries for ''Nut, tree, group 14'' and ''Pistachio''; and
■ g. Add alphabetically the entries ''Southern pea, succulent shelled''; ''Soybean, edible, succulent shelled''; ''Squash/cucumber subgroup 9B''; ''Succulent bean, succulent shelled''; and ''Velvet bean, succulent shelled''.

The additions read as follows:

§ 180.566 Fenpyroximate; tolerances for residues.

(a) * * *
(1) * * *

Commodity	Parts per million
* * * * *	
Banana	1
* * * * *	
Blackeyed pea, succulent shelled	0.4
Broad bean, succulent shelled	0.4
Bushberry subgroup 13–07B	3
Caneberry subgroup 13–07A	3
* * * * *	
Chickpea, succulent shelled	0.4
* * * * *	
Cottonseed subgroup 20C	0.1
Cowpea, succulent shelled	0.4

Commodity	Parts per million
Crowder pea, succulent shelled	0.4
* * * * *	
Goa bean, pods, succulent shelled	0.4
* * * * *	
Lablab bean, succulent shelled	0.4
Leaf petiole vegetable subgroup 22B	4
Lima bean, succulent shelled	0.4
* * * * *	
Nut, tree, group 14–12	0.1
* * * * *	
Southern pea, succulent shelled	0.4
Soybean, edible, succulent shelled	0.4
* * * * *	
Squash/cucumber subgroup 9B	0.4
* * * * *	
Succulent bean, succulent shelled	0.4
* * * * *	
Velvet bean, succulent shelled	0.4

* * * * *

[FR Doc. 2019–26131 Filed 12–4–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0644; FRL–10000–97]

Etoxazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of etoxazole in or on beet, sugar, roots and beet, sugar, leaves. The Interregional Research Project Number 4 (IR–4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 5, 2019. Objections and requests for hearings must be received on or before February 3, 2020 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0644, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0644 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before February 3, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0644, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 18, 2018 (84 FR 9737) (FRL–9989–71), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E8701) by IR–4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W. Princeton, NJ 08540. The petition requested that 40 CFR part 180.593 be amended by establishing tolerances for residues of the insecticide etoxazole, (2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole), in or on the following sugar beet commodities: Roots at 0.02 parts per million (ppm); dried pulp at 0.04 ppm; and leaves at 1 ppm. In addition, the petition requested tolerances for etoxazole residues in or on the leaves of many other commodities at 1 ppm. That document referenced a summary of the petition prepared by Valent U.S.A. Corporation,

the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing tolerances that vary from what the petitioner requested, in accordance with section 408(d)(4)(A)(i). The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for etoxazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with etoxazole follows.

A. Toxicological Profile

EPA has evaluated the available toxicity database and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The effects in the etoxazole database show liver toxicity in all species tested (enzyme release, hepatocellular swelling and histopathological indicators), and the severity does not appear to increase with time. In rats only, there were effects on incisors (elongation, whitening, and partial loss of upper and/or lower incisors). There is no evidence of neurotoxicity or immunotoxicity. No toxicity was seen at the limit dose in a 28-day dermal toxicity study in rats.

No increased quantitative or qualitative susceptibilities were observed following *in utero* exposure to rats or rabbits in the developmental studies; however, offspring toxicity was more severe (increased pup mortality) than maternal toxicity (increased liver and adrenal weights) at the same dose (158.7 milligram/kilogram/day (mg/kg/day)) in the rat reproduction study indicating increased qualitative susceptibility. Etoxazole is not mutagenic and not likely to be carcinogenic based on the lack of carcinogenicity effects in the database.

Specific information on the studies received and the nature of the adverse effects caused by etoxazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at http://www.regulations.gov in document, ''Etoxazole: Human Health Risk Assessment for Registration Review and a Proposed Section 3 Use on Sugar Beets'' at pages 33–37 in docket ID number EPA–HQ–OPP–2018–0644.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the LOAEL are identified. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for etoxazole used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ETOXAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	POD and uncertainty/FQPA safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Chronic dietary (All populations)	NOAEL= 4.62 mg/kg/day ..... UF_A = 10X UF_H = 10X FQPA SF = 1X	cPAD = cRfD = 0.046 mg/kg/day.	Chronic Oral Toxicity Study—Dog. LOAEL = 23.5 mg/kg/day based upon increased alkaline phosphatase activity, increased liver weights, liver enlargement (females), and incidences of centrilobular hepatocellular swelling in the liver.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ETOXAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	POD and uncertainty/FQPA safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Cancer (Oral, dermal, inhalation)	EPA has classified etoxazole as ''not likely to be carcinogenic to humans.''		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to etoxazole, EPA considered exposure under the petitioned-for tolerances as well as all existing etoxazole tolerances in 40 CFR 180.593. EPA assessed dietary exposures from etoxazole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for etoxazole; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID), Version 3.16. This software uses food consumption data from the USDA National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA; 2003–2008). As to residue levels in food, EPA assumed tolerance-level residues and 100% crop treated (PCT) for all food commodities. EPA's 2018 default processing factors were used except in cases where adequate processing data were available. In the cases where there was no significant concentration, the default processing factors were set to 1.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has classified etoxazole as ''not likely'' to be carcinogenic to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for etoxazole. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for etoxazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of etoxazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Etoxazole residues of concern in drinking water, which were used in the dietary exposure assessment for this new use, include the parent and two major metabolites, R–8 and R–13. Based on the First Index Reservoir Screening Tool (FIRST), and Pesticide Root Zone Model Ground Water (PRZM GW) models, the estimated drinking water concentrations (EDWCs) of etoxazole for chronic exposures are estimated to be 4.761 parts per billion (ppb) for surface water and <0.01 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the chronic dietary exposure and risk assessment, the water concentration of value 4.761 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Etoxazole is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to etoxazole and any other substances and etoxazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that etoxazole has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* No increased quantitative or qualitative susceptibilities were observed following *in utero* exposure to rats or rabbits in the developmental studies. There is evidence of increased qualitative offspring susceptibility in the rat reproduction study, but the concern is low since: (1) The effects in pups are well-characterized with a clear NOAEL; (2) the selected endpoints are protective of the doses where the offspring toxicity is observed; and (3) offspring effects occur in the presence of parental toxicity.

3. *Conclusion.* Based on the available hazard and exposure database for

etoxazole, EPA recommends that the FQPA SF be reduced to 1X for all exposure scenarios relevant to the current safety assessment.

EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X for current exposure scenarios. That decision is based on the following findings:

i. The toxicity database for etoxazole is complete including acceptable developmental toxicity studies in rats and rabbits, a two-generation reproduction study in rats, and acute and subchronic neurotoxicity studies in rats.

ii. There is no evidence of neurotoxicity in the etoxazole database including guideline acute and subchronic neurotoxicity studies.

iii. There are no residual uncertainties for pre- and/or post-natal toxicity. The observed qualitative postnatal susceptibility is protected for by the selected endpoints.

iv. There are no residual uncertainties identified in the exposure databases. Adequate data are available to determine the nature and magnitude of the residue in all proposed/registered crops and in livestock. The current dietary exposure analysis assumed 100 PCT, tolerance-level residues, modeled drinking water estimates, and in the absence of empirical data, default processing factors. Therefore, the dietary exposure analysis is conservative and unlikely to underestimate exposure. There are no registered residential uses for etoxazole.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, etoxazole is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to etoxazole from food and water will utilize 3.6% of the cPAD for the U.S. population and 15% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for etoxazole.

3. *Short- and Intermediate term risks.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Short- and intermediate-term risk is assessed based on short- or intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short- or intermediate-term risks), no further assessment of short- or intermediate- term risk is necessary. EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for etoxazole.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, etoxazole is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to etoxazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, Valent Method RM–37, gas chromatography/mass-selective detector (GC/MSD) or GC/nitrogen-phosphorus detector (NPD), is available for enforcing the current plant and livestock tolerances.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are no Codex MRLs for residues of etoxazole in/on sugar beet commodities.

C. Revisions to Petitioned-for Tolerances

EPA concluded that a separate tolerance for etoxazole residues in or on Beet, sugar, dried pulp is not needed because available processing data indicate that quantifiable residues of etoxazole are unlikely to occur in sugar beet processed commodities following an application at the maximum use rate. In addition, EPA is not establishing any tolerances for residues on plant leaves (other than the tolerance on beet, sugar, leaves) because the petitioner withdrew its request for those tolerances. At this time, those tolerances are not necessary.

V. Conclusion

Therefore, a tolerance is established for residues of etoxazole, (2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole), in or on Beet, sugar, leaves at 1 ppm and Beet, sugar, roots at 0.02 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order

13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 21, 2019.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In the table in paragraph (a) of § 180.593, add alphabetically the commodities ''Beet, sugar, leaves'' and ''Beet, sugar, roots'' to read as follows:

§ 180.593 Etoxazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Beet, sugar, leaves	1
Beet, sugar, roots	0.02
* * * * *	

* * * * *

[FR Doc. 2019–26158 Filed 12–4–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 181010932–9124–02; RTID 0648–XX028]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer From NC to RI

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

ACTION: Notification of quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2019 commercial bluefish quota to the State of Rhode Island. This quota adjustment is necessary to comply with the Atlantic Bluefish Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised commercial bluefish quotas for North Carolina and Rhode Island.

DATES: Effective December 4, 2019, through December 31, 2019.

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

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found in 50 CFR 648.160 through 648.167. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.162 and the initial 2019 allocations were published on March 12, 2019 (84 FR 8826).

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan published in the **Federal Register** on July 26, 2000 (65 FR 45844), and provided a mechanism for transferring bluefish quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can request approval to transfer or combine bluefish commercial quota under § 648.162(e)(1)(i) through (iii). The Regional Administrator must first approve any such transfer based on the criteria in § 648.162(e).

North Carolina is transferring 150,000 lb (63 mt) of bluefish commercial quota to Rhode Island through mutual agreement of the states. This transfer was requested to ensure that Rhode Island would not exceed its allocated 2019 state quota. The revised bluefish quotas for 2019 are: North Carolina, 2,321,746 lb (1,053 mt); and Rhode Island, 674,874 lb (306 mt).

Classification

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

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

Dated: December 2, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–26291 Filed 12–4–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 234
Thursday, December 5, 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 AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 56, 145, 146, and 147

[Docket No. APHIS-2018-0062]

RIN 0579–AE49

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the National Poultry Improvement Plan (NPIP). These amendments would establish a U.S. Newcastle Disease Clean program within the NPIP, create an NPIP subpart specific to game birds, revise testing requirements, and clarify existing provisions of the regulations. We are also proposing to amend the regulations concerning the payment of indemnity and compensation for low pathogenic avian influenza to reflect current policy and operational practices, and to allow NPIP voting delegates to represent multiple States during the Biennial Conferences. These proposed changes were voted on and approved by the voting delegates at the NPIP's 2018 National Plan Conference.

DATES: We will consider all comments that we receive on or before February 3, 2020.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0062*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2018-0062, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0062* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Elena Behnke, DVM, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (NPIP, also referred to below as ''the Plan'') is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control poultry diseases. Participation in all Plan programs is voluntary, but breeding flocks, hatcheries, and dealers must first qualify as ''U.S. Pullorum-Typhoid Clean'' as a condition for participating in the other Plan programs.

The Plan identifies States, independent flocks, hatcheries, dealers, and slaughter plants that meet certain disease control standards specified in the Plan's various programs. As a result, customers can buy poultry that has tested clean of certain diseases or that has been produced under disease-prevention conditions.

The regulations in 9 CFR parts 56, 145, 146, and 147 (referred to below as the regulations) contain the provisions of the Plan. The Animal and Plant Health Inspection Service (APHIS) amends these provisions from time to time to incorporate new scientific information and technologies within the Plan, and to ensure the plan reflects changes to the poultry industry itself. The changes we are proposing, which are discussed below, were approved by the voting delegates at the Plan's 2018 Biennial Conference.

Participants and voting delegates at the Biennial Conference represented the poultry industry, flock owners, breeders, hatchery men, slaughter plants, poultry veterinarians, diagnostic laboratory personnel, Official State Agencies from cooperating States, and other poultry industry affiliates. The proposed amendments are discussed in the order they would appear in the regulations.

Proposed Amendments to Part 56

Definitions

The terms *H5/H7 LPAI exposed* and *H5/H7 LPAI infection (infected)* are currently defined in § 56.1 of the regulations in a manner that describes the risks or effects of poultry being exposed to or contracting the virus.

The current definition of *H5/H7 LPAI exposed* provides that all birds or poultry associated with H5/H7 infected birds or poultry, whether it is via excrement or other materials, are automatically placed in the exposed category. This could be construed to suggest that an exposed flock is potentially infectious because the birds in the flock have had contact with the virus in some manner. However, this is not the case. Although ''exposed'' birds have been exposed to the virus, they are no longer shedding the virus and no longer considered to be potentially infectious. As such, they can go to slaughter to be controlled marketed, instead of being depopulated. Therefore, we are proposing to amend the terms and definitions of *H5/H7 LPAI infection (infected)* and *H5/H7 LPAI exposed.*

The new terms would be *H5/H7 LPAI virus exposed (non-infectious)* and *H5/H7 LPAI virus actively infected (infectious).* We are proposing to define *H5/H7 LPAI virus exposed (non-infectious)* in the following way. Poultry would be considered to be exposed (non-infectious) to H5/H7 LPAI for purposes of the regulations if:

- Antibodies to the H5 or H7 subtype of the AI virus that are not a consequence of vaccination have been detected in poultry, and
- Samples collected from the flock using real-time reverse transcription polymerase chain reaction (RT–PCR) or virus isolation are determined to be not infectious for H5/H7 LPAI.

The definition would also provide that the official determination that H5/H7 LPAI virus exposure has occurred is by the identification of antibodies to the H5 or H7 subtype of AI virus detected and may only be made by APHIS' National Veterinary Services Laboratories (NVSL).

We are proposing to define *H5/H7 LPAI virus actively infected (infectious)* in the following way. Poultry would be considered to be infected with H5/H7 LPAI for purposes of the regulations if:

- H5/H7 LPAI virus has been isolated and identified as such from poultry; or
- Viral antigen or viral RNA specific to the H5 or H7 subtype of AI virus has been detected in poultry.

The definition would also provide that the official determination that H5/H7 LPAI virus has been isolated and identified, or viral antigen or viral RNA specific to the H5 or H7 subtype of AI virus has been detected, may only be made by NVSL.

We would also revise references to H5/H7 LPAI) infection (infected) and H5/H7 LPAI exposed throughout part 56 of the regulations to these two new terms instead.

We believe the revised terms better clarify the distinction between exposed and infected poultry.

We are also proposing to add definitions for *cleaning, compensation, disinfection, indemnity,* and *virus elimination (VE)* to § 56.1 of the regulations.

We would define *cleaning* as the removal of gross contamination, organic material, and debris from the premises or respective structures, via mechanical means like sweeping (dry cleaning) and/or the use of water and soap or detergent (wet cleaning), in order to minimize organic material to prepare for effective disinfection.

We would define *disinfection* as methods used on surfaces to destroy or eliminate H5/H7 LPAI virus through physical (*e.g.,* heat) or chemical (*e.g.,* disinfectant) means, and would further specify that a combination of methods may be required.

Section 56.3 of the regulations provides that APHIS may indemnify persons for cleaning and disinfection of premises, conveyances, and materials infected with or exposed to LPAI. While we believe it is clear from context that § 56.3 pertains only to cleaning and disinfection associated with elimination of LPAI virus, rather than any cleaning and disinfection activities whatsoever that may be conducted on an affected premises, adding definitions of the terms to the regulations would further clarify our intent.

For a similar reason, we are proposing to add the term virus elimination after every reference to cleaning and disinfection in part 56 of the regulations. Virus elimination is the term used in many foreign countries for cleaning and disinfection measures conducted to destroy or eliminate all virus on an affected premises; we would define it in that way in § 56.1. This would also underscore the restrictive sense in which cleaning and disinfection is being used within part 56.

The term *compensation* would also be new to part 56. We would define compensation in § 56.1 as reimbursement for the activities associated with the depopulation of infected or exposed poultry, including the disposal of contaminated carcasses and materials and the cleaning and disinfection of premises, conveyances, and materials that came into contact with infected or exposed poultry. The definition would further provide that, in the case of contaminated materials, if the cost of cleaning and disinfection would exceed the value of the materials, or cleaning and disinfection would be impracticable for any reason, APHIS would base compensation on the fair market value (depreciated value) of those materials. Finally, the definition would specify that compensation does not include payment for depopulated birds or eggs destroyed, as those payments would constitute indemnity.

We would define *indemnity* as payments representing the fair market value of destroyed birds and eggs. Indemnity would not include reimbursements for depopulation (by which we mean the act of depopulation, rather than the depopulated poultry), or for disposal, destroyed materials, or cleaning and disinfection (virus elimination) activities, as these would be covered under the definition of *compensation.*

Currently, the regulations in part 56 refer only to indemnity, regardless of the activity for which APHIS is providing reimbursement. However, the procedures for the payment of indemnity for destroyed birds or eggs differ significantly from those for the payment of indemnity for cleaning and disinfection. As a result, APHIS' Veterinary Services (VS) program, in conjunction with State departments of agriculture, has developed a guidance document, VS Guidance document 8601.2 that clarifies how the two processes differ.[1] The guidance document makes the distinction between compensation and indemnity that we are proposing to codify in the regulations themselves. We would also amend part 56 throughout to change references to ''indemnity'' that pertain to reimbursement for activities, rather than the destroyed poultry or eggs themselves, to ''compensation.''

[1] See *http://poultryimprovement.org/documents/ISRCPGuidanceDocument.pdf.*

Payment of Indemnity

The regulations in § 56.3 describe conditions for the payment of indemnity for H5/H7 LPAI. Paragraph (a) of the section lists activities that may be eligible for indemnity for H5/H7 LPAI: The destruction and disposal of infected poultry, the destruction of any eggs during outbreak testing, and disinfection of areas and materials that have come in contact with infected poultry. Paragraph (b) describes the percentage of costs that are eligible for indemnity for the listed activities, depending on certain criteria.

Currently, paragraph (b) provides that, if poultry meet the definition of *commercial,* but does not participate in their respective NPIP Avian Influenza program, the maximum amount of indemnity that may be paid for eligible activities is 25 percent. Commercial poultry that do participate in Plan AI programs, however, may receive up to 100 percent indemnity.

This paragraph currently does not reflect the fact that the NPIP regulations themselves specifically exempt poultry operations that fall below certain size thresholds from having to participate in the NPIP AI programs. The exemption numbers are currently listed in 9 CFR part 146. We are proposing to amend paragraph (b) to clarify that poultry operations that are exempted by the Plan regulations from having to participate in Plan AI programs because of their size may still receive up to 100 percent indemnity and/or compensation for eligible activities.

Determination of Indemnity

The current regulations in § 56.4 describe how APHIS determines fair market value regarding the destruction of infected or exposed poultry; this includes determining indemnity for cleaning and disinfection procedures. The regulations currently state that APHIS will use an appraisal by an APHIS official appraiser and State official appraiser, or, in instances when APHIS and State authorities agree, either the APHIS appraiser or State appraiser alone, to determine fair market value for indemnity for destroyed poultry and eggs. However, we have discontinued use of appraisers in favor of an indemnity calculator drawn from multiple data points in order to determine fair market value for destroyed birds and eggs. We are therefore proposing to amend § 56.4 to indicate that appraisal calculator values will be used to determine the amount of indemnity paid for destroyed birds and eggs.

Section 56.4 also describes how reimbursement may be paid for disposal activities. Currently, as a precondition for submitting a claim, the claimant, Cooperating State Agency, and APHIS must jointly enter into a cooperative agreement. However, State Agencies have stated that their participation in the cooperative agreement is not necessary. We are proposing to amend the regulations accordingly.

Finally, § 56.4 describes how indemnity may be paid for cleaning and disinfection activities. Currently, we require the claimant, the Cooperating State Agency, and APHIS to enter into a compliance agreement. The claimant then submits receipts or other documentation regarding the activities, and APHIS evaluates them against the cleaning and disinfection procedures in § 56.5 of the regulations and the initial State response and containment plan, the requirements for which are found in § 56.10 of the regulations.

To streamline reimbursement for cleaning and disinfection activities, we have developed a calculator for cleaning and disinfection as well, the APHIS flat-rate virus elimination (VE) calculator. The calculator provides a per-square-foot rate for premises with floor-raised birds and per-cubic-foot rate for premises with caged birds for cleaning and disinfection activities that we have previously determined to fall within the scope of the regulations as reimbursable activities.

While the VE calculator covers the majority of production types and VE scenarios, it does not cover every possibility. In such instances, the existing procedures for claiming compensation for cleaning and disinfection would apply. The floor-raised rates would be used by APHIS as the baseline for compensation in such instances, and the claimant would be afforded the opportunity to demonstrate through receipts or other documentation the uniqueness of his or her situation.

NPIP Certifications for Poultry Moved for Controlled Marketing

Section 56.5 provides that, at the discretion of APHIS and the Cooperating State Agency, poultry that has been infected with or exposed to H5/H7 LPAI may be moved for controlled marketing rather than depopulated. We are proposing to amend the section to indicate that poultry moved for controlled marketing maintain their current NPIP certifications. This amendment would help provide assurances to slaughtering facilities that receive such flocks.

Revisions to Part 145

Definitions

Section 145.1 of the regulations provides general definitions of terms used within the NPIP regulations. We are proposing to add a definition for the term *Newcastle disease,* and to revise the existing definition for *avian influenza.* Both the new definition and the revised definition would be modeled on the definitions of these terms found in the World Organization for Animal Health's (OIE's) Terrestrial Animal Health Code, to which the United States is a signatory.[2]

Specific Provisions for Participating Dealers

Section 145.7 of the regulations requires participating dealers to follow all applicable provisions in part 145. However, the section refers to dealers in ''poultry breeding stock, hatching eggs, or baby or started poultry'' while the definition of *dealer* in § 145.1 refers to dealers as individuals or businesses that deal in commerce with hatching eggs, newly-hatched poultry, and/or started poultry. We are proposing to revise § 145.7 so that it refers to dealers using the same term as in the definition in § 145.1. The revised section would also indicate that dealers must comply with the regulations in the relevant part of the NPIP regulations. It would also specify the NPIP Program Standards that are applicable to such dealers, as well as the provisions of the NPIP regulations that provide for approval of alternatives to those standards.

Testing

The regulations in §§ 145.14 and 146.13 discuss the official avian influenza (AI) antibody detection tests, the enzyme-linked immunosorbent assay (ELISA) test and agar gel immunodiffusion (AGID) test, in regard to poultry testing requirements within the NPIP.

We are proposing to require that, when ELISA test samples are positive for AI, an AGID test must be conducted within 48 hours. This is because the AGID test is used as a confirmatory test on presumptive positives using the ELISA test. Timely corroboratory testing is therefore necessary in order to determine the disease status of the tested flock. Additionally, the AGID test must comply with the relevant NPIP requirements and would specify the relevant NPIP Program Standards, as well as provide a citation to the provisions for approval of alternate standards.

Additionally, these sections currently provide that agent detection tests for AI may be used to detect influenza A matrix gene or protein. We are proposing to amend these sections to provide that agent detection tests may be used to detect influenza A virus rather than specifically influenza A matrix gene or protein. The existing limitation imposes an unnecessary technical restriction on test design and precludes the use of lateral flow antigen immunoassays that target the influenza nucleoprotein and still reliably indicate the presence or absence of AI in a test sample.

For reasons that we discuss below, we are also proposing to add provisions regarding official tests for Newcastle disease (ND) to these two sections. The regulations would say that the official ND tests are serological tests for antibody detection and molecular-based tests for antigen detection that are listed in the Program Standards document as determined by APHIS to reliably detect ND infection. The Program Standards document would indicate that the approved serological tests for ND are currently the ELISA and hemagglutination inhibition (HI) tests, and the approved molecular-based test for ND is PCR.

Proposed Newcastle Disease Clean Program

The regulations in § 145.43 provide disease-free, or Clean, classifications that may be applied to turkey breeding flocks, and eggs and poults from turkey breeding flocks, provided that they meet certain requirements demonstrating freedom from that disease. Similar classification systems exist in § 145.45 for compartments within the turkey breeding-hatchery industry; § 145.73 for egg-type chicken breeding flocks, as well as their eggs and chicks; § 145.74 for compartments within the egg-type chicken breeding-hatchery industry; § 145.83 for meat-type chicken breeding flocks, as well as their eggs and chicks; and § 145.84 for compartments within the meat-type chicken breeding-hatchery industry.

We are proposing to amend each of these sections to establish an ND Clean program. The ND Clean program is intended to allow the turkey breeding-hatchery, egg-type chicken breeding-hatchery, and meat-type chicken breeding-hatchery industries, as well as compartments within those industries, to demonstrate freedom from ND based on vaccination and/or monitoring of each participating breeding flock. Lastly, in regards to this paragraph's

[2] To view the Code, go to *https://www.oie.int/standard-setting/terrestrial-code/access-online/.*

language, we note that the original voting resolution in § 145.43 stated ''vaccination and monitoring of each participating breeding flock;'' however, given that vaccination is optional, we have replaced ''and'' with ''and/or'' to accurately reflect the intended requirements.

For a flock to gain ND Clean status, the Official State Agency (OSA) would have to determine that the flock is a primary breeding flock that either (1) has been vaccinated for ND using USDA-licensed vaccines and response to vaccination is serologically monitored using an approved serological ND test when the birds are more than 4 months of age; or (2) is unvaccinated for ND, in which a minimum of 30 birds have tested negative to ND using an approved test when more than 4 months of age. We would require serological testing for vaccinated flocks because it indicates the increased presence of antibodies in vaccinated birds.

To retain ND Clean classification for a vaccinated flock, the vaccine would have to be a USDA-licensed vaccine administered during the early stages of development through rearing, and an inactivated vaccine as final vaccination prior to the onset of egg production; the flock would have to be have been monitored for antibody response using an approved serological test (again, currently the ELISA or HI test) and the results would have to be compatible with immunological response against ND vaccination; and testing would have to include a minimum of 30 birds with a serologic monitoring program when the birds are more than 4 months of age and prior to the onset of production and not longer than every 90 days thereafter.

To retain ND Clean classification for unvaccinated flocks, during each 90-day period, all primary spent fowl, up to a maximum of 30, would have to test negative to ND within 21 days prior to movement to slaughter; and either a minimum of 30 birds for flock would have to test negative using an approved ND test (either serological or molecular-based) at intervals of 90 days, or a sample of fewer than 30 birds could be tested, provided that all pens are equally represented and a total of 30 birds is tested within each 90 day period.

Finally, for an ND Clean program for flocks to exist within a State, ND would have to be a disease reportable to the responsible State authority by all licensed veterinarians within the State. To accomplish this, all laboratories (including private, State, and university laboratories) that perform diagnostic procedures on poultry would have to examine all submitted cases of unexplained respiratory disease, egg production drops, and mortality for ND. In § 145.15 of the regulations, as a general NPIP requirement, we require diagnostic surveillance for LPAI within participating States. Part of this diagnostic surveillance must include LPAI being a reportable disease. This requirement for the ND Clean program is modeled on that existing requirement for LPAI surveillance.

The requirements for ND Clean compartments would be similar to the existing requirements for AI Clean compartments, and we would accordingly revise sections of the regulations regarding the establishment and maintenance of AI Clean compartments so that they would also apply to the establishment and maintenance of ND Clean Compartments.

Removal of the Pullorum Typhoid Agglutination Test for S. Enteritidis Clean Classifications

The regulations in §§ 145.23(d), 145.73(d), and 145.83(d) contain requirements for *S. Enteritidis* Clean classifications in the multiplier egg-type chicken breeding industry, primary egg-type chicken breeding industry, and primary meat-type chicken breeding industry, respectively. We are proposing to remove testing using the pullorum-typhoid (PT) agglutination test from the U.S. *S. Enteritidis* Clean classification requirements.

The PT agglutination test was adopted as a test for *S. enteritidis* in the 1980s based on similarities between the two diseases, and on the presumption that it could be used for both diseases. However, the test has since proven to be unreliable in detecting the presence of *S. enteritidis.* It would, however, continue to be used for testing for PT, for which it is reliable.

Revisions to Testing Protocols for AI in the Multiplier Meat-Type Chicken Breeding Industry

Section 145.33 contains, among other things, requirements for determining a participating multiplier meat-type chicken breeding flock is free of AI for purposes of a Clean classification. Paragraph (l)(1) of that section provides three different possible testing protocols for a flock to retain Clean status.

While the first option states at least 15 birds must test negative at intervals of 90 days, and the third option requires a total of 15 samples collected and tested within a 90 day period, the second option requires 30 birds to be tested within each 90 day testing period. Our intent has always been that a total of 15 birds must be tested in each of the three options to retain the AI Clean classification; the discrepancy in the second option is the result of a drafting error. We are proposing to revise the second option to correct this error.

The section also currently requires serological tests for testing of multiplier spent fowl. This limitation is not warranted because molecular-based tests such as PCR are also reliable for such testing. We are proposing to revise the section so that any AI test approved in accordance with § 145.14 may be used.

Proposed Revisions to NPIP Provisions for Hobbyist and Exhibition Waterfowl, Exhibition Poultry and Raised-for-Release Waterfowl Breeding Flocks and Products

Subpart E of part 145, ''Special Provisions for Hobbyist and Exhibition Waterfowl, Exhibition Poultry, and Game Bird Breeding Flocks and Products'' (§§ 145.51–145.54), contains Plan requirements specific to the hobbyist, exhibition, and game bird industries. We are proposing several changes to this subpart.

First, we are proposing to remove all references to game birds from subpart E due to the addition of proposed subpart J to part 145. The game bird industry has grown rapidly and has become more complex since its inception, and the terminology, production methods, and end uses in the industry are now significantly different than those in other poultry industries. Currently, subpart E does not have specific requirements for any one group of birds covered by its provisions, and subpart J would add testing regimes, terminology, and programs specifically designed for the game bird industry.

In addition to the removal of game bird references, we would revise all references to ''waterfowl'' within the subpart to instead refer to ''raised-for-release waterfowl,'' and would remove the definition for *waterfowl* from § 145.51 of the regulations, and add a definition for *raised-for-release waterfowl* in its place. We are proposing to define *raised-for-release waterfowl* as domesticated fowl that normally swim, such as ducks and geese, grown under confinement for the primary purpose of producing eggs, chicks, started, or mature birds for release on game preserves or in the wild.

Waterfowl is currently defined in § 145.51 as domesticated fowl that normally swim, such as ducks and geese, and it is only apparent from subsequent sections of subpart E that the subpart does not apply to meat-type waterfowl, which are instead covered by

the provisions of a separate subpart I. These revisions would help to further clarify the scope of subpart E.

We are also proposing to add a definition for *hobbyist poultry.* We would define *hobbyist poultry* as domesticated fowl which are bred for the purposes of meat and/or egg production on a small scale as determined by the Official State Agency. This would also help clarify the scope of subpart E.

Section 145.52 contains requirements that flocks of hobbyist and exhibition waterfowl, exhibition poultry, and game bird breeding flocks, and the eggs and baby poultry produced from them, must meet in order to participate in the Plan.

We are proposing to amend the introductory text of the section to remove the term ''baby poultry'' and instead indicate that it applies to chicks, started, and mature poultry. This will provide more clarity regarding the applicability of the section and align it with the terminology used elsewhere in part 145 of the regulations. We are also proposing revisions to the introductory text that reflect the usage the term ''raised-for-release waterfowl'' throughout the subpart and the creation of a new subpart J for gamebirds.

Paragraph (c) of § 145.52 currently recommends that waterfowl and gallinaceous flocks in open-air facilities be kept separate. However, it is a best practice not to commingle waterfowl, which can act as asymptomatic vectors of disease, and gallinaceous flocks, regardless of whether they are kept in contained or open-air facilities. We are proposing to amend paragraph (c) accordingly.

Finally, we are proposing to add a paragraph (f) to the section to indicate that all participating raised-for-release waterfowl flocks, whether breeders or non-breeders, will be considered to be enrolled under subpart E of part 145 of the regulations. While provisions for non-breeding raised-for-release flocks are contained in part 146 of the regulations, rather than part 145, the testing requirements are identical. This will afford Plan participants some discretion in revising the intended use of a particular flock without jeopardizing the flock's status.

Terminology and Classification; Flocks and Products

Section 145.53 of the regulations provide Clean classifications that may be applied to participating hobbyist and exhibition waterfowl, exhibition poultry, and game bird breeding flocks, and the eggs and baby poultry produced from them, provided that they meet certain requirements demonstrating freedom from that disease. We are proposing several changes to this section. This section would also discuss that hatcheries should be kept in sanitary conditions according to their relevant subpart and would specify the applicable part of the NPIP Program Standards that pertains to such hatcheries.

In paragraph (b)(5), we are proposing to remove the term ''exhibition waterfowl'' and use the term ''exhibition poultry.''

Additionally, paragraph (f) of § 145.53 contains requirements for a Salmonella Monitored classification. The Salmonella program currently only contains *Salmonella* testing and interventions at the hatchery level, and calls for five environmental samples from a hatchery every 30 days performed at an authorized laboratory in order for breeders to claims their products are monitored for *Salmonella.* We are proposing to add requirements for representative sampling of pullets and breeder farms. Hatched chicks transferred to farms are still at risk of contracting *Salmonella.*

Special Provisions for Egg/Meat-Type Game Bird and Raised-for-Release Game Bird Breeding Flocks and Products

As we mentioned above, we are proposing to establish a new subpart J for the game bird industry. We are amending §§ 145.24, 145.34, 145.44, 145.54, and 145.94 to align them with the rest of the section regarding testing. The separation of the game bird industry from hobby and exhibition poultry in subpart E is necessary because the current definitions and provisions do not match the production methods and end uses for the game bird industry.

Subpart J would consist of four sections: §§ 145.101 for definitions, 145.102 for participation, 145.103 for terminology and classification of flocks and products, and 145.104 for terminology and classification of States.

The requirements in proposed subpart J are drawn from the existing requirements in subpart E; however, some of the definitions, terms, and provisions would be unique to subpart J, and reflect the unique nature of the game bird industry. Key differences between subpart E and subpart J include the following:

- In subpart J, we are proposing to allow breeders to also hatch and/or grow out birds and still meet the definition of *breeder.* This will have the effect of allowing premises with breeding and ''grow out'' birds to be covered under one NPIP number, and will account for a common production model in the game bird industry.
- We are proposing definitions for the terms *dealer, grower,* and *hatchery.* Subpart E relies on the general definition for dealer in § 145.1 of the regulations, and does not contain definitions for growers or hatcheries. However, in order for NPIP to accurately register game bird operations, definitions of these three terms are warranted within subpart J.
- The terms chick, egg, mature bird, and started bird, and raised-for-release bird would be defined within subpart J. Definitions are warranted in order to characterize these products within the game bird industry.
- While subpart E requires hatching eggs produced by breeding flocks to be fumigated or otherwise sanitized, subpart J would provide a third option in addition to fumigation or sanitization, ''nest cleaning.'' ''Nest clean'' eggs are produced within the game bird industry on wire or otherwise away from the litter.
- We are proposing to allow a breeder, hatchery, or grower to also be a dealer without being categorized as a dealer, provided that, when reselling products, the breeder, hatchery, or grower has purchased those products from an NPIP participant with equal or greater classifications or from a flock with equivalent or greater testing requirements under official supervision. This allowance would simplify the registration and recordkeeping process for Plan participants within the game bird industry.
- The Pullorum-Typhoid Clean classification requirements reflect the terminology and production methods in the game bird industry.

Proposed Amendments to Part 146

Part 146, subpart E, contains definitions and requirements for Plan participants within the game bird, commercial waterfowl, and raised-for-release waterfowl industries who produce meat- or egg-type flocks.

We are proposing to update the terminology in subpart E to match the other subparts within part 146 by replacing the term ''commercial'' with ''egg/meat-type.''

Additionally, we are proposing to eliminate all provisions related to ''grow-out'' production from part 146; such poultry would be included in subpart E and our proposed subpart J within part 145.

Proposed Amendments to Part 147

Official Delegates

Section 147.45 provides requirements regarding delegation and voter

representation for the NPIP's Biennial Conferences. The text currently states that each cooperating State is entitled to one official delegate for each of the programs in parts 145 and 146.

We are proposing to allow a single, participating delegate to represent multiple States. Companies often have operations in various States, and this change would help those companies save money by appointing a single individual to represent all of the States where the company has operations.

Approval of Conference Recommendations by the Department

Section 147.48 discusses the incorporation of recommendations from the NPIP Biennial Conferences into the NPIP provisions. The regulations do not currently have an established timeframe for the publication of NPIP Biennial Conference proposed changes; therefore, we are proposing to establish that we would publish a proposed rule to amend the regulations in the **Federal Register** within 14 months of the Biennial Conference. This will help ensure that, when a Biennial Conference is reviewing recommendations for amendments to the regulations, the regulations are up-to-date at the time of the Conference.

Authorized Laboratories

In § 147.52, the regulations state the minimum requirements for an APHIS authorized laboratory evaluation to ensure that they are in compliance with NPIP regulations. Within § 147.52, paragraph (b) contains requirements to be a trained laboratory technician. Currently, testing procedures may only be overseen by technicians who successfully complete Service-approved laboratory workshops for Plan-specific diseases within the past 4 years.

We are proposing to amend § 147.52(b) by removing the word ''within'' and replacing it with the word ''every.'' Technicians should attend a workshop for an individual Plan at 4-year intervals versus any time during a 4-year span. We are also proposing a minor editorial change to the paragraph which will indicate that ''all authorized laboratories'' must be overseen by a technician who meets the aforementioned criteria.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. Further, because this rule is not significant, it is not a regulatory action under Executive Order 13771.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

This rulemaking would result in various changes to regulations in 9 CFR parts 56 and 145 through 147, modifying provisions of the NPIP. The modifications are recommended by the NPIP General Conference Committee (GCC), which represents cooperating State agencies and poultry industry members and advises the Secretary on issues pertaining to poultry health. The proposed rule would, among other changes, remove the Pullorum-Typhoid agglutination test as a test under which a flock can achieve *Salmonella enteritidis* clean classification, due to its unreliability; propose a Newcastle Disease Clean Program; specify that ELISA-positive samples for Avian Influenza (AI) must be sent for corroboratory testing within 48 hours; and broaden the criteria under which AI detection tests can be approved, while still requiring that the tests reliably detect AI virus. In addition, the proposed rule would clarify the testing period for AI tests to maintain AI Clean classification by correcting an editorial error; clarify that flocks that have been designated exposed to HPAI are not considered infectious; clarify when indemnity may be paid to breeders within the NPIP program; clarify the types of poultry in commerce; and clarify that NPIP dealers must follow the Program Standards in addition to the regulations. The proposal would create NPIP provisions specific to the game bird breeders industry and would set forth Salmonella testing for breeders, in addition to hatchers, relative to Salmonella Monitored status.

These changes would align the regulations with international standards and make them more transparent to APHIS stakeholders and the general public. The changes included in this rule were voted on and approved by the voting delegates at the Plan's 2018 Biennial Conference.

The establishments that would be affected by the rule—principally entities engaged in poultry production and processing—are predominantly small by Small Business Administration standards. In those instances in which an addition or modification could potentially result in a cost to certain entities, we do not expect the costs to be significant. This rule embodies changes decided upon by the NPIP GCC on behalf of Plan members, that is, changes recognized by the poultry industry as in their interest. We note that NPIP membership is voluntary. Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with Section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the reporting, recordkeeping, and third-party disclosure requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send comments on the Information Collection Request (ICR) to OMB's Office of Information and Regulatory Affairs via email to *oira_submissions@omb.eop.gov,* Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2018–0062. Please send a copy of your comments to the USDA using one of the methods described under **ADDRESSES** at the beginning of this document.

APHIS is proposing to amend the National Poultry Improvement Program regulations to establish a U.S. Newcastle Disease Clean program within NPIP. The Newcastle Disease Clean program is intended to allow the turkey breeding-hatchery, egg-type chicken breeding-hatchery, and meat-type chicken breeding-hatchery industries, as well as compartments within those industries, to demonstrate freedom from ND based

on vaccination and/or monitoring of each participating breeding flock. APHIS intends to determine the presence of Newcastle disease virus through vaccination and monitoring of each participating breeding flock. Implementing this rule will require information collection activities such as a revised flock selecting and testing reports; applications for U.S. Avian Flu and Newcastle Disease clean compartment, clean compartment component registrations, and compartment component removal; component audits; compliance statements; compliance agreements; description of business processes; biosecurity plans; appraisal and indemnity claims; response and containment plans; and recordkeeping.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public burden for this collection of information is estimated to average 1.84 hours per response.

Respondents: Commercial poultry producers and State agricultural officials.

Estimated annual number of respondents: 1,361.

Estimated annual number of responses per respondent: 18.

Estimated annual number of responses: 23,857.

Estimated total annual burden on respondents: 43,810 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

A copy of the information collection may be viewed on the *Regulations.gov* website or in our reading room. (A link to *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) Copies can also be obtained from Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483. APHIS will respond to any ICR-related comments in the final rule. All comments will also become a matter of public record.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

List of Subjects

9 CFR Part 56

Animal diseases, Indemnity payments, Low pathogenic avian influenza, Poultry.

9 CFR Parts 145, 146, and 147

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR parts 56, 145, 146, and 147 as follows:

PART 56—CONTROL OF H5/H7 LOW PATHOGENIC AVIAN INFLUENZA

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 56.1 is amended as follows:

■ a. By adding, in alphabetical order, definitions for *Cleaning, Compensation,* and *Disinfection;*

■ b. By removing the definitions for *H5/H7 LPAI exposed* and *H5/H7 LPAI infection (infected);* and

■ c. By adding, in alphabetical order, definitions for *H5/H7 LPAI virus actively infected (infectious), H5/H7 LPAI virus exposed (non-infectious), Indemnity,* and *Virus elimination (VE).*

The additions read as follows:

§ 56.1 Definitions.

* * * * *

Cleaning. The removal of gross contamination, organic material, and debris from the premises or respective structures, via mechanical means like sweeping (dry cleaning) and/or the use of water and soap or detergent (wet cleaning), in order to minimize organic material to prepare for effective disinfection.

* * * * *

Compensation. In the case of H5/H7 LPAI detection, compensation specifically refers to reimbursement for the activities associated with the depopulation of infected or exposed poultry, including the disposal of contaminated carcasses and materials and the cleaning and disinfection of premises, conveyances, and materials that came into contact with infected or exposed poultry. In the case of contaminated materials, if the cost of cleaning and disinfection would exceed the value of the materials, or cleaning and disinfection would be impracticable for any reason, APHIS will base compensation on the fair market value (depreciated value) of those materials. Compensation does not include payment for depopulated birds or eggs destroyed (see definition of *Indemnity* in this section).

* * * * *

Disinfection. Methods used on surfaces to destroy or eliminate H5/H7 LPAI virus through physical (*e.g.,* heat) or chemical (*e.g.,* disinfectant) means. A combination of methods may be required.

* * * * *

H5/H7 LPAI virus actively infected (infectious). (1) Poultry will be considered to be infected with H5/H7 LPAI for the purposes of this part if:

(i) H5/H7 LPAI virus has been isolated and identified as such from poultry; or

(ii) Viral antigen or viral RNA specific to the H5 or H7 subtype of AI virus has been detected in poultry.

(2) The official determination that H5/H7 LPAI virus has been isolated and identified, or viral antigen or viral RNA specific to the H5 or H7 subtype of AI virus has been detected, may only be made by the National Veterinary Services Laboratories.

H5/H7 LPAI virus exposed (non-infectious). (1) Poultry will be considered to be exposed (non-infectious) to H5/H7 LPAI for the purposes of this part if:

(i) Antibodies to the H5 or H7 subtype of the AI virus that are not a consequence of vaccination have been detected in poultry; and

(ii) Samples collected from the flock using real-time reverse transcription polymerase chain reaction (RT–PCR) or virus isolation are determined to be not infectious for H5/H7 LPAI.

(2) The official determination that H5/H7 LPAI virus exposure has occurred is by the identification of antibodies to the H5 or H7 subtype of AI virus detected and may only be made by the National Veterinary Services Laboratories.

Indemnity. Payments representing the fair market value of destroyed birds and eggs. Indemnity does not include reimbursements for depopulation, disposal, destroyed materials, or cleaning and disinfection (virus elimination) activities (see definition of *Compensation* in this section).

* * * * *

Virus elimination (VE). Cleaning and disinfection measures conducted to destroy or eliminate all AI virus on an affected premises.

■ 3. Section 56.3 is amended by revising the section heading and paragraphs (a) introductory text and (b) and (c) to read as follows:

§ 56.3 Payment of indemnity and/or compensation.

(a) *Activities eligible for indemnity and/or compensation.* The Administrator may pay indemnity and/or compensation for the activities listed in this paragraph (a), as provided in paragraph (b) of this section:

* * * * *

(b) *Percentage of costs eligible for indemnity.* Except for poultry that are described by the categories in this paragraph (b), the Administrator is authorized to pay 100 percent of the costs and/or compensation, as determined in accordance with § 56.4, of the activities described in paragraphs (a)(1) through (3) of this section, regardless of whether the infected or exposed poultry participate in the Plan. For infected or exposed poultry that are described by the categories in this paragraph (b), the Administrator is authorized to pay 25 percent of the costs of the activities described in paragraphs (a)(1) through (3) of this section:

(1)(i) The poultry are from a breeding flock, commercial flock, or slaughter plant that participates in any Plan program in part 145 or 146 of this chapter but that does not participate in the U.S. Avian Influenza Clean, U.S. H5/H7 Avian Influenza Clean, or U.S. H5/H7 Avian Influenza Monitored program of the Plan available to the flock in part 145 or 146 of this chapter; and

(ii) The poultry are from:

(A) A commercial table-egg laying premises with at least 75,000 birds; or

(B) A meat-type chicken slaughter plant that slaughters at least 200,000 meat-type chickens in an operating week; or

(C) A meat-type turkey slaughter plant that slaughters at least 2 million meat-type turkeys in a 12 month period; or

(D) A commercial waterfowl and commercial upland game bird slaughter plant that slaughters at least 50,000 birds annually; or

(E) A raised-for-release upland game bird premises, raised-for-release waterfowl premises, and commercial upland game bird or commercial waterfowl producing eggs for human consumption premises that raise at least 25,000 birds annually; or

(F) A breeder flock premises with at least 5,000 birds.

(2) The poultry are located in a State that does not participate in the diagnostic surveillance program for H5/H7 LPAI, as described in § 146.14 of this chapter, or that does not have an initial State response and containment plan for H5/H7 LPAI that is approved by APHIS under § 56.10, unless such poultry participate in the Plan with another State that does participate in the diagnostic surveillance program for H5/H7 LPAI, as described in § 146.14 of this chapter, and has an initial State response and containment plan for H5/H7 LPAI that is approved by APHIS under § 56.10.

(c) *Other sources of payment.* If the recipient of indemnity and/or compensation for any of the activities listed in paragraphs (a)(1) through (3) of this section also receives payment for any of those activities from a State or from other sources, the indemnity and/or compensation provided under this part may be reduced by the total amount of payment received from the State or other sources to the extent that total payments do not exceed 100 percent of total reimbursable indemnity and/or compensation amounts.

■ 4. Section 56.4 is revised to read as follows:

§ 56.4 Determination of indemnity and/or compensation amounts.

(a) *Destruction and disposal of poultry.* (1) Indemnity for the destruction of poultry and/or eggs infected with or exposed to H5/H7 LPAI will be based on the fair market value of the poultry and/or eggs, as determined by an appraisal. The appraisal will use the current APHIS appraisal calculator values; if no such calculator value exists, an APHIS official appraiser will provide an appraisal of fair market value. An indemnity request form must be signed by the owners and grower (if applicable) of the poultry and received by APHIS prior to the destruction of the poultry and eggs, unless the owners, grower, APHIS, and the Cooperating State Agency agree in writing that the poultry may be destroyed immediately. Reports of appraisals must show the number of birds and the value per head. Complete inventory records of all birds and/or eggs on the premises must be provided to APHIS prior to the start of depopulation.

(2) Compensation for disposal of poultry and/or eggs infected with or exposed to H5/H7 LPAI will be based on receipts or other documentation maintained by the claimant verifying expenditures for disposal activities authorized by this part. Any disposal of poultry infected with or exposed to H5/H7 LPAI for which compensation is requested must be performed under a compliance agreement between the claimant and APHIS. APHIS will review claims for compensation for disposal to ensure that all expenditures relate directly to activities described in § 56.5 and in the initial State response and containment plan described in § 56.10. If disposal is performed by the Cooperating State Agency, APHIS will compensate the Cooperating State Agency for disposal under a cooperative agreement.

(3) The destruction and disposal of the poultry and/or eggs must be conducted in accordance with the initial State response and containment plan for H5/H7 LPAI, as described in § 56.10.

(b) *Cleaning and disinfection (virus elimination).* (1) Compensation for cleaning and disinfection (virus elimination) of premises, conveyances, and materials that came into contact with poultry that are infected with or exposed to H5/H7 LPAI will be determined using the current APHIS flat-rate virus elimination (VE) calculator in effect at the time of the infection.

(2) For premises types for which a flat-rate VE calculator is not available, reimbursement will be based on receipts or other documentation maintained by the claimant verifying expenditures for cleaning and disinfection (virus elimination) activities authorized by this part. Any cleaning and disinfection (virus elimination) of premises, conveyances, and materials for which compensation is requested must be performed under a compliance agreement between the claimant, the Cooperating State Agency, and APHIS. APHIS will review claims for compensation for cleaning and disinfection (virus elimination) to ensure that all expenditures relate directly to activities described in § 56.5 and in the initial State response and containment plan described in § 56.10.

(i) In the case of materials, if the cost of cleaning and disinfection (virus

elimination) would exceed the value of the materials or cleaning and disinfection (virus elimination) would be impracticable for any reason, compensation for the destruction of the materials will be based on the fair market value (depreciated value) of those materials, as determined by an appraisal. Materials will be appraised by an APHIS official appraiser. Compensation for disposal of the materials will be based on receipts or other documentation maintained by the claimant verifying expenditures for disposal activities authorized by this part. Appraisals of materials must be reported on forms furnished by APHIS and must be signed by the appraisers and by the owners of the materials to indicate agreement with the appraisal amount. Appraisals of materials must be signed and received by APHIS prior to the disassembly or destruction of the materials, unless the owners, APHIS, and the Cooperating State Agency agree in writing that the materials may be disassembled and/or destroyed immediately. Any disposal of materials for which compensation is requested must be performed under a compliance agreement between the claimant, the Cooperating State Agency, and APHIS. APHIS will review claims for compensation for disposal to ensure that all expenditures relate directly to activities described in § 56.5 and in the initial State response and containment plan described in § 56.10.

(ii) [Reserved]

(c) *Requirements for compliance agreements.* The compliance agreement is a comprehensive document that describes the depopulation, disposal, and cleaning and disinfection (virus elimination) plans for poultry that were infected with or exposed to H5/H7 LPAI, or a premises that contained such poultry. The compliance agreement must set out cost estimates that include labor, materials, supplies, equipment, personal protective equipment, and any additional information deemed necessary by APHIS. A compliance agreement must indicate what tasks will be completed, who will be responsible for each task, and how much the work is expected to cost. Once work associated with the compliance agreement is completed, receipts and documentation detailing the activities specified in the agreement should be forwarded to APHIS for review, approval, and final payment. This documentation should be submitted to APHIS no later than 30 days after the quarantine release of the affected or exposed premises.

(Approved by the Office of Management and Budget under control number 0579–0007)

■ 5. Section 56.5 is amended as follows:

■ a. By revising the section heading;

■ b. In paragraph (c)(1) introductory text, by adding the words ''and maintain their current National Poultry Improvement Plan (NPIP) certifications'' after the words ''controlled marketing''; and

■ c. By revising paragraphs (c)(2) and (d).

The revisions read as follows:

§ 56.5 Destruction and disposal of poultry and cleaning and disinfection (virus elimination) of premises, conveyances, and materials.

* * * * *

(c) * * *

(2) Poultry moved for controlled marketing will not be eligible for indemnity under § 56.3. However, any costs related to cleaning and disinfection (virus elimination) of premises, conveyances, and materials that came into contact with poultry that are moved for controlled marketing will be eligible for compensation under § 56.3.

(d) *Cleaning and disinfection (virus elimination) of premises, conveyances, and materials.* Premises, conveyances, and materials that came into contact with poultry infected with or exposed to H5/H7 LPAI must be cleaned and disinfected; *Provided,* that materials for which the cost of cleaning and disinfection would exceed the value of the materials or for which cleaning and disinfection would be impracticable for any reason may be destroyed and disposed. Cleaning and disinfection must be performed in accordance with the initial State response and containment plan described in § 56.10, which must be approved by APHIS. Cleaning and disinfection must also be performed in accordance with any applicable State and local environmental regulations.

■ 6. Section 56.6 is amended as follows:

■ a. By revising the section heading;

■ b. In paragraph (a), by removing the word ''Compensation'' and adding the word ''Indemnity'' in its place;

■ c. By revising paragraph (b); and

■ d. In paragraph (c), by adding the words ''(virus elimination)'' after the word ''disinfection'' each time it appears.

The revisions read as follows:

§ 56.6 Presentation of claims for indemnity and/or compensation.

* * * * *

(b) Indemnity for the value of eggs to be destroyed due to infection or exposure to H5/H7 LPAI; and

* * * * *

■ 7. Section 56.8 is amended as follows:

■ a. In paragraph (a) introductory text, by removing the word ''may'' and adding the word ''shall'' in its place; and

■ b. By revising paragraph (b).

The revision reads as follows:

§ 56.8 Conditions for payment.

* * * * *

(b)(1) If indemnity for the destroyed poultry or eggs is being provided for 100 percent of eligible costs under § 56.3(b), the Administrator may pay contractors eligible for indemnity under this section 100 percent of the amount determined in paragraph (a) of this section.

(2) If indemnity for the destroyed poultry or eggs is being provided for 25 percent of eligible costs under § 56.3(b), the Administrator may pay contractors eligible for indemnity 25 percent of the amount determined in paragraph (a) of this section.

* * * * *

§ 56.9 [Amended]

■ 8. Section 56.9 is amended as follows:

■ a. In paragraph (a), by removing the citation ''§ 56.4(a)(1)'' and adding the citation ''§ 56.4(a)'' in its place; and

■ b. In paragraph (b), by adding the words ''and/or compensation'' after the word ''indemnity'' both times it appears.

§ 56.10 [Amended]

■ 9. In § 56.10, paragraph (a) introductory text is amended by adding the words ''and/or compensation'' after the word ''indemnity''.

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN FOR BREEDING POULTRY

■ 10. The authority citation for part 145 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 11. Section 145.1 is amended as follows:

■ a. By revising the definition for *Avian influenza;*

■ b. By adding a definition for *Newcastle disease* in alphabetical order; and

■ c. By revising the definition for *NPIP Program Standards.*

The revisions and addition read as follows:

§ 145.1 Definitions.

* * * * *

Avian influenza. Avian influenza is defined as an infection of poultry caused by any influenza A virus of the H5 or H7 subtypes or by any influenza A virus with an intravenous

pathogenicity index (IVPI) greater than 1.2 (or as an alternative at least 75 percent mortality).

* * * * *

Newcastle disease. Newcastle disease (ND) is defined as an infection of poultry caused by Newcastle disease virus (NDV), which is an avian paramyxovirus serotype 1 (APMV–1) that meets one of the following criteria for virulence:

(1) The virus has an intracerebral pathogenicity index (ICPI) in day-old chicks (Gallusgallus) of 0.7 or greater; or

(2) Multiple basic amino acids have been demonstrated in the virus (either directly or by deduction) at the C-terminus of the F2 protein and phenylalanine at residue 117, which is the N-terminus of the F1 protein. The term 'multiple basic amino acids' refers to at least three arginine or lysine residues between residues 113 and 116. Failure to demonstrate the characteristic pattern of amino acid residues as described above would require characterization of the isolated virus by an ICPI test.

NPIP Program Standards. A document that contains tests and sanitation procedures approved by the Administrator in accordance with § 147.53 of this subchapter for use under this subchapter. This document may be obtained from the National Poultry Improvement Plan (NPIP) website at *http://www.poultryimprovement.org/* or by writing to the Service at National Poultry Improvement Plan, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094.

* * * * *

■ 12. Section 145.7 is revised to read as follows:

§ 145.7 Specific provisions for participating dealers.

Dealers in hatching eggs, newly hatched poultry, or started poultry shall comply with the provisions in this part (within the NPIP Program Standards document, Program Standard C applies to hatcheries; alternatives to the program standards may also be approved by the Administrator under § 147.53).

■ 13. Section 145.14 is amended as follows:

■ a. By revising paragraphs (d)(1) and (2) introductory text; and

■ b. By adding paragraph (e).

The revisions and addition read as follows:

§ 145.14 Testing.

* * * * *

(d) * * *

(1) *Antibody detection tests*—(i) *ELISA test.* (A) The ELISA test must be conducted using test kits approved by the Department and the Official State Agency and must be conducted in accordance with the recommendations of the producer or manufacturer.

(B) When positive ELISA samples are identified, an AGID test must be conducted within 48 hours.

(ii) *Agar gel immunodiffusion (AGID) test.* (A) The AGID test must be conducted using reagents approved by the Department and the Official State Agency.

(B) The AGID test for avian influenza must be conducted in accordance with this section (within the NPIP Program Standards document, Program Standard A applies to blood and yolk testing procedures; alternatives to the program standards may also be approved by the Administrator under § 147.53) for the avian influenza agar gel immunodiffusion (AGID) test. The test can be conducted on egg yolk or blood samples. The AGID test is not recommended for use in waterfowl.

(C) Positive tests for the AGID must be further tested by Federal Reference Laboratories using appropriate tests for confirmation. Final judgment may be based upon further sampling and appropriate tests for confirmation.

(2) *Agent detection tests.* Agent detection tests may be used to detect influenza A virus but not to determine hemagglutinin or neuraminidase subtypes. Samples for agent detection testing should be collected from naturally occurring flock mortality or clinically ill birds.

* * * * *

(e) *For Newcastle Disease (ND).* The official tests for ND are serological tests for antibody detection or molecular-based tests for antigen detection.

* * * * *

§ 145.23 [Amended]

■ 14. Section 145.23 is amended as follows:

■ a. By removing paragraphs (d)(1)(vi) and (vii) and redesignating paragraphs (d)(1)(viii) and (ix) as paragraphs (d)(1)(vi) and (vii), respectively; and

■ b. By removing paragraph (d)(3) and redesignating paragraphs (d)(4) and (5) as paragraphs (d)(3) and (4), respectively.

§ 145.24 [Amended]

■ 15. In § 145.24, paragraph (a)(1)(i) is amended by removing ''§ 145.23(b)(3)(i) through (vii), § 145.33(b)(3)(i) through (vii), § 145.43(b)(3)(i) through (vi), § 145.53(b)(3)(i) through (vii), § 145.73(b)(2)(i), § 145.83(b)(2)(i), and § 145.93(b)(3)(i) through (vii)'' and adding ''§§ 145.23(b)(3)(i) through (vii), 145.33(b)(3)(i) through (vii), 145.43(b)(3)(i) through (vi), 145.53(b)(3)(i) through (vii), 145.73(b)(2)(i), 145.83(b)(2)(i), 145.93(b)(3)(i) through (vii), and 145.103(b)(3)(i) through (ix)'' in its place.

■ 16. Section 145.33 is amended as follows:

■ a. In paragraph (l)(1)(ii), by removing the number ''30'' and adding the number ''15'' in its place; and

■ b. By revising paragraph (l)(2).

The revision reads as follows:

§ 145.33 Terminology and classification; flocks and products.

* * * * *

(l) * * *

(2) During each 90-day period, all multiplier spent fowl, up to a maximum of 30, must be tested and found negative for avian influenza within 21 days prior to movement to slaughter.

* * * * *

§ 145.34 [Amended]

■ 17. In § 145.34, paragraph (a)(1)(i) is amended by removing ''§ 145.23(b)(3)(i) through (vii), § 145.33(b)(3)(i) through (vii), § 145.43(b)(3)(i) through (vi), § 145.53(b)(3)(i) through (vii), § 145.73(b)(2)(i), § 145.83(b)(2)(i), and § 145.93(b)(3)(i) through (vii)'' and adding ''§§ 145.23(b)(3)(i) through (vii), 145.33(b)(3)(i) through (vii), 145.43(b)(3)(i) through (vi), 145.53(b)(3)(i) through (vii), 145.73(b)(2)(i), 145.83(b)(2)(i), 145.93(b)(3)(i) through (vii), and 145.103 (b)(3)(i) through (ix)'' in its place.

■ 18. Section 145.43 is amended by adding paragraph (h) to read as follows:

§ 145.43 Terminology and classification; flocks and products.

* * * * *

(h) *U.S. Newcastle Disease Clean.* The program in this paragraph (h) is intended to be the basis from which the breeding-hatchery industry may conduct a program for the prevention and control of Newcastle disease. It is intended to determine the presence of Newcastle disease in primary breeding turkeys through vaccination and/or monitoring of each participating breeding flock. A flock and the hatching eggs and poults produced from it will qualify for the classification in this paragraph (h) when the Official State Agency determines that they have met the following requirements:

(1) It is a primary breeding flock that is either:

(i) Vaccinated for Newcastle disease using USDA-licensed vaccines and response to vaccination is serologically monitored using an approved test as

described in § 145.14 when more than 4 months of age, and meets the criteria in paragraph (h)(2) of this section to retain classification; or

(ii) Unvaccinated for Newcastle disease, in which a minimum of 30 birds have tested negative to ND using an approved test as described in § 145.14 when more than 4 months of age and meets the criteria in paragraph (h)(3) of this section to retain classification.

(2) To retain the classification in this paragraph (h), for vaccinated flocks:

(i) Vaccines for ND must be USDA-licensed vaccines administered during early stages of development through rearing, and inactivated vaccines as final vaccination prior to the onset of egg production; and

(ii) The flock has been monitored for antibody response using approved serological tests as listed in § 145.14 and the results are compatible with immunological response against ND vaccination; and

(iii) Testing must include a minimum of 30 birds with a serologic monitoring program when more than 4 months of age and prior to the onset of production and not longer than every 90 days thereafter.

(3) To retain the classification in this paragraph (h) for unvaccinated flocks:

(i) A minimum of 30 birds per flock must test negative using an approved test in § 145.14 at intervals of 90 days; or

(ii) A sample of fewer than 30 birds may be tested, and found negative, at any one time if all pens are equally represented and a total of 30 birds is tested within each 90-day period; and

(iii) During each 90-day period, all primary spent fowl, up to a maximum of 30, must test negative to ND within 21 days prior to movement to slaughter.

(4) Newcastle disease must be a disease reportable to the responsible State authority (State veterinarian, etc.) by all licensed veterinarians. To accomplish this, all laboratories (private, State, and university laboratories) that perform diagnostic procedures on poultry must examine all submitted cases of unexplained respiratory disease, egg production drops, and mortality for ND.

* * * * *

§ 145.44 [Amended]

■ 19. In § 145.44, paragraph (a)(1)(i) is amended by removing ''§ 145.23(b)(3)(i) through (vii), § 145.33(b)(3)(i) through (vii), § 145.43(b)(3)(i) through (vi), § 145.53(b)(3)(i) through (vii), § 145.73(b)(2)(i), § 145.83(b)(2)(i), and § 145.93(b)(3)(i) through (vii)'' and adding ''§§ 145.23(b)(3)(i) through (vii), 145.33(b)(3)(i) through (vii), 145.43(b)(3)(i) through (vi), 145.53(b)(3)(i) through (vii), 145.73(b)(2)(i), § 145.83(b)(2)(i), 145.93(b)(3)(i) through (vii), and 145.103(b)(3)(i) through (ix)'' in this place.

■ 20. Section 145.45 is amended as follows:

■ a. By revising paragraph (a) introductory text;

■ b. In paragraph (a)(1) introductory text, by adding the words ''and ND'' after the word ''AI'' each time it appears;

■ c. In paragraph (a)(1)(i):

■ i. By adding the words ''and ND Clean in accordance with § 145.43(h)'' after the citation ''§ 145.43(g)'';

■ ii. By adding the words ''and ND'' after the words ''official tests for AI'' and adding the words ''and (e)'' after the citation ''§ 145.14(d)''; and

■ iii. By removing the word ''AI-related'' and adding the words ''AI and ND-related'' in its place;

■ d. In paragraphs (a)(1)(iii) introductory text, (a)(1)(iii)(B) and (E), and (a)(1)(v), by adding the words ''and ND'' after the word ''AI'' each time it appears;

■ e. In paragraph (a)(1)(vi), by adding the words ''and ND'' after the word ''Influenza'';

■ f. In paragraph (a)(2)(iii):

■ i. By removing the words ''Clean classification'' and adding the words ''and ND Clean classifications'' in their place;

■ ii. By adding the words ''and ND'' after the word ''AI'' both times it appears; and

■ iii. By removing the words ''avian influenza surveillance'' and adding the words ''avian influenza and ND surveillance'' in their place;

■ g. In paragraph (a)(3)(iii), by adding the words ''and ND'' after the word ''Influenza'';

■ h. In paragraph (a)(3)(iv), by adding the words ''and ND Clean program as described in § 145.43(h)'' after the citation ''§ 145.43(g)''; and

■ i. In paragraph (a)(3)(vii), by adding the words ''and (h)'' after the citation ''145.43(g)''.

The revision reads as follows:

§ 145.45 Terminology and classification; compartments.

(a) *US H5/H7 AI and ND Clean Compartment.* The program in this section is intended to be the basis from which the primary turkey breeding-hatchery industry may demonstrate the existence and implementation of a program that has been approved by the Official State Agency and APHIS to establish a compartment consisting of a primary breeding-hatchery company that is free of H5/H7 avian influenza (AI) and ND. This compartment has the purpose of protecting the defined subpopulation and avoiding the introduction and spread of H5/H7 AI and ND within that subpopulation by prohibiting contact with other commercial poultry operations, other domestic and wild birds, and other intensive animal operations. The program shall consist of the following:

* * * * *

■ 21. The heading for subpart E, consisting of §§ 145.51 through 146.54, is revised to read as follows:

Subpart E—Special Provisions for Hobbyist and Exhibition Poultry, and Raised-for-Release Waterfowl Breeding Flocks and Products

■ 22. Section 145.51 is amended as follows:

■ a. By removing the definition for *Game birds;*

■ b. By adding, in alphabetical order, definitions for *Hobbyist poultry* and *Raised-for-release waterfowl;* and

■ c. By removing the definition for *Waterfowl.*

The additions read as follows:

§ 145.51 Definitions.

* * * * *

Hobbyist poultry. Domesticated fowl which are bred for the purposes of meat and/or egg production on a small scale as determined by the Official State Agency.

Raised-for-release waterfowl. Domesticated fowl that normally swim, such as ducks and geese, grown under confinement for the primary purpose of producing eggs, chicks, started, or mature birds for release on game preserves or in the wild.

■ 23. Section 145.52 is amended as follows:

■ a. By revising the introductory text;

■ b. In paragraph (c), by removing the words ''in open air facilities''; and

■ c. By adding paragraph (f).

The revision and addition read as follows:

§ 145.52 Participation.

Participating flocks of hobbyist and exhibition poultry, raised-for-release waterfowl, and the eggs, chicks, started, and mature poultry produced from them shall comply with the applicable general provisions of subpart A of this part and the special provisions of this subpart. The special provisions that apply to meat-type waterfowl flocks are found in subpart I of this part. The special provisions that apply to game

bird flocks are found in subpart J of this part.

* * * * *

(f) All participating raised-for-release waterfowl flocks, regardless of whether they are breeders or non-breeders, shall be enrolled under this subpart.

■ 24. Section 145.53 is amended as follows:

■ a. In paragraph (b)(5), by removing the words ''exhibition waterfowl or''; and

■ b. By revising paragraph (f).

The revision reads as follows:

§ 145.53 Terminology and classification; flocks and products.

* * * * *

(f) *U.S. Salmonella Monitored.* The program in this paragraph (f) is intended to be the basis from which the breeding-hatching industry may conduct a program for the prevention and control of salmonellosis. It is intended to reduce the incidence of Salmonella organisms in hatching eggs and day-old poultry through an effective and practical sanitation and testing program at the breeder farm and in the hatchery. This will afford other segments of the poultry industry an opportunity to reduce the incidence of *Salmonella* in their products. The following requirements must be met for a flock or hatchery to be eligible for the classification in this paragraph (f) as determined by the Official State Agency:

(1) Hatcheries must be kept in a sanitary condition as applicable and as outlined in § 145.6 (within the NPIP Program Standards document, Program Standard C applies to hatcheries; alternatives to the program standards may also be approved by the Administrator under § 147.53).

(2) An Authorized Agent shall collect and submit to an authorized laboratory:

(i) A minimum of five samples from the hatchery at least every 30 days while in operation. These samples may include: Hatchery debris, swabs from hatchers, setters, hatchery environment, hatchery equipment, sexing tables and belts, meconium, chick box papers, hatching trays, or chick transfer devices. Samples will be examined bacteriologically at an authorized laboratory for *Salmonella;* and

(ii) Annual environmental samples from each pullet and breeder farm in accordance with this section (within the NPIP Program Standards document, Program Standard B applies to bacteriological examination procedures; alternatives to the program standards may also be approved by the Administrator under § 147.53). Samples will be examined bacteriologically at an authorized laboratory for *Salmonella.*

(3) If *Salmonella* is identified through this testing:

(i) A qualified poultry health professional knowledgeable with the operation will be consulted and will:

(A) Review test results to evaluate the *Salmonella* monitoring program.

(B) Use the *Salmonella* monitoring program test results to develop appropriate and practical *Salmonella* intervention measures.

(ii) [Reserved]

(4) To claim products are of the classification in this paragraph (f), all products shall be derived from a farm or hatchery that meets the requirements of the classification.

* * * * *

§ 145.54 [Amended]

■ 25. In § 145.54, paragraph (a)(1)(i) is amended by removing ''§ 145.23(b)(3)(i) through (vii), § 145.33(b)(3)(i) through (vii), § 145.43(b)(3)(i) through (vi), § 145.53(b)(3)(i) through (vii), § 145.73(b)(2)(i), § 145.83(b)(2)(i), and § 145.93(b)(3)(i) through (vii)'' and adding ''§§ 145.23(b)(3)(i) through (vii), 145.33(b)(3)(i) through (vii), 145.43(b)(3)(i) through (vi), 145.53(b)(3)(i) through (vii), 145.73(b)(2)(i), 145.83(b)(2)(i), 145.93(b)(3)(i) through (vii), and 145.103(b)(3)(i) through (ix)'' in its place.

■ 26. Section 145.73 is amended as follows:

■ a. By removing paragraphs (d)(1)(vi) and (vii) and redesignating paragraphs (d)(1)(viii) and (ix) as paragraphs (d)(1)(vi) and (vii), respectively;

■ b. By removing paragraph (d)(3) and redesignating paragraphs (d)(4) and (5) as paragraphs (d)(3) and (4), respectively; and

■ c. By adding paragraph (h).

The addition reads as follows:

§ 145.73 Terminology and classification; flocks and products.

* * * * *

(h) *U.S. Newcastle Disease Clean.* The program in this paragraph (h) is intended to be the basis from which the breeding-hatchery industry may conduct a program for the prevention and control of Newcastle disease. It is intended to determine the presence of Newcastle disease in primary breeding chickens through vaccination and/or monitoring of each participating breeding flock. A flock and the hatching eggs and chicks produced from it will qualify for the classification in this paragraph (h) when the Official State Agency determines that they have met the following requirements:

(1) It is a primary breeding flock that is either:

(i) Vaccinated for Newcastle disease using USDA-licensed vaccines and response to vaccination is serologically monitored using an approved test as described in § 145.14 when more than 4 months of age and meets the criteria in paragraph (h)(2) of this section to retain classification; or

(ii) Unvaccinated for Newcastle disease, in which a minimum of 30 birds have tested negative to ND using an approved test as described in § 145.14 when more than 4 months of age and meets criteria in paragraph (h)(3) of this section to retain classification.

(2) To retain the classification in this paragraph (h), for vaccinated flocks:

(i) Vaccines for ND must be USDA-licensed vaccines administered during early stages of development through rearing, and inactivated vaccines as final vaccination prior to the onset of egg production; and

(ii) The flock has been monitored for antibody response using approved serological tests as listed in § 145.14 and the results are compatible with immunological response against ND vaccination; and

(iii) Testing must include a minimum of 30 birds with a serologic monitoring program when more than 4 months of age and prior to the onset of production and not longer than every 90 days thereafter.

(3) To retain the classification in this paragraph (h) for unvaccinated flocks:

(i) A minimum of 30 birds per flock must test negative using an approved test as described in § 145.14 at intervals of 90 days; or

(ii) A sample of fewer than 30 birds may be tested, and found negative, at any one time if all pens are equally represented and a total of 30 birds is tested within each 90-day period; and

(iii) During each 90-day period, all primary spent fowl, up to a maximum of 30, must test negative to ND within 21 days prior to movement to slaughter.

(4) Newcastle disease must be a disease reportable to the responsible State authority (State veterinarian, etc.) by all licensed veterinarians. To accomplish this, all laboratories (private, State, and university laboratories) that perform diagnostic procedures on poultry must examine all submitted cases of unexplained respiratory disease, egg production drops, and mortality for ND.

■ 27. Section 145.74 is amended as follows:

■ a. In paragraph (a) introductory text, by revising the paragraph heading, adding the words ''and Newcastle disease (ND)'' after the word ''(AI)'', and

adding the words ''and ND'' after the word ''AI'';
■ b. In paragraph (a)(1) introductory text, by adding the words ''and ND'' after the word ''AI'' each time it appears;
■ c. In paragraph (a)(1)(i):
■ i. By adding the words ''and ND Clean in accordance with § 145.73(h)'' after the words ''in accordance with § 145.73(f)'';
■ ii. By adding the words ''and ND'' after the words ''official tests for AI'' and adding the words ''and (e)'' after the citation ''§ 145.14(d)''; and
■ iii. By removing the word ''AI-related'' and adding the words ''AI and ND-related'' in its place;
■ d. In paragraphs (a)(1)(iii), (a)(1)(iii)(B) and (E), and (a)(1)(v), by adding the words ''and ND'' after the word ''AI'' each time it appears;
■ e. In paragraph (a)(1)(vi), by adding the words ''and ND'' after the word ''Influenza'';
■ f. In paragraph (a)(2)(iii):
■ i. By removing the words ''Clean classification'' and adding the words ''and ND Clean classifications'' in their place;
■ ii. By adding the words ''and ND'' after the word ''AI'' both times it appears; and
■ iii. By removing the words ''avian influenza surveillance'' and adding the words ''avian influenza and ND surveillance'' in their place;
■ g. In paragraph (a)(3)(iii), by adding the words ''and ND'' after the word ''Influenza'';
■ h. In paragraph (a)(3)(iv), by adding the words ''and ND Clean program as described in § 145.73(h)'' after the citation ''§ 145.73(f)'';
■ i. In paragraph (a)(3)(vii), by adding the words ''and (h)'' after the citation ''145.73(f); and
■ j. In paragraph (a)(4), by adding the words ''and/or ND'' after the word ''AI'' both times it appears.

The revision reads as follows:

§ 145.74 Terminology and classification; compartments.

(a) *U.S. Avian Influenza and Newcastle Disease Clean Compartment.* * * *

* * * * *

■ 28. Section 145.83 is amended as follows:
■ a. By removing paragraph (e)(1)(iv) and redesignating paragraphs (e)(1)(v) and (vi) as paragraphs (e)(1)(iv) and (v), respectively; and
■ b. By adding paragraph (h).

The addition reads as follows:

§ 145.83 Terminology and classification; flocks and products.

* * * * *

(h) *U.S. Newcastle Disease (ND) Clean.* The program in this paragraph (h) is intended to be the basis from which the breeding-hatchery industry may conduct a program for the prevention and control of Newcastle disease. It is intended to determine the presence of Newcastle disease in primary breeding chickens through vaccination and/or monitoring of each participating breeding flock. A flock and the hatching eggs and chicks produced from it will qualify for the classification in this paragraph (h) when the Official State Agency determines that they have met the following requirements:

(1) It is a primary breeding flock that is either:

(i) Vaccinated for Newcastle disease using USDA-licensed vaccines and response to vaccination is serologically monitored using an approved test as described in § 145.14 when more than 4 months of age and meets the criteria in paragraph (h)(2) of this section to retain classification; or

(ii) Unvaccinated for Newcastle disease, in which a minimum of 30 birds have tested negative to ND using an approved test as described in § 145.14 when more than 4 months of age and meets criteria in paragraph (h)(3) of this section to retain classification.

(2) To retain the classification in this paragraph (h), for vaccinated flocks:

(i) Vaccines for ND must be USDA-licensed vaccines administered during early stages of development through rearing, and inactivated vaccines as final vaccination prior to the onset of egg production; and

(ii) The flock has been monitored for antibody response using approved serological tests as described in § 145.14 and the results are compatible with immunological response against ND vaccination; and

(iii) Testing must include a minimum of 30 birds with a serologic monitoring program when more than 4 months of age and prior to the onset of production, and not longer than every 90 days thereafter.

(3) To retain the classification in this paragraph (h) for unvaccinated flocks:

(i) A minimum of 30 birds per flock must test negative using an approved test as described in § 145.14 at intervals of 90 days; or

(ii) A sample of fewer than 30 birds may be tested, and found negative, at any one time if all pens are equally represented and a total of 30 birds is tested within each 90-day period; and

(iii) During each 90-day period, all primary spent fowl, up to a maximum of 30, must test negative to ND within 21 days prior to movement to slaughter.

(4) Newcastle disease must be a disease reportable to the responsible State authority (State veterinarian, etc.) by all licensed veterinarians. To accomplish this, all laboratories (private, State, and university laboratories) that perform diagnostic procedures on poultry must examine all submitted cases of unexplained respiratory disease, egg production drops, and mortality for ND.

■ 29. Section 145.84 is amended as follows:
■ a. In paragraph (a) introductory text, by revising the heading, adding the words ''and Newcastle disease (ND)'' after the words ''influenza (AI)'', and adding the words ''and ND'' after the words ''H5/H7 AI'';
■ b. In paragraph (a)(1) introductory text, by adding the words ''and ND'' after the word ''AI'' each time it appears;
■ c. By revising paragraph (a)(1)(i);
■ d. In paragraphs (a)(1)(iii) introductory text, (a)(1)(iii)(B) and (E), and (a)(1)(v), by adding the words ''and ND'' after the word ''AI'' each time it appears;
■ e. In paragraph (a)(1)(vi), by adding the words ''and ND'' after the word ''Influenza'';
■ f. In paragraph (a)(2)(iii):
■ i. Removing the words ''Clean classification'' and adding the words ''and ND Clean classifications'' in their place;
■ ii. Adding the words ''and ND'' after the word ''AI'' both times it appears; and
■ iii. Removing the words ''avian influenza surveillance'' and adding the words ''avian influenza and ND surveillance'' in their place;
■ g. In paragraph (a)(3)(iv), by adding the words ''and ND Clean program as described in § 145.83(h)'' after the citation ''§ 145.83(g)''; and
■ h. In paragraph (a)(3)(vii), by adding the words '' and (h)'' after the citation ''145.83(g)''.

The revisions read as follows:

§ 145.84 Terminology and classification; compartments.

(a) *U.S. Avian Influenza and Newcastle Disease Clean Compartment.* * * *

(1) * * *

(i) *Definition and description of the subpopulation of birds and their health status.* All birds included in the compartment must be U.S. Avian Influenza Clean in accordance with § 145.83(g) and ND Clean in accordance with § 145.83(h). The poultry must also be located in a State that has an initial State response and containment plan approved by APHIS under § 56.10 of

this chapter and that participates in the diagnostic surveillance program for H5/H7 low pathogenicity AI as described in § 145.15. Within the compartment, all official tests for AI and ND, as described in § 145.14(d) and (e), must be conducted in State or Federal laboratories or in NPIP authorized laboratories that meet the minimum standards described in § 147.52 of this subchapter. In addition, the company must provide to the Service upon request any relevant historical and current H5/H7 AI and ND-related data for reference regarding surveillance for the disease and the health status of the compartment. Upon request, the Official State Agency may provide such data for other commercial poultry populations located in the State.

* * * * *

§ 145.94 [Amended]

■ 30. In § 145.94, paragraph (a)(1)(i) is amended by removing the word ''and'' and adding the words '', and 145.103(b)(3)(i) through (ix)'' after the words ''145.93(b)(3)(i) through (vii)''.

■ 31. Subpart J, consisting of §§ 145.101 through 145.104, is added to read as follows:

Subpart J—Special Provisions for Egg/Meat-Type Game Bird and Raised-for-Release Game Bird Breeding Flocks and Products

Sec.

145.101 Definitions.
145.102 Participation.
145.103 Terminology and classification; flocks and products.
145.104 Terminology and classification; States.

Subpart J—Special Provisions for Egg/Meat-Type Game Bird and Raised-for-Release Game Bird Breeding Flocks and Products

§ 145.101 Definitions.

Except where the context otherwise requires, for the purposes of this subpart the following terms shall be construed, respectively, to mean:

Egg/meat-type bird. Birds grown under confinement for the primary purpose of producing eggs and/or meat for human consumption.

Game birds. Domesticated fowl such as pheasants, partridge, quail, grouse, and guineas, but not doves and pigeons.

Raised-for-release bird. Birds grown under confinement for the primary purpose of producing eggs, chicks, started, or mature birds for release on game preserves or in the wild.

§ 145.102 Participation.

Participating flocks of egg/meat-type game birds, raised-for-release game birds, and the products produced from them shall comply with the applicable general provisions of subpart A of this part and the special provisions of this subpart. Participation is broken into the following categories of operation and products:

(a) The categories for operation are:

(1) *Breeder.* An individual or business that maintains a breeding flock for the purpose of producing eggs, chicks, started, or mature birds. A breeder that is also a hatchery and/or grower shall be categorized as a breeder.

(2) *Hatchery.* A category of operations in which an individual or business does not have a breeding flock, but hatches eggs for the purpose of producing chicks, started, or mature birds. A hatchery that is also a grower shall be categorized as a hatchery.

(3) *Grower.* A category of operations in which an individual or business does not have a breeding flock or hatchery, but raises birds for the purpose of selling started or mature birds.

(4) *Dealer.* An individual or business that resells eggs, chicks, started, or mature birds. Products a dealer handles are typically resold within 30 days or less.

(b) The categories for products are:

(1) *Egg.* An egg laid by a female bird for the purpose of hatching a chick.

(2) *Chick.* A bird that is newly hatched from an egg.

(3) *Started Bird.* A bird that is between the age of a newly hatched chick and a mature bird.

(4) *Mature Bird.* A bird that is fully colored and has reached the average maximum size specific to each species.

(c) Products shall lose their identity under Plan terminology when not maintained by Plan participants under the conditions prescribed in § 145.5(a).

(d) Hatching eggs produced by breeding flocks shall be nest clean, fumigated, or otherwise sanitized in accordance with part 147 of this subchapter.

(e) It is recommended that gallinaceous flocks and waterfowl flocks be kept separate.

(f) Any nutritive material provided to baby poultry must be free of the avian pathogens that are officially represented in the Plan disease classifications listed in § 145.10.

(g) A flock of game birds that are not breeders, but are located on the same premise as game bird breeders, shall be covered under the same NPIP hatchery approval number as long as the appropriate testing requirements have been met.

(h) All participating raised-for-release game bird flocks, regardless of whether they are breeders or non-breeders, shall be enrolled under this subpart.

(i) A breeder, hatchery, or grower may also be a dealer without being categorized as a dealer. To resell products under the assigned NPIP number and avoid losing NPIP flock classifications, products must be purchased from an NPIP participant with equal or greater classifications or from a flock with equivalent or greater testing requirements under official supervision.

(j) Subject to the approval of the Service and the Official State Agencies in the importing and exporting States, participating flocks may report poultry sales to importing States by using either VS Form 9–3, ''Report of Sales of Hatching Eggs, Chicks, and Poults,'' or by using an invoice form (9–3I) approved by the Official State Agency and the Service to identify poultry sales to clients. If the 9–3I form is used, the following information must be included on the form:

(1) The form number ''9–3I'', printed or stamped on the invoice;

(2) The seller name and address;

(3) The date of shipment;

(4) The invoice number;

(5) The purchaser name and address;

(6) The quantity of products sold;

(7) Identification of the products by bird variety or by NPIP stock code as listed in the NPIP APHIS 91–55–078 appendix; and

(8) The appropriate NPIP illustrative design in § 145.10. One of the designs in § 145.10(b) or (g) must be used. The following information must be provided in or near the NPIP design:

(i) The NPIP State number and NPIP approval number; and

(ii) The NPIP classification for which product is qualified (*e.g.,* U.S. Pullorum-Typhoid Clean).

§ 145.103 Terminology and classification; flocks and products.

Participating flocks, and the eggs, chicks, started, and mature birds produced from them, which have met the respective requirements specified in this section may be designated by the following terms and the corresponding designs illustrated in § 145.10.

(a) [Reserved]

(b) *U.S. Pullorum-Typhoid Clean.* A flock in which freedom from pullorum and typhoid has been demonstrated to the Official State Agency under the criteria in this paragraph (b). (See § 145.14 relating to the official blood test where applicable.):

(1) It has been officially blood tested with either no reactors or reactors that, upon further bacteriological examination conducted in accordance with part 147 of this subchapter, fail to isolate *S. pullorum* or *S. gallinarum.*

(2) It is a started or mature bird flock that meets the following specifications as determined by the Official State Agency and the Service:

(i) The flock is located in a State where all persons performing poultry disease diagnostic services within the State are required to report to the Official State Agency within 48 hours the source of all poultry specimens from which *S. pullorum* or *S. gallinarum* is isolated;

(ii) The flock is composed entirely of birds that originated from U.S. Pullorum-Typhoid Clean breeding flocks or from flocks that met equivalent requirements under official supervision; and

(iii) The flock is located on a premises where a flock not classified as U.S. Pullorum-Typhoid Clean was located the previous year; *Provided,* That an Authorized Testing Agent must blood test up to 300 birds per flock, as described in § 145.14, if the Official State Agency determines that the flock has been exposed to pullorum-typhoid. In making determinations of exposure and setting the number of birds to be blood tested, the Official State Agency shall evaluate the results of any blood tests, described in § 145.14(a)(1), that were performed on an unclassified flock located on the premises during the previous year; the origins of the unclassified flock; and the probability of contacts between the flock for which qualification is being sought and infected wild birds, contaminated feed or waste, or birds, equipment, supplies, or personnel from flocks infected with pullorum-typhoid.

(3) It is a breeding flock that originated from U.S. Pullorum-Typhoid Clean breeding flocks or from flocks that met equivalent requirements under official supervision, and in which a sample of 300 birds from flocks of more than 300, and each bird in flocks of 300 or less, has been officially tested for pullorum-typhoid: *Provided,* That a bacteriological examination monitoring program or serological examination monitoring program for game birds acceptable to the Official State Agency and approved by the Service may be used in lieu of annual blood testing: *And provided further,* That it is located in a State in which it has been determined by the Service that:

(i) All hatcheries within the State are qualified as ''National Plan Hatcheries'' or have met equivalent requirements for pullorum-typhoid control under official supervision;

(ii) All hatchery supply flocks within the State, are qualified as U.S. Pullorum-Typhoid Clean or have met equivalent requirements for pullorum-typhoid control under official supervision: *Provided,* That if other domesticated fowl, except waterfowl, are maintained on the same premises as the participating flock, freedom from pullorum-typhoid infection shall be demonstrated by an official blood test of each of these fowl;

(iii) All shipments of products other than U.S. Pullorum-Typhoid Clean, or equivalent, into the State are prohibited;

(iv) All persons performing poultry disease diagnostic services within the State are required to report to the Official State Agency within 48 hours the source of all poultry specimens from which *S. pullorum* or *S. gallinarum* is isolated;

(v) All reports of any disease outbreak involving a disease covered under the Plan are promptly followed by an investigation by the Official State Agency to determine the origin of the infection; *Provided,* That if the origin of the infection involves another State, or if there is exposure to poultry in another State from the infected flock, then the National Poultry Improvement Plan will conduct an investigation;

(vi) All flocks found to be infected with pullorum or typhoid are quarantined until marketed or destroyed under the supervision of the Official State Agency, or until subsequently blood tested, following the procedure for reacting flocks as contained in § 145.14(a)(5), and all birds fail to demonstrate pullorum or typhoid infection;

(vii) All poultry, including exhibition, exotic, and game birds, but excluding waterfowl, going to public exhibition shall come from U.S. Pullorum-Typhoid Clean or equivalent flocks, or have had a negative pullorum-typhoid test within 90 days of going to public exhibition; and

(viii) The flock is located in a State in which pullorum disease or fowl typhoid is not known to exist nor to have existed in hatchery supply flocks within the State during the preceding 24 months.

(ix) Discontinuation of any of the conditions or procedures described in paragraphs (b)(3)(i) through (viii) of this section, or the occurrence of repeated outbreaks of pullorum or typhoid in poultry breeding flocks within or originating within the State shall be grounds for the Service to revoke its determination that such conditions and procedures have been met or complied with. Such action shall not be taken until a thorough investigation has been made by the Service and the Official State Agency has been given an opportunity to present its views.

(c) *U.S. H5/H7 Avian Influenza Clean.* The program in this paragraph (c) is intended to be the basis from which the game bird industry may conduct a program for the prevention and control of the H5 and H7 subtypes of avian influenza. It is intended to determine the presence of the H5 and H7 subtypes of avian influenza in game bird flocks through routine surveillance of each participating flock. A flock or premise, and the hatching eggs, chicks, started, and mature birds produced from it, will qualify for the classification in this paragraph (c) when the Official State Agency determines that it has met the following requirements:

(1) It is a flock in which a minimum of 30 birds has been tested negative to the H5 and H7 subtypes of avian influenza as provided in § 145.14(d) when more than 4 months of age. To retain the classification in this paragraph (c):

(i) A sample of at least 30 birds must be tested negative at intervals of 90 days; or

(ii) A sample of fewer than 30 birds may be tested, and found to be negative, at any one time if all pens are equally represented and a total of 30 birds are tested within each 90-day period.

(2) For participants with non-breeding flocks retained for raised-for-release or other purposes on the same premises as a breeding flock, a representative sample of at least 30 birds from the participating premise must be tested negative to the H5 and H7 subtypes of avian influenza as provided in § 145.14(d) when more than 4 months of age, every 90 days.

(d) *U.S. Salmonella Monitored.* The program in this paragraph (d) is intended to be the basis from which the game bird industry may conduct a program for the prevention and control of salmonellosis. It is intended to reduce the incidence of *Salmonella* organisms in day-old poultry through an effective and practical sanitation program in the hatchery. This will afford other segments of the poultry industry an opportunity to reduce the incidence of *Salmonella* in their products. The following requirements must be met for a flock to be of the classification in this paragraph (d):

(1) An Authorized Agent shall collect a minimum of five environmental samples, *e.g.,* chick papers, hatching trays, and chick transfer devices, from the hatchery at least every 30 days. Testing must be performed at an authorized laboratory.

(2) To claim products are of the classification in this paragraph (d), all products shall be derived from a hatchery that meets the requirements of the classification.

(3) The classification in this paragraph (d) may be revoked by the Official State Agency if the participant fails to follow recommended corrective measures.

§ 145.104 Terminology and classification; States.

(a) *U.S. Pullorum-Typhoid Clean State.* (1) A State will be declared a U.S. Pullorum-Typhoid Clean State when it has been determined by the Service that:

(i) The State is in compliance with the provisions contained in §§ 145.23(b)(3)(i) through (vii), 145.33(b)(3)(i) through (vii), 145.43(b)(3)(i) through (vi), 145.53(b)(3)(i) through (vii), 145.73(b)(2)(i), 145.83(b)(2)(i), 145.93(b)(3)(i) through (vii), and 145.103(b)(3)(i) through (ix).

(ii) No pullorum disease or fowl typhoid is known to exist nor to have existed in hatchery supply flocks within the State during the preceding 12 months: *Provided,* That pullorum disease or fowl typhoid found within the preceding 24 months in waterfowl, exhibition poultry, and game bird breeding flocks will not prevent a State, which is otherwise eligible, from qualifying.

(2) Discontinuation of any of the conditions described in paragraph (a)(1)(i) of this section, or repeated outbreaks of pullorum or typhoid occur in hatchery supply flocks described in paragraph (a)(1)(ii) of this section, or if an infection spreads from the originating premises, the Service shall have grounds to revoke its determination that the State is entitled to the classification in this paragraph (a). Such action shall not be taken until a thorough investigation has been made by the Service and the Official State Agency has been given an opportunity for a hearing in accordance with rules of practice adopted by the Administrator.

(b) [Reserved]

PART 146—NATIONAL POULTRY IMPROVEMENT PLAN FOR COMMERCIAL POULTRY

■ 32. The authority citation for part 146 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 33. Section 146.13 is amended as follows:

■ a. By revising paragraph (b)(1); and

■ b. In paragraph (b)(2) introductory text, by removing the words ''matrix gene or protein'' and adding the word ''virus'' in their place.

The revision reads as follows:

§ 146.13 Testing.

* * * * *

(b) * * *

(1) *Antibody detection tests*—(i) *Enzyme-linked immunosorbent assay (ELISA) test.* (A) The ELISA test must be conducted using test kits approved by the Department and the Official State Agency and must be conducted in accordance with the recommendations of the producer or manufacturer.

(B) When positive ELISA samples are identified, an AGID test must be conducted within 48 hours.

(ii) *Agar gel immunodiffusion (AGID) test.* (A) The AGID test must be conducted using reagents approved by the Department and the Official State Agency.

(B) The AGID test for avian influenza must be conducted in accordance with this section (within the NPIP Program Standards, Program Standard A applies to blood and yolk testing procedures; alternatives to the program standards may also be approved by the Administrator under § 147.53) for the avian influenza agar gel immunodiffusion (AGID) test. The test can be conducted on egg yolk or blood samples. The AGID test is not recommended for use in waterfowl.

(C) Positive tests for the AGID must be further tested by Federal Reference Laboratories using appropriate tests for confirmation. Final judgment may be based upon further sampling and appropriate tests for confirmation.

* * * * *

■ 34. Section 146.51 is revised to read as follows:

§ 146.51 Definitions.

Except where the context otherwise requires, for the purposes of this subpart the following terms shall be construed, respectively, to mean:

Egg/meat-type game birds. Domesticated fowl such as pheasants, partridge, quail, grouse, and guineas, but not doves and pigeons grown under confinement for the primary purposes of producing eggs and/or meat for human consumption.

Egg/meat-type waterfowl. Domesticated ducks or geese grown under confinement for the primary purposes of producing eggs and/or meat for human consumption.

Meat-type game bird slaughter plant. A meat-type game bird slaughter plant that is federally inspected or under State inspection that the U.S. Department of Agriculture's Food Safety and Inspection Service has recognized as equivalent to Federal inspection.

Meat-type waterfowl slaughter plant. A meat-type waterfowl slaughter plant that is federally inspected or under State inspection that the U.S. Department of Agriculture's Food Safety and Inspection Service has recognized as equivalent to Federal inspection.

Shift. The working period of a group of employees who are on duty at the same time.

■ 35. Section 146.52 is revised to read as follows:

§ 146.52 Participation.

(a) Participating meat-type game bird slaughter plants, meat-type waterfowl slaughter plants, and egg-type game bird and egg-type waterfowl premises producing eggs for human consumption shall comply with the applicable general provisions of subpart A of this part and the special provisions of this subpart.

(b) Meat-type game bird slaughter plants and Meat-type waterfowl slaughter plants that slaughter fewer than 50,000 birds annually are exempt from the special provisions of this subpart.

(c) Egg-type game bird and egg-type waterfowl premises with fewer than 25,000 birds are exempt from the special provisions of this subpart.

■ 36. Section 146.53 is amended as follows:

■ a. In the introductory text, by adding the words ''slaughter plants and'' after the word ''participating'';

■ b. By revising paragraph (a) introductory text;

■ c. In paragraph (a)(1), by removing the words ''commercial upland'' and adding the word ''meat-type'' in their place and by removing the word ''commercial'' and adding the word ''meat-type'' in its place;

■ d. By revising paragraph (a)(2);

■ e. In paragraph (a)(3), by removing the words ''commercial upland'' and adding the word ''meat-type'' in their place and by removing the word ''commercial'' and adding the word ''meat-type'' in its place;

■ f. In paragraph (a)(4), by removing the words ''a commercial upland'' and adding the words ''an egg-type'' in their place and by adding the word ''egg-type'' after the words ''game bird or''.

■ g. In paragraph (a)(5), by removing the words ''a commercial upland'' and adding the words ''an egg-type'' in their place and by adding the word ''egg-type'' after the words ''game bird or''.

■ h. By removing and reserving paragraph (b).

The revisions read as follows:

§ 146.53 Terminology and classification; slaughter plants and premises.

* * * * *

(a) *U.S. H5/H7 Avian Influenza Monitored.* The program in this

paragraph (a) is intended to be the basis from which the egg/meat-type game bird and egg/meat-type waterfowl industry may conduct a program to monitor for the H5/H7 subtypes of avian influenza. It is intended to determine the presence of the H5/H7 subtypes of avian influenza in egg/meat-type game birds and egg/meat-type waterfowl through routine surveillance of each participating slaughter plant or, in the case of egg-producing flocks, the regular surveillance of these flocks. A slaughter plant or flock will qualify for the classification in this paragraph (a) when the Official State Agency determines that it has met one of the following requirements:

* * * * *

(2) It is a meat-type game bird slaughter plant or meat-type waterfowl slaughter plant that only accepts egg/meat-type game birds or egg/meat-type waterfowl from flocks where a minimum of 11 birds per flock have been tested negative for the H5/H7 subtypes of avian influenza, as provided in § 146.13(b), no more than 21 days prior to slaughter;

* * * * *

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

■ 37. The authority citation for part 147 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 38. Section 147.45 is revised to read as follows:

§ 147.45 Official delegates.

Each cooperating State shall be entitled to one official delegate for each of the programs prescribed in parts 145 and 146 of this subchapter in which it has one or more participants at the time of the Conference. The official delegates shall be elected by a representative group of participating industry members and be certified by the Official State Agency. It is recommended but not required that the official delegates be Plan participants. Individuals may be allowed to be an official delegate or alternate delegate for up to three States in which that delegate has flocks or is a plan participant with acknowledgement and approval of the Official State Agencies. Each official delegate shall endeavor to obtain, prior to the Conference, the recommendations of industry members of their State with respect to each proposed change.

■ 39. Section 147.48 is revised to read as follows:

§ 147.48 Approval of conference recommendations by the Department.

Proposals adopted by the official delegates will be recommended to the Department for incorporation into the provisions of the National Poultry Improvement Plan (NPIP) in parts 56, 145, and 146 of this chapter and this subpart. The Department reserves the right to approve or disapprove the recommendations of the conference as an integral part of its sponsorship of the National Poultry Improvement Plan. The Department will publish the recommendations in the **Federal Register** within 14 months following the NPIP Biennial Conference.

■ 40. In § 147.52, paragraph (b) is revised to read as follows:

§ 147.52 Authorized laboratories.

* * * * *

(b) *Trained technicians.* Testing procedures at all authorized laboratories must be run or overseen by a laboratory technician who every 4 years has attended, and satisfactorily completed, Service-approved laboratory workshops for Plan-specific diseases.

* * * * *

Done in Washington, DC, this 28th day of October 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–23973 Filed 12–4–19; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

Tribal Consultations for Consolidation of Mentor Protégé Programs and Other Government Contracting Amendments (RIN 3245–AG94)

AGENCY: U.S. Small Business Administration.

ACTION: Notice of tribal consultation meetings.

SUMMARY: The U.S. Small Business Administration (SBA) announces that it is holding tribal consultation meetings in Minneapolis, Minnesota, Anchorage, Alaska, Albuquerque, New Mexico, and Oklahoma City, Oklahoma concerning the proposed revisions to the 8(a) Business Development (BD) program regulations. Testimony presented at these tribal consultations will become part of the administrative record for SBA's consideration when the Agency deliberates on approaches to changes in the regulations pertaining to the 8(a) BD program.

DATES: The Tribal Consultation meeting dates are as follows:

1. Tuesday, December 10, 2019, 10:00 a.m. to 2:00 p.m. (CST), Minneapolis, Minnesota. The pre-registration deadline for this Tribal Consultation meeting is December 6, 2019.

2. Wednesday, January 8, 2020, 10:00 a.m. to 4:00 p.m. (AKST), Anchorage, Alaska. The pre-registration deadline for this Tribal Consultation meeting is January 2, 2020.

3. Tuesday, January 14, 2020, 10:00 a.m. to 2:00 p.m. (MST), Albuquerque, New Mexico. The pre-registration deadline for this Tribal Consultation meeting is January 7, 2020.

4. Thursday, January 16, 2020, 10:00 a.m. to 2:00 p.m. (CST), Oklahoma City, Oklahoma. The pre-registration deadline for this Tribal Consultation meeting is January 9, 2020.

ADDRESSES:

1. The Tribal Consultation meeting in Minneapolis, Minnesota will be held at the SBA Minnesota District Office, Training Center, 330 Second Avenue South, Minneapolis, MN 55401.

2. The Tribal Consultation meeting in Anchorage, Alaska will be held at the Z.J. Loussac Public Library, 3600 Denali Street, Anchorage, AK 99503.

3. The Tribal Consultation meeting in Albuquerque, New Mexico will be held at the Indian Pueblo Cultural Center, 2401 12th Street NW, Albuquerque, New Mexico 87104.

4. The Tribal Consultation meeting in Oklahoma City, Oklahoma will be held at the Francis Tuttle Technology Center, Corporate Training Center Building, 12777 North Rockwell Avenue, Oklahoma City, OK 73142.

5. Send pre-registration requests to attend and/or testify to Chequita Carter of SBA's Office of Native American Affairs, U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416; *Chequita.Carter@sba.gov;* or Facsimile to (202) 481–2177.

6. You may submit comments, identified by RIN 3245–AG94, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* and follow the instructions for submitting comments.
- *Mail (for paper, disk, or CD–ROM submissions):* To Brenda Fernandez, Office of Procurement Policy and Liaison, U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416; or *Brenda.Fernandez@sba.gov.*

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this

rulemaking. All comments received will be posted on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the comments to Brenda Fernandez and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will make a final determination as to whether the comments will be published or not.

FOR FURTHER INFORMATION CONTACT: Chequita Carter, Program Assistant for SBA's Office of Native American Affairs, at *Chequita.Carter@sba.gov* or (202) 205–6680 or by facsimile to (202) 481–2177.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 2019 (84 FR 60846), SBA issued a proposed rule contemplating substantive changes to the regulations governing the 8(a) BD program (13 CFR 124), publicly available at *https://www.govinfo.gov/content/pkg/FR-2019-11-08/pdf/2019-23141.pdf.* The proposed rule would consolidate the All Small Mentor Protégé Program and the 8(a) Mentor Protégé Program into one program to eliminate confusion and remove duplicative functions within SBA. This proposed rule would also eliminate the requirement that 8(a) Participants seeking to be awarded a competitive 8(a) contract as a joint venture must submit the joint venture agreement to SBA for review and approval prior to contract award. Additionally, this rule proposes to make several changes to the 8(a) BD program regulations to eliminate confusion or reduce unnecessary or excessive burdens on 8(a) applicants and Participants owned and controlled by tribes, Alaska Native Corporations (ANCs), Native Hawaiian Organizations (NHOs), and Community Development Corporations (CDCs). Among other things, such changes would eliminate the prior approval requirement for changes of ownership involving the insertion or removal of a wholly-owned business entity between the tribe/ANC/CDC and the Participant, simplify the rules pertaining to a tribe/ANC/NHO/CDC owning more than one Participant in the 8(a) BD program, clarify the 8(a) BD program admission requirements governing how a tribally-owned applicant may demonstrate that it possesses the necessary potential for success, revise the rules regarding excessive withdrawals in the context of pro-rata distributions to non-disadvantaged minority owners of entity-owned 8(a) Participants, and authorize an appeal process under which a Participant could challenge an SBA-initiated change to its primary industry classification. SBA is seeking comments and input on the various approaches and changes identified in the proposed rule.

II. Tribal Consultation Meeting

The purpose of these tribal consultation meetings is to conform to the requirements of Executive Order 13175, Tribal Consultations; to provide interested parties with an opportunity to discuss their views on the issues; and for SBA to obtain the views of SBA's stakeholders on proposed approaches to the 8(a) BD program regulations. SBA considers tribal consultation meetings a valuable component of its deliberations and believes that these tribal consultation meetings will allow for constructive dialogue with the Tribal community, Tribal Leaders, Tribal Elders, elected members of Alaska Native Villages or their appointed representatives, and principals of tribally-owned and ANC-owned firms participating in the 8(a) BD program.

The format of these tribal consultation meetings will consist of a panel of SBA representatives who will preside over the session. The oral and written testimony as well as any comments SBA receives will become part of the administrative record for SBA's consideration. Written testimony may be submitted in lieu of oral testimony. SBA will analyze the testimony, both oral and written, along with any written comments received. SBA officials may ask questions of a presenter to clarify or further explain the testimony. Testimony received at these tribal consultations will guide SBA's review process and may potentially develop new proposals. SBA requests that the comments focus on SBA's proposed rulemaking relating to the 8(a) BD program, general issues as they pertain to the 8(a) BD regulations, or the unique concerns of the Tribal or native communities. SBA requests that commenters do not raise issues pertaining to other SBA small business programs. Presenters are encouraged to provide a written copy of their testimony. SBA will accept written material that the presenter wishes to provide that further supplements his or her testimony. Electronic or digitized copies are encouraged.

Each tribal consultation meeting will be held for one day. The meeting in Minneapolis, Minnesota will begin at 10:00 a.m. and end at 2:00 p.m. (CST); the meeting in Anchorage, Alaska will begin at 10:00 a.m. and end at 4:00 p.m. (AKST), with a break from 12:30 p.m. to 1:30 p.m.; the meeting in Albuquerque, New Mexico will begin at 10:00 a.m. and end at 2:00 p.m. (MST); and the meeting in Oklahoma City, Oklahoma will begin at 10:00 a.m. and end at 2:00 p.m. (CST). SBA will adjourn early if all those scheduled have delivered their testimony.

III. Registration

SBA respectfully requests that any elected or appointed representative of the tribal communities or principal of a tribally-owned or ANC-owned 8(a) firm that is interested in attending please pre-register in advance and indicate whether you would like to testify at the hearing. Registration requests should be received by SBA no later than: December 6, 2019 for the consultation meeting in Minneapolis; January 2, 2020 for the consultation meeting in Anchorage; January 7, 2020 for the consultation meeting in Albuquerque; and January 9, 2020 for the consultation meeting in Oklahoma City. Please submit registration requests in writing to Chequita Carter of SBA's Office of Native American Affairs at *Chequita.Carter@sba.gov* or by facsimile to (202) 481–2177. If you are interested in testifying please include the following information relating to the person testifying: Name, Organization affiliation, Address, Telephone number, Email address and Fax number. SBA will attempt to accommodate all interested parties that wish to present testimony. Based on the number of registrants it may be necessary to impose time limits to ensure that everyone who wishes to testify has the opportunity to do so. SBA will confirm in writing the registration of presenters and attendees.

IV. Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the tribal consultation meeting, contact Chequita Carter at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: 15 U.S.C. 634 and E.O. 13175, 65 FR 67249.

Shawn Pensoneau,

Assistant Administrator for the Office of Native American Affairs.

[FR Doc. 2019–26293 Filed 12–4–19; 8:45 am]

BILLING CODE P

Notices

Federal Register
Vol. 84, No. 234
Thursday, December 5, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

30 Day Federal Register Notice on Proposed Information Collection

AGENCY: U.S. Agency for International Development.

ACTION: Notice of information collection.

SUMMARY: U.S. Agency for International Development (USAID), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the following new information collection, as required by the Paperwork Reduction Act of 1995. This proposed information collection was published in the **Federal Register** on September 6, 2019, allowing for a 60-day public comment period and received one comment. The notice was revised to clarify participation in the survey is voluntary and how information will be used. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed information collection to Jennifer Cupp, USAID, Bureau for Food Security, at *jcupp@usaid.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Cupp, USAID, Bureau for Food Security, *jcupp@usaid.gov.*

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

I. Abstract

Abstract: The ''USAID National Survey of U.S. Adults about Global Food Security'' is a 20-minute nationally-representative voluntary survey of U.S. adults conducted for USAID by a professional research company. The purpose of the research is to inform the communications strategy, education, and outreach efforts for the Feed the Future Initiative. The research contractor will gather information and feedback by telephone and online from 1,000 voluntary adult participants using a nationally representative survey sampling method. Using the information collected in the survey, the research consultant will measure opinions about global food security and hunger, program awareness, reasons for improving global food security and reducing hunger, questions and concerns about the initiative, as well as consumer segments and insights for each segment to more effectively hone communication, education and outreach efforts. Information will be used to improve the effectiveness of Agency communications and education efforts with the public.

Likely Respondents: This study includes one respondent group, U.S. adults 18 years and older living in the fifty states and the District of Columbia.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions and survey screening criteria; to develop, acquire, install and utilize technology and systems for the purpose of providing opinions and feedback; to be able to respond to and complete the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated are summarized in the table below.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (hours)	Total burden hours
USAID Feed the Future Initiative Audience Segmentation	1,000	1	1,000	.333	333
Screened households	1,200	1	1,200	.0167	20.04
Total			2,200		353.04

USAID specifically requests comments on (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.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. The comments will also become a matter of public record.

Dated: December 2, 2019.

Jennifer Cupp,

Communications Director, Feed the Future, U.S. Agency for International Development.

[FR Doc. 2019–26297 Filed 12–4–19; 8:45 am]

BILLING CODE 6116–02–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of planning 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 Colorado Advisory Committee to the Commission will convene by conference call at 4:00 p.m. (MST) on Thursday, December 12, 2019. The purpose of the meeting is for planning the committee's next civil rights project.

DATES: Thursday, December 12, 2019, at 4:00 p.m. (MST).

ADDRESSES: Public call-in information: Conference call number: 1–800–367–2403 and conference call ID: 7967825.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, *ebohor@usccr.gov* or by phone at 303–866–1040.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–800–367–2403 and conference call ID: 7967825.

Please be advised that, before being placed 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 telephone number provided.

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 number: 1–800–367–2403 and conference call 7967825.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1040, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzksAAA;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain 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 Rocky Mountain Regional Office at the above phone number, email or street address.

Agenda: Thursday, December 12, 2019; 4:00 p.m. (MST)

I. Roll Call
II. Planning Next Civil Rights Project
III. Other Business
IV. Open Comment
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal continuing resolution.

Dated: December 2, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–26267 Filed 12–4–19; 8:45 am]

BILLING CODE;P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[11/19/2019 through 11/26/2019]

Firm name	Firm address	Date accepted for investigation	Product(s)
Murray Corporation	260 Schilling Circle, Hunt Valley, MD 21031.	11/20/2019	The firm manufactures metal clamps.
Metalfab Material Handling Systems, LLC.	11 Prices Switch Road, Vernon, NJ 07462.	11/26/2019	The firm manufactures equipment for handling bulk solid materials.
Beta Acquisition, Inc. d/b/a Comptus	202 Tamarack Road, Thornton, NH 03285.	11/26/2019	The firm manufacturers sensors that measure wind, air pressure, temperature, and other environmental factors.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which

these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Irette Patterson

Program Analyst.

[FR Doc. 2019–26290 Filed 12–4–19; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–49–2019]

Foreign-Trade Zone (FTZ) 19—Omaha, Nebraska; Authorization of Production Activity; Syngenta Crop Protection, Inc. (Herbicides, Fungicides and Insecticides), Omaha, Nebraska

On August 2, 2019, Syngenta Crop Protection, Inc., submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 19, in Omaha, Nebraska.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 40021–40022, August 13, 2019). On December 2, 2019, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: December 2, 2019.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2019–26270 Filed 12–4–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–44–2019]

Foreign-Trade Zone (FTZ) 7—Mayaguez, Puerto Rico; Authorization of Production Activity; Patheon Puerto Rico, Inc. (Pharmaceutical Products), Manatí, Puerto Rico

On August 2, 2019, The Puerto Rico Industrial Development Company, grantee of FTZ 7, submitted a notification of proposed production activity to the FTZ Board on behalf of Patheon Puerto Rico, Inc., within FTZ 7, in Manatí, Puerto Rico.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 40020–40021, August 13, 2019). On December 2, 2019, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: December 2, 2019.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2019–26269 Filed 12–4–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–50–2019]

Foreign-Trade Zone (FTZ) 154—Baton Rouge, Louisiana; Authorization of Production Activity; Syngenta Crop Protection, LLC (Herbicides, Fungicides and Insecticides), Baton Rouge, Louisiana

On August 2, 2019, Syngenta Crop Protection, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 154, in Baton Rouge, Louisiana.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 40022, August 13, 2019). On December 2, 2019, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: December 2, 2019.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2019–26271 Filed 12–4–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–73–2019]

Foreign-Trade Zone (FTZ) 18—San Jose, California; Notification of Proposed Production Activity; Tesla, Inc. (Electric Passenger Vehicles and Components), Fremont, Livermore, and Oakland, California

Tesla, Inc. (Tesla) submitted a notification of proposed production activity to the FTZ Board for its facilities in Fremont, Livermore, and Oakland, California. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on November 26, 2019.

Tesla already has authority to produce electric passenger vehicles and related components within FTZ 18. The current request would add nine finished products and a foreign status material/component to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status material/component and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Tesla from customs duty payments on the foreign-status material/component used in export production (estimated at up to 50 percent of production). On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Tesla would be able to choose the duty rates during customs entry procedures that apply to doors, front under body shotguns, vehicle body sides, automotive spoilers, hoods, vehicle roof headers, lift gates, under bodies, and quarter panels (duty rate duty-free to 2.5%). Tesla would be able to avoid duty on the foreign-status component which becomes scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The material/component sourced from abroad is aluminum coil (duty rate 3.0%). The request indicates that aluminum coil is subject to an antidumping/countervailing duty (AD/CVD) order if imported from the People's Republic of China. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign status (19 CFR 146.41). The request also indicates that aluminum coil is subject to special duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) and Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The

closing period for their receipt is January 14, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or 202–482–1378.

Dated: December 2, 2019.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2019–26272 Filed 12–4–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 191127–0095; RTID 0648–XR030]

Endangered and Threatened Species; Determination on the Designation of Critical Habitat for Giant Manta Ray

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

ACTION: Notice of critical habitat determination.

SUMMARY: We, NMFS, have determined that a designation of critical habitat is not prudent at this time. Based on a comprehensive review of the best scientific data available, we find that there are no identifiable physical or biological features that are essential to the conservation of the giant manta ray within areas under U.S. jurisdiction. We also find that there are no areas outside of the geographical area occupied by the species under U.S. jurisdiction that are essential to its conservation. As such, we find that there are no areas within the jurisdiction of the United States that meet the definition of critical habitat for the giant manta ray.

DATES: This finding is made on December 5, 2019.

ADDRESSES: Electronic copies of the determination, list of references, and supporting documents prepared for this action are available from the NMFS Office of Protected Resources website at *https://www.fisheries.noaa.gov/species/giant-manta-ray.*

FOR FURTHER INFORMATION CONTACT: Maggie Miller, NMFS, Office of Protected Resources, (301) 427–8403.

SUPPLEMENTARY INFORMATION:

Background

On January 22, 2018, we published a final rule to list the giant manta ray (*Manta birostris*) as a threatened species under the Endangered Species Act (ESA) (83 FR 2916). Section 4(b)(6)(C) of the ESA requires the Secretary of Commerce (Secretary) to designate critical habitat concurrently with making a determination to list a species as threatened or endangered unless it is not determinable at that time, in which case the Secretary may extend the deadline for this designation by 1 year. At the time of listing, we concluded that critical habitat was not determinable because sufficient information was not available to: (1) Identify the physical and biological features essential to the conservation of the species at an appropriate level of specificity, particularly given the uncertainty regarding habitats required to support its life history (*e.g.,* pupping and nursery grounds were unknown) and migratory movements, (2) determine the specific geographical areas that contain the physical and biological features essential to conservation of the species, particularly given the global range of the species, and (3) assess the impacts of the designation. We requested relevant information from interested persons to help us identify and describe the physical and biological features essential to the conservation of the giant manta ray, and assess the economic consequences of designating critical habitat for the species. We solicited input from the public, other concerned government agencies, the scientific community, industry and any other interested party on features and areas that may meet the definition of critical habitat for the giant manta ray within U.S. waters. We received information regarding giant manta ray occurrence in the Flower Garden Banks National Marine Sanctuary (Stewart et al. 2018b) as well as off the coast of Florida. We reviewed this information and considered it along with other available information we compiled. Together, this information comprises the best available scientific data for use in the identification of critical habitat for the giant manta ray. However, as discussed below, based on these data we find that there are no identifiable physical or biological features that are essential to the conservation of the giant manta ray within areas under U.S. jurisdiction, or unoccupied areas under U.S. jurisdiction that are essential to the conservation of the species. Therefore, at this time we find no areas within U.S. jurisdiction that meet the definition of critical habitat for the giant manta ray.

This finding describes information on the biology, distribution, and habitat use of the giant manta ray and the methods used to identify areas that may meet the definition of critical habitat. In this determination, we focus on information directly relevant to the designation of critical habitat for giant manta rays.

Giant Manta Ray Biology and Status

The following discussion of the life history and status of giant manta ray is based on the best scientific data available, including the ''Endangered Species Act Status Review Report: Giant Manta Ray (*Manta birostris*) and Reef Manta Ray (*Manta alfredi*)'' (Miller and Klimovich 2017).

Manta rays are large bodied, planktivorous rays, considered part of the Mobulidae subfamily. *Manta* species are distinguished from other Mobula rays in that they tend to be larger, with a terminal mouth, and have long cephalic fins (Evgeny 2010); however, misidentifications are common both between *Manta* species (*i.e.,* between *M. alfredi* and *M. birostris*) as well as between *Manta* and *Mobula* rays. In addition, recent taxonomic studies have suggested that *Manta birostris* and *Manta alfredi* may actually be closely related to the giant devil ray (*Mobula mobular*) (White et al. 2017), with genetic analyses that demonstrate support for nesting these species under the genus *Mobula* rather than *Manta* (White et al. 2017; Hosegood et al. 2019). The studies still recognize both manta rays as distinct species, but refer to them as *Mobula birostris* and *Mobula alfredi.*

The giant manta ray, *M. birostris,* can be found in all ocean basins, while the reef manta ray, *M. alfredi,* is currently only observed in the Indian Ocean and the western and south Pacific. Additionally, we note that a third, putative manta ray species has been identified (referred to here as *M. cf. birostris*), with its range extending along the Atlantic coast, Gulf of Mexico, and Caribbean, based on research conducted in the western Atlantic (A. Marshall, MMF, pers. comm. to M. Miller, NMFS OPR, 2019). A manuscript identifying this third species is expected in the near future; however, according to Dr. Andrea Marshall, this newly identified manta species is highly abundant off the U.S. east coast, with a large population also found off the Yucatán peninsula (A. Marshall, MMF, pers. comm. to M. Miller, NMFS OPR, 2019). This new species looks very similar to *M. birostris,* with only a few diagnostic features that could potentially distinguish the two (mainly small morphological and meristic ones; A.

Marshall, MMF, pers. comm. to M. Miller, NMFS OPR, 2019). Without genetic testing, species identification cannot be completely validated (Hinojosa-Alvarez et al. 2016; Kashiwagi et al. 2017; Hosegood et al. 2019).

Therefore, for purposes of this critical habitat determination, we will consider any records of manta rays in the Atlantic to be *M. birostris* (even though an unknown proportion may comprise *M. cf. birostris*) and will continue to recognize *Manta birostris* as a species under the genus *Manta.*

The genus *Manta* has a complex taxonomic history due partially to the difficulty of preserving such large specimens and also the conflicting historical reports of taxonomic characteristics (Couturier et al. 2012; Kitchen-Wheeler 2013). Prior to 2009, most manta rays were categorized as *Manta birostris,* but Marshall et al. (2009) presented new data that supported the splitting of the *Manta* genus into two species: *M. birostris* and *M. alfredi.*

Both *Manta* species have diamond-shaped bodies with wing-like pectoral fins; the distance over this wingspan is termed disc width (DW). There are two distinct color types in both species: Chevron and black (melanistic). Most of the chevron variants have a black dorsal surface and a white ventral surface with distinct patterns on the underside that can be used to identify individuals (Marshall et al. 2008; Kitchen-Wheeler 2010; Deakos et al. 2011). The black color variants of both species are entirely black on the dorsal side and almost completely black on the ventral side, except for areas between the gill-slits and the abdominal area below the gill-slits (Kitchen-Wheeler 2013).

Giant manta rays inhabit tropical, subtropical, and temperate bodies of water and are commonly found offshore, in oceanic waters, and near productive coastlines. It is thought to be a generally long-lived species (>28 years) (Stewart et al. 2018a) with low reproductive output. Manta rays, like all chondrichthyans, reproduce via internal fertilization (Wourms 1981), and the sexes can be differentiated by the presence of myxopterigia, or claspers, on the inner margin of the pelvic fins in males, whereas females lack these structures. Sexual maturity in males can be easily determined by examining the level of calcification in these intromittent organs. In their examination of mobulids taken as bycatch in the Indonesian drift net fishery, White et al. (2006) found that male *M. birostris* greater than 3,800 mm DW possessed fully calcified claspers and were, therefore, mature, while those less than 3,800 mm DW possessed either non-calcified or partially calcified claspers. In the same study, White et al. (2006) found that females 2,732 to 3,774 mm DW were immature and females measuring 4,126 mm DW and greater were mature. White and Last (2016) report similar ranges, with males maturing between approximately 3,750 and 4,000 mm DW and females maturing between approximately 4,100 and 4,700 mm DW. In the Flower Gardens Banks National Marine Sanctuary (FGBNMS), Stewart et al. (2018b) observed a mature male *M. birostris* with an estimated size of 3,600 mm. The age that *M. birostris* matures is not known, but it may be similar to that of reef mantas, with males maturing at 3–6 years and females at 8–10 years (Stewart et al. 2018a).

Gestation time is also not known for this species, and parturition has only been witnessed once and under unnatural conditions (Coles 1916). It is suspected that gestation would be similar to that observed in *M. alfredi,* which is generally accepted to be 12 to 13 months (Kitchen-Wheeler 2013). In addition to the Coles (1916) observation of a single embryo aborted during capture, the limited investigations of pregnant females with embryos intact have all indicated the presence of a single embryo per pregnancy (Muller and Henle 1838–1841; Beebe and Tee-Van 1941). Similarly, reports of reef manta ray births and dissections have also all revealed only a single embryo (Homma et al. 1999; Uchida et al. 2008). Size at birth has remained elusive for *M. birostris.* The embryos examined in the previous studies had sizes of 1,140 mm and 1,270 mm DW (Muller and Henle 1838–1841; Beebe and Tee-Van 1941), while the smallest free swimming individuals reported by Stewart et al. (2018b) were approximately 1,000 mm DW (however, these individuals may have been *M. cf. birostris*). Rambahiniarison et al. (2018) recently estimated size at birth of *M. birostris* to be 2,000 mm DW based on the DW of the largest fetus and the smallest free-living specimen captured in the Philippines mobulid fishery.

Very little is known about the early life stages or habitat needs or requirements of *M. birostris* because, until fairly recently, juveniles have rarely been observed in the wild. However, large numbers of juvenile *M. birostris* have been caught in Sri Lanka in offshore pelagic habitats by the gill-net fisheries, landed by fisherman in Brazil and Indonesia, and also observed in oceanic habitats off Mexico (Stewart et al. 2016a; Stewart et al. 2018b). Stewart et al. (2016a) suggests that adult and juvenile giant mantas may use similar offshore pelagic habitats, but that the juveniles may avoid cleaning stations and other near-shore areas where adults are more commonly observed to reduce predation risk. In fact, results from stable isotope analyses of muscle tissues collected from both adult and juvenile *M. birostris* off Peru, Sri Lanka, and the Philippines appear to provide further confirmation that the species may not undergo an ontogenetic shift in feeding behavior or trophic level, with both adults and juveniles sharing the same habitats and targeting the same prey (Stewart et al. 2017).

In terms of prey, giant manta rays primarily feed on planktonic organisms such as euphausiids, copepods, mysids, decapod larvae, and shrimp, with some studies noting their consumption of small and moderate sized fishes as well (Bigelow and Schroeder 1953; Carpenter and Niem 2001; Graham et al. 2012; Stewart et al. 2016b; Burgess 2017; Rohner et al. 2017). They feed by swimming with their mouths open, continuously filtering zooplankton. Their gill rakers filter out water, leaving behind food particles that are then directed to the esophagus through cross-flow (Paig-Tran 2012). This filter mechanism allows mantas to retain prey of various sizes, even if they are smaller than the filter pores, which means they can effectively feed on mixed zooplankton assemblages where prey range in size from small calanoid copepods to larger mysids and euphausiids (Stewart et al. 2016b). Given the feeding habits of the giant manta ray, it can be considered a generalist carnivore, with a trophic position of approximately 3.4 (Burgess et al. 2016; Burgess 2017).

With regards to movement, the giant manta ray is considered to be a migratory species, with satellite tracking studies measuring straight line distances of up to 1,500 km (Hearn et al. 2014). Some giant manta rays appear to migrate seasonally, possibly due to the seasonal fluctuations in food sources (Wilson et al. 2001; Luiz et al. 2009; Graham et al. 2012; Sobral and Afonso 2014; De Boer et al. 2015; Girondot et al. 2015; Stewart et al. 2016a; Hacohen-Domené et al. 2017). However, in some portions of its range, the species may actually exist as well-structured subpopulations with a high degree of residency (Stewart et al. 2016a).

As discussed in the proposed rule (82 FR 3694, January 12, 2017) and final rule (83 FR 2916, January 22, 2018) to list the giant manta ray, the most significant threat to the species is overutilization for commercial purposes. Giant manta rays are both

targeted and caught as bycatch in a number of fisheries throughout their range, and are most susceptible to industrial purse-seine and artisanal gillnet fisheries. With the expansion of the international mobulid gill raker market and increasing demand for manta ray products, estimated take of giant manta rays, particularly in many portions of the Indo-Pacific, frequently exceeds numbers of identified individuals in those areas. Observations from these areas also indicate declines in sightings and landings of the species. Given the extremely low reproductive output and overall productivity of the giant manta ray, it is inherently vulnerable to threats that would deplete its abundance, with a low likelihood of recovery. So, while there is considerable uncertainty regarding the current abundance of *M. birostris* throughout its entire range, the best available information indicates that the species is likely to become an endangered species within the foreseeable future throughout a significant portion of its range (the Indo-Pacific and eastern Pacific portion) due to overutilization.

Critical Habitat Identification and Designation

Critical habitat is defined by section 3 of the ESA as: ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed . . . , on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the Secretary that such areas are essential for the conservation of the species.'' This definition provides a step-wise approach to identifying areas that may qualify as critical habitat for the giant manta ray: (1) Determine the geographical area occupied by the species at the time of listing; (2) identify physical or biological habitat features essential to the conservation of the species; (3) delineate specific areas within the geographical area occupied by the species on which are found the physical or biological features; (4) determine whether the features in a specific area may require special management considerations or protection; and (5) determine whether any unoccupied areas are essential for conservation. Our evaluation and conclusions as we worked through this step-wise process are described in detail in the following sections.

Geographical Area Occupied by the Species

The ''geographical area occupied by the species'' is defined in our regulations as ''an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).'' (50 CFR 424.02). Further, our regulations at 50 CFR 424.12(g) state: ''The Secretary will not designate critical habitat within foreign countries or in other areas outside of the jurisdiction of the United States.'' As such, we focus the following discussion on the range of the species within waters under U.S. jurisdiction.

In the Atlantic, giant manta rays have been confirmed as far north as Long Island, New York (offshore around the Hudson Canyon region) (Normandeau Associates and APEM Ltd 2017); however, as will be discussed later, we note that they are generally rare north of Cape Hatteras, North Carolina. To the south, giant manta rays occur off the coast of North Carolina, South Carolina, Georgia, and Florida (Marshall et al. 2011). Giant manta rays can also be found throughout the U.S. Gulf of Mexico and within the U.S. Caribbean, including off Puerto Rico and the U.S. Virgin Islands (Marshall et al. 2011). In the central Pacific, giant manta rays are found off Hawaii (Clark 2010) and Jarvis Island (K. Lino unpublished data). While there have been no confirmed sightings of giant manta rays in waters of the other Pacific Remote Island Areas, Northern Mariana Islands (Kashiwagi et al. 2011), Guam (Kashiwagi et al. 2011), or American Samoa, based on confirmed observations of the species elsewhere throughout the Pacific (*e.g.,* Ogasawara Islands, Japan (Kashiwagi et al. 2010); Philippines (Verdote and Ponzo 2014); French Polynesia (Mourier 2012); Jarvis Island (K. Lino unpublished data); Hawaii (Clark 2010)) and coupled with the migratory and pelagic nature of giant manta rays, their ability to exploit significant depths, and tolerance of tropical to temperate water temperatures, we find no known barriers to their movement that may prevent them from occurring at these locations.

In the eastern U.S. Pacific, while there is documentation of a giant manta off the west coast (*i.e.,* San Clemente Island, California), this sighting was of a single individual in 2014 (Warneke 2014) and there have been no documented sightings since (or prior to) this time. Given the amount of fishing effort, as well as the human population density in these regions, it is highly unlikely that substantial concentrations of giant manta rays would have passed unnoticed. As such, we consider this individual to be a vagrant of the species (an individual that occurs outside of the species' normal range). Therefore, as the occurrence of giant manta rays in waters off the U.S. west coast is extremely uncommon, we do not consider this geographical area to be part of the species' occupied range at the time of listing.

Conclusion

Based on the above information and analysis, we define the geographical area occupied by the giant manta ray at the time of listing as all U.S. waters off the east coast, from Florida to Long Island, New York, the entire Gulf coast, the U.S. Virgin Islands and Puerto Rico in the Caribbean, and Hawaii, the Pacific Remote Islands Areas, Guam, American Samoa, and the Northern Mariana Islands in the Pacific.

Physical or Biological Features Essential for Conservation

Within the geographical area occupied by an endangered or threatened species at the time of listing, critical habitat consists of specific areas upon which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection. The ESA does not specifically define physical or biological features; however, court decisions and joint NMFS-USFWS regulations at 50 CFR 424.02 provide guidance on how physical or biological features are expressed. Specifically, these regulations state that the physical and biological features are those that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. (50 CFR 424.02).

Section 3 of the ESA (16 U.S.C. 1532(3)) defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean: ''to use and the use of all

methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.'' For giant manta rays, we consider conservation to include the use of all methods and procedures necessary to bring giant manta rays to the point at which factors related to population ecology and vital rates indicate that the species is recovered in accordance with the definition of recovery in 50 CFR 402.02. Important factors related to population ecology and vital rates include population size and trends, range, distribution, age structure, gender ratios, age-specific survival, age-specific reproduction, and lifetime reproductive success. Based on the available knowledge of giant manta ray population ecology and life history, we have identified four biological behaviors that are critical to the goal of increasing survival and population growth: (1) Foraging, (2) pupping, (3) migration, and (4) breeding. In the following section, we evaluate whether there are physical and biological features of the habitat areas known or thought to be used for these behaviors that are essential to the species' conservation because they facilitate or are intimately tied to these behaviors and, hence, support the life-history needs of the species. Because these behaviors are essential to the species' conservation, facilitating or protecting each one is considered a key conservation objective for any critical habitat designation for this species.

Analysis of the Physical and Biological Features of Foraging Habitat That Are Essential to the Conservation of the Species

Giant manta rays are filter-feeders and generalist carnivores that feed on a variety of planktonic organisms, including euphausiids, copepods, mysids, decapod larvae and shrimp, as well as small fishes. Prey needs to be of sufficient density and quality to support the energy requirements for the giant manta rays, particularly as they conduct long-distance migrations across open oceans. Sustained decreases in prey quantity, quality, availability, or accessibility can decrease foraging success of giant manta rays and eventually lead to reduced individual growth, reproduction, and development. Therefore, using the best available data, we examined the diet and energy needs of giant manta rays, including foraging behavior, to determine whether we could identify physical or biological features of habitat that facilitate successful giant manta ray feeding and, thus, are essential for the conservation of the species.

As mentioned above, planktonic organisms comprise the majority of the diet for giant manta rays. While it was previously assumed that manta rays obtain most of their energy needs from surface zooplankton, results from recent studies indicate that these feeding events may not be the primary source of the dietary intake (Burgess et al. 2016; Stewart et al. 2016b). For example, for giant manta rays off Ecuador, Burgess et al. (2016) estimated that, on average, mesopelagic food sources contribute 73 percent to the giant manta ray's diet compared to 27 percent for surface zooplankton. In the Mexican Pacific, Stewart et al. (2016b) interpreted dive profiles and submersible video data of *M. birostris* to suggest that giant manta rays frequently forage on vertically migrating zooplankton and zooplankton in the epipelagic scattering layers in addition to surface zooplankton.

Analysis of stomach contents and collection of zooplankton during observed giant manta ray feeding events reveal a varied diet, with no targeting of a specific species or size of prey (Graham et al. 2012; Armstrong et al. 2016; Stewart et al. 2016b; Burgess 2017; Rohner et al. 2017). Rather, density of the prey appears to be the driving factor that triggers giant manta ray feeding behavior. However, the levels necessary to attract giant manta rays remain unknown. For example, a study conducted by Burgess (2017) found that giant manta ray aggregations off the northwest side of Isla de la Plata, Ecuador, were unlikely associated with foraging opportunities as observations of feeding events were rare. Specifically, Burgess (2017) collected surface zooplankton during feeding events (n=5) and during non-feeding events (n=79) and calculated that the dry zooplankton biomass was 1.9 mg m^{-3} during the rare *M. birostris* feeding events and 1.4 mg m^{-3} during non-feeding events. Although comparable data are unavailable for *M. birostris* elsewhere throughout its range, these figures are substantially lower than what has been reported for the closely related reef manta ray, *M. alfredi,* in eastern Australia during regular active feeding (19.1 mg m^{-3}) and non-feeding (9.3 mg m^{-3}) events (Armstrong et al. 2016). In fact, Armstrong et al. (2016) determined that the critical prey density threshold for *M. alfredi* feeding was 11.2 mg m^{3}. If *M. birostris* has similar prey density thresholds, these data lend support to Burgess (2017)'s finding that the aggregative behavior of giant manta rays at Isla de la Plata is unlikely related to feeding. Furthermore, the data suggest that for habitat to be characterized as providing necessary foraging opportunities, it likely requires substantially higher levels of zooplankton biomass than what was found off Isla de la Plata.

In terms of energy needs, the only available data that provides insight for *M. birostris* is from a study that examined the stomach contents of giant manta rays collected within the Bohol Sea (Philippines) in 2015 (Rohner et al. 2017). Using adiabatic bomb calorimetry, Rohner et al. (2017) calculated that krill (*Euphausia diomedeae*), the dominant prey species for *M. birostris* in this particular area, contributed 24,572 kJ (±20,451 kJ s.d.) per 100 g of stomach content in *M. birostris.* When scaled up based on the total number of euphausiids per stomach, the authors estimated that *E. diomedeae* contributed up to 631,167 kcal in the giant manta ray diet (Rohner et al. 2017). This energetic contribution is significantly greater than what has been found for reef manta rays in captivity. Rohner et al. (2017), citing a personal communication, reports that in aquaria, a 350 cm DW *M. alfredi* is fed 3,500 kcal per day and a 450 cm DW *M. alfredi* is fed 6,100 kcal per day, with captive reef manta rays consuming 12.7 percent of their body weight in euphausiids weekly (Homma et al. 1999). Although energy requirements and caloric intake for captive manta rays will likely be different than those found in the wild, Rohner et al. (2017) proposes that the significant calorific value of the *M. birostris* stomach contents suggests that giant manta rays partake in numerous feeding events over several days or, alternatively, engage in a few, sporadic, opportunistic feeding events on large aggregations of prey that can be used to sustain them until their next meal. Burgess (2017) tends to agree with the latter. The author cites the particularly large capacity of the *M. birostris* stomach, as well as the branchial filter pad and filtration mechanism used by manta rays (which allows for the capture of numerous macroscopic zooplankton and small fishes of varying sizes) to support the assumption that manta rays likely exploit large patches of zooplankton for a high net energy gain in a short period of time (Burgess 2017). However, with only one study that has examined the energy contents of a particular prey item of *M. birostris* in a specific area, it is difficult to make any conclusions as to the general energy needs or requirements for the species throughout its range.

With the lack of available data regarding prey density thresholds or

caloric value requirements, we next looked at areas where manta rays have been observed or assumed to be feeding to determine whether we could identify any physical or biological features of these habitats that are tied to foraging behavior. In many portions of the species' range, it is the presence of seasonal upwelling events, which concentrate plankton and create patches of high productivity, that appear to drive the occurrence of giant manta rays in areas, presumably for foraging. For example, off the northern Yucatán peninsula, Hacohen-Domené et al. (2017) found a higher probability of *M. birostris* occurrence from July through September, with the main difference being the increase in primary productivity during this time of year (with particularly high probability of occurrence when primary productivity was at 4,500 mg $C{\cdot}m^{-2}{\cdot}day^{-1}$). Other features associated with a greater probability of giant manta ray presence in this area included sea surface temperatures (SST) warmer than 27 °C, shallow (<10 m depths) and nearshore waters (<50 km from shore), with a bottom slope of <0.5° (Hacohen-Domené et al. 2017). However, the authors note that most of the manta rays observed in the study were not foraging but rather swimming alone or in pairs. While Hacohen-Domené et al. (2017) did not observe or analyze feeding habits in their study, Hinojosa-Alvarez et al. (2016) confirmed foraging behavior in this area (specifically between 21°46.020′ N and 87°01.200′ W and 21°30.00′ and 86°4100), with videos of Yucatán manta rays feeding in surface waters from May through August (the same period as the seasonal upwelling).

Seasonal occurrence of manta rays was also observed off the continental shelf of French Guiana. Specifically, Girondot et al. (2015) observed a peak in the presence of manta rays between July and December in the river-ocean transition zone off French Guiana. While specific features of the habitat where giant manta rays were observed was not provided, the authors did note that phytoplankton biomass and primary productivity is generally highest during the months of manta ray presence, with a biomass of over 25 mg Chl-a m^{-3} and productivity of over 8 g $C°m^{-2}*day^{-1}$ (Girondot et al. 2015).

Similarly, in southeastern Brazil, giant manta rays are most frequently sighted in Laje de Santos Marine State Park (24° S) during seasonal upwelling, from June to August (Luiz et al. 2009). During this time, the warm Brazil Current weakens and coastal waters change direction and move northward, bringing waters from the southern Falklands Current to areas of southeastern Brazil (Luiz et al. 2009). This current displaces a low salinity front (generated by discharge from the La Plata River) from the mouth of the La Plata River during the summer to areas north in the winter (Luiz et al. 2009). It is thought that this coastal front, which accumulates plankton, may attract giant manta rays at Laje de Santos Marine State Park in the winter months (Luiz et al. 2009). However, besides the greater presence of manta rays in this region during the seasonal upwelling event (based on diver photos), no information was provided regarding foraging activities or the essential physical or biological features of the habitat that are necessary to support this behavior.

Off the coast of Suriname, De Boer et al. (2015) found that the presence of *M. birostris* coincided with the region's two rainy seasons. As the outflows of nutrient-rich waters from the Amazon and Suriname rivers lead to a low salinity front during the rainy seasons, the authors suggest that giant manta rays are visiting the coastal waters of Suriname for feeding purposes (De Boer et al. 2015). Although only a few observations of manta rays were recorded during the survey period, the authors found the behavior was likely indicative of foraging (*i.e.,* swimming just below the surface with pectoral fins curled) (De Boer et al. 2015); however, again, no physical or biological features of the foraging habitat were identified.

While upwelling events appear to be the main environmental factor driving manta ray foraging behavior, we note that Graham et al. (2012) also observed a giant manta ray feeding in oligotrophic waters during a seasonal fish spawning event. The giant manta ray was initially tagged off the northern Yucatán peninsula in eutrophic waters and observed feeding on copepeds (Graham et al. 2012). However, 57 days later, it was re-sighted in oligotrophic waters foraging on fish eggs released during a seasonal spawning event of little tunny (*Euthynnus alletteratus*), suggesting that giant manta rays are also able to exploit different habitats when conditions arise that are suitable for foraging (Graham et al. 2012).

Overall, based on the foregoing information regarding known or presumed foraging areas for giant manta rays, the general and consistent physical oceanographic feature that appear to be associated with foraging habitat is high primary productivity from upwelling events, which favors the potential accumulation of zooplankton. Yet the levels of primary productivity necessary to produce suitable foraging habitat are unknown, and this feature is relatively ubiquitous throughout the global range of the species, with not all areas of high primary productivity providing meaningful foraging habitat for giant manta rays. Furthermore, given that the characteristics of habitat necessary to produce areas of high primary productivity varies by region and site (*e.g.,* seasonal upwelling events due to increased river discharge or wind-driven fronts), we proceeded to focus our examination on whether we could identify any physical and biological features of giant manta ray foraging areas within U.S. waters that are essential to the conservation of the species.

In general, very little published literature exists on giant manta ray occurrence and behavior in U.S. waters. Adams and Amesbury (1998) documented the presence of three giant manta rays in the estuarine waters of the Indian River Lagoon system and in Port Canaveral, Florida. Foraging behavior was not observed and the authors proposed that individuals likely enter the estuary sporadically and stay for only short durations. Freedman and Roy (2012) used Ocean Biogeographic Information System (OBIS) data on giant manta ray observations to examine the spatial distribution of the species along the U.S. east coast. They found a higher number of observations near the continental shelf edge and bordering the Gulf Stream, and suggested a seasonal distribution of the species driven mainly by temperature, with giant manta rays primarily observed in waters from 19 °C to 22 °C (Freedman and Roy 2012). Manta rays are also known to visit the east coast of Florida, more often in the spring and summer months, moving north as water temperatures rise above 20 °C (Levesque 2019). However, while it is known that giant manta rays prefer warmer waters, there is no evidence that this is a physical or biological feature that is essential to the conservation of the species or related to foraging activity. In fact, as noted in the literature, giant manta rays can be found in waters anywhere from 18 °C to 30 °C (Yano et al. 1999; Freedman and Roy 2012; Graham et al. 2012; Burgess 2017; Hacohen-Domené et al. 2017). Additionally, the OBIS data, upon which Freedman and Roy (2012) based their conclusions, also has inherent flaws as it is an open-access database where any member can submit observations of marine species without validation. As will be discussed below, there are significant misidentification issues associated with *M. birostris* observations and conclusions drawn from this type of sightings data should

be made with caution as there are significant uncertainties and limitations to the data.

In the FGBNMS, Stewart et al. (2018b) documented high numbers of giant manta rays but specifically noted that foraging behavior was rare. Citing a personal observation (E. Hickerson), Stewart et al. (2018b) stated that mantas were only rarely seen exhibiting barrel rolling behavior (3 of 88 observations), indicative of feeding, at the banks. In his study of the Flower Garden Banks and surrounding banks, Childs (2001) documented *M. birostris* feeding behavior in February and March of 2000 through the use of a remotely operated vehicle. He noted that *M. birostris* generally fed along escarpments and within the water column over the reef crest; however, no other details were provided regarding these events.

In our own examination of the available data, we compiled manta ray sightings data (NMFS unpublished data) from a number of available surveys (Table 1), photo databases, individual observations, and social media websites (*e.g.,* YouTube and Facebook), and plotted the information to assess whether we could determine ''hot spots'' of giant manta rays, or areas where manta rays appear to be visiting consistently over time. We initially made the main assumption that sightings of the species were correlated with areas of high prey (as tends to be the case with observations of giant manta rays in other portions of its range). In other words, when a manta ray was spotted, we assumed it was likely because that animal was foraging in the area, but we also looked for behavioral (*e.g.,* barrel rolling, mouth open, cephalic lobes unfurled) or environmental data (*e.g.,* high plankton biomass) that could support this assumption as foraging may not be the only reason for manta ray presence.

Because most manta sightings within surveys are opportunistic in surveys designed for other species, there are some misidentification issues and gaps in the time series. Many of the sightings data were obtained from aerial surveys aimed at collecting information on the distribution and abundance of marine mammals (for example, the Atlantic Marine Assessment Program for Protected Species (AMAPPS) and North Atlantic Right Whale Consortium data). This presents a problem as observers on these surveys are usually not trained in identifying mobulid rays to the species level. In discussions with biologist Todd Pusser, a contract observer for NOAA in the southeast region during the 1990s and early 2000s who was then contracted through the NOAA Northeast Fisheries Science Center (NEFSC) at Woods Hole and participated in these marine mammal surveys from Canada to Cape Hatteras, North Carolina, he confirmed that in both the NOAA aerial and ship surveys along the Atlantic coast, mobulid sightings were simply logged as ''manta ray'' or ''manta spp,'' thus greatly inflating the sightings data for *M. birostris* (T. Pusser, pers. comm. to C. Jones, NMFS SEFSC, 2018). In fact, when photos were available from accompanying ship and aerial surveys, the majority of the sightings logged as *M. birostris* in the northeast Atlantic were *Mobula tarapacana* or *M. mobular* (T. Pusser, pers. comm. to C. Jones, NMFS SEFSC, 2018).

TABLE 1—AVAILABLE SURVEY DATASETS WITH REPORTED MANTA SIGHTINGS

Survey name	Year(s)	Survey location
Digital Aerial Baseline Survey—NYSERDA	2016, 2017	Atlantic (38.45° N to 41.08° N).
AMAPPS (aerial)	2010 through 2018	Atlantic (26.03° N to 45.32° N).
North Atlantic Right Whale Consortium database (various surveys).	1986 through 2017	Atlantic (25° N to 41° N).
SEFSC Mid-Atlantic Tursiops Survey (aerial)	1994, 1995	Atlantic (24.5° N to 40.50° N).
SEFSC Southeast Cetacean Aerial Survey	1992, 1995	Atlantic (26.21° N to 35.19° N).
Florida Manta Project (boat & aerial; directed manta ray survey)	2016, 2017, 2018	Atlantic (26.5° N to 27° N).
GA Aquarium (boat & aerial; directed manta ray survey)	2010 through 2017	Atlantic (29.5° N to 29.9° N).
SEFSC Platform Calibration Survey (aerial)	1991	Atlantic (35.8° N to 39.3° N).
Gulf of Mexico Marine Mammal Assessment Aerial Surveys—NRDA.	2010, 2011, 2012	Gulf of Mexico (98° W to 80.5° W).
GoMAPPS (aerial)	2017, 2018	Gulf of Mexico (97° W to 81° W).
GulfCet (aerial)	1992, 1993, 1994, 1996,1997	Gulf of Mexico (96.5° W to 84° W).
SEFSC GoMex (aerial)	1992, 1993, 1994, 1996	Gulf of Mexico (96.3° W to 82° W).
NOAA Coral Reef Ecosystems Program (towed diver survey)	2006, 2010	Pacific Islands (160° W; Jarvis Island).

Note: Survey locations are given as geographic regions: Atlantic, Gulf of Mexico, Pacific Islands. For Atlantic locations, the latitude range over which the surveys were conducted is given. For Gulf of Mexico and Pacific Island locations, the longitude range over which the surveys were conducted is given.

We similarly found this to be the case with another available dataset from the northeast Atlantic that documented 504 sightings of ''Giant Manta Ray'' (Normandeau Associates and APEM Ltd 2017). This aerial survey, conducted in 2016 and 2017 and supported by the New York State Energy Research and Development Authority (NYSERDA), encompassed the waters of the New York Bight from Long Island southeast to the continental shelf break. This dataset also had accompanying photos of each animal observation, which a NMFS species expert was able to review and confirm that only 6 of the 504 ''giant manta ray'' sightings were actually *Manta birostris* (C. Horn, NMFS SERO, pers. comm. to M. Miller, NMFS OPR, 2018). Similarly, in 2015, the NMFS Northeast Fisheries Observer Program database underwent a species verification review whereby NMFS scientists conducted a detailed review of observer photo records with the assistance of manta and devil ray experts (*i.e.,* Dr. Giuseppe Notarbartolo di Sciara, Dr. Andrea Marshall, and Guy Stevens). From 2009 to 2015, there were 25 manta and mobula species records with photos in the database (J. Hare, memo, addressed to R.E. Crabtree, February 1, 2019). Most of the mobula bycatch consisted of *Mobula tarapacana,* with only two confirmed records of *Manta birostris.* These individuals were observed caught off the coast of North Carolina. This observer data appears to further confirm the rare occurrence of *M. birostris* in the U.S. mid-Atlantic and northeast, and supports the advice provided by species experts that all *M. birostris* sightings north of Cape Hatteras should be questioned if there are no corresponding photos.

There may also be occasional misidentifications of *M. birostris* south

of Cape Hatteras as both *Mobula tarapacana* and *M. mobular* are also common in this portion of the species' range within the Atlantic (Stevens et al. 2018a, C. Jones unpublished data). Additionally, *M. tarapacana* co-occurs with *Manta birostris* in the Gulf of Mexico and Caribbean (Childs 2001), potentially confounding those aerial sighting records as well. Thus, while the presence of *M. birostris* south of Cape Hatteras is much more likely (based on photographic evidence), the proportion of *M. birostris* in these datasets to the other two commonly misidentified mobula rays is presently unknown, significantly increasing the uncertainty of the accuracy of the available sightings data.

In addition to misidentification rates, we found other inherent problems with the sightings data during our analysis, including the uncertainty regarding unique sightings and the large gaps in time between surveys. For aerial surveys, planes are generally flown following designated transect lines. Depending on the transect distance and timing, there is potential for double-counting the same animal if the animal is also moving. Without being able to view the ventral side of the animal, it is difficult for aerial observers to identify whether the manta ray they are spotting is the same individual from a previous observation. Aerial surveys are also subject to availability bias (*i.e.,* the percentage of time a manta would be near enough to the surface to be viewed by an aerial observer) and perception bias (*i.e.,* the probability of an observer viewing the animal when it is available). While it is possible to control for some of this uncertainty using distance-weighted sampling techniques for perception bias combined with data from satellite tags for availability bias, we do not have the data or information that would be necessary in order to conduct this type of analysis at this time, nor are we aware of any available studies that have accounted for this uncertainty in reporting and analyzing manta ray sightings.

Furthermore, as some of the aerial surveys were not regularly conducted on an annual or seasonal basis, but rather for specific research purposes that were unrelated to manta ray distribution or abundance, the resulting data was skewed in terms of effort in specific locations and over certain time periods and could not be used to identify potential areas used routinely or repeatedly by giant manta rays. For example, along the east coast, the SEFSC Mid Atlantic Tursiops Surveys (MATS), for which we have manta ray sightings information, were conducted in February of 1994 and July and August of 1995 to examine the distribution and estimate an index of relative abundance for Atlantic bottlenose dolphins inhabiting nearshore coastal waters in the mid and southern Atlantic bight. We also have data from the SEFSC Southeast Cetacean Aerial Survey, SECAS, from February to March in 1992 and March of 1995, a survey that was conducted to estimate cetacean abundance. The Gulf of Mexico Marine Mammal Assessment Aerial Surveys—Natural Resource Damage and Assessment surveys were only conducted during the spring and summer of 2010 and seasonally during 2011 to 2012 to assess the abundance and spatial distribution of marine mammals and sea turtles within the region impacted by the Deepwater Horizon oil spill. The Atlantic Marine Assessment Program for Protected Species (AMAPPS), which conducted annual aerial surveys from 2010–2017, had as its main objective assessing the abundance, distribution, ecology, and behavior of marine mammals, sea turtles, and seabirds throughout the U.S. Atlantic. However, again, these surveys, as well as others that were analyzed (see Table 1), varied with respect to the geographical coverage, years and even months in which they were conducted. Currently there are no available analyses of datasets or studies that control for spatial and temporal variation in sampling effort, perception and availability bias, and potential misidentification rates to distinguish areas of high giant manta ray abundance.

Recently, we became aware of an ongoing dedicated manta ray aerial survey, conducted by the Georgia Aquarium, which has documented manta ray presence off the east coast of Florida since 2010. The manta aerial surveys are conducted in spring and summer (March/April to June/July) and follow general track lines 0 to 2.5 nautical miles (0 to 4.63 km) from the beach that run parallel to the shore, from St. Augustine Beach Pier (29°52′ N) to Flagler Beach Pier (29°29′ N). The number of mantas are counted and, occasionally, dorsal photos of mantas are collected during these surveys. However, due to the murkiness of the water, photos are rather hard to obtain if the mantas are too deep in the water column, and no ventral photos are available (H. Webb, GA Aquarium, pers. comm. to M. Miller, NMFS OPR, 2019), preventing the identification of individual manta rays or analysis of potential site fidelity over the course of multiple years. Overall, the sightings data indicate the seasonal visitation of manta rays to Florida's inshore waters; however, the specific physical or biological features that attract giant manta rays to this particular area are poorly understood. The numbers, location, and peak timing of the manta rays to this area varies by year, but with a notable decline in manta rays observed in the study area since 2015 (H. Webb unpublished data). While sea surface temperatures are thought to play a role in the initial migration of manta rays to the study site, preliminary analysis suggests that the within-season temperatures are not strongly correlated with manta ray distribution or abundance within the area (H. Webb, GA Aquarium, pers. comm. to M. Miller, NMFS OPR, 2019). Although foraging has been anecdotally observed during these surveys (H. Webb, GA Aquarium, pers. comm. to M. Miller, NMFS OPR, 2019) and mentioned in a few online fishing articles (Roberts 2016; Levesque 2019), we are unaware of any research that has determined the driving factor of manta ray occurrence in this area and/or investigated the physical or biological features of this area that may be essential to support the life history needs of the species. Without information on specific habitat characteristics or the relationship between environmental variables and manta ray abundance or distribution, the available sightings data do not allow us to identify important foraging areas at this time. A manuscript summarizing findings from the Georgia Aquarium sightings dataset is forthcoming (H. Webb, GA Aquarium, pers. comm. to M. Miller, NMFS OPR, 2019), and we intend to review any new information that becomes available regarding manta ray use of this area off Florida.

Overall, the best available information indicates that giant manta rays will feed on a variety of planktonic organisms and are not limited by the required presence of a specific prey species for successful foraging to occur. Areas of high primary productivity (*e.g.,* upwelling) are generally regarded as habitat that could potentially support giant manta ray foraging events; however, the physical and biological characteristics of high productivity areas can vary depending on the location and season. Additionally, the presence of these areas does not necessarily indicate giant manta ray foraging will occur as the available data suggest some unknown prey density threshold may be necessary to facilitate manta ray foraging or aggregations. In U.S. waters, foraging has been anecdotally observed, but the available

data do not indicate any specific physical and biological features of these areas that are essential for facilitating foraging events or specific sites that are used consistently for foraging purposes. For the foregoing reasons, it is not possible to identify any physical or biological features related to foraging that are essential to the conservation of the species, nor any specific areas that are essential to support the foraging needs of the species within waters under U.S. jurisdiction.

Analysis of the Physical and Biological Features of Pupping Habitat That Are Essential to the Conservation of the Species

Giant manta rays likely give birth to only one pup per pregnancy after a long gestation time (12–13 months). This very low reproductive output for the species means that the success of pupping events is essential for the conservation of the species. Identifying and protecting important pupping habitat throughout the species' range will be necessary to support recruitment of young individuals to the recovering population. Without sufficient nursery habitat, the population is unlikely to increase to a level associated with low extinction risk and delisting. Protection of the species' nurseries is crucial because the rebuilding of the population cannot occur without protecting the source (juvenile) population and its associated habitats. Therefore, using the best available data, we attempted to identify potential nursery habitats and determine whether we could identify physical or biological features of the habitat that facilitate successful giant manta ray pupping and, thus, are essential for the conservation of the species.

For the purposes of identifying potential nursery habitat, we considered giant manta rays that were less than 4,000 mm DW to be immature, with a size at birth of ~2,000 mm DW. As mentioned previously, juvenile giant manta rays are rarely observed in the wild but are present in the fishery landings data from many countries, including Sri Lanka, Brazil, Indonesia, and the Philippines. While this indicates that fishermen are accessing potentially important juvenile habitat and possibly nursery areas, we have no data on these fishing grounds that could provide insight into important physical or biological features of these areas. However, recent manta ray research in U.S. waters has documented the presence of juvenile giant manta rays in the FGBNMS in the U.S. Gulf of Mexico as well as off the east coast of Florida, suggesting the existence of juvenile and potential manta ray nursery habitat, which we discuss below.

For the FGBNMS, both Childs (2001) and Stewart et al. (2018b) suggested this area may contain potential nursery grounds for the species. Although juveniles are rarely observed globally, a high number of juveniles were sighted at several locations in the FGBNMS over multiple years. Based on an analysis of NOAA diver logs (from various coral reef and fish surveys), approximately 171 individual manta rays have been sighted within the FGBNMS since 1994 (C. Jones unpublished data). Of these, 114 have approximate recorded sizes. Around 97 percent of the individuals sighted were less than 4 m DW (*i.e.,* immature), and around 50 percent were 2 m DW (*i.e.,* estimated size at birth of *M. birostris*) or less. However, *M. cf. birostris* may comprise the majority of these sightings as Stewart et al. (2018b) noted that at least 55 percent of the manta rays identified in their study likely belong to *M. cf. birostris,* which is thought to be closer in size to *M. alfredi* (Stevens et al. 2018a) and potentially explains the observations of mantas with sizes smaller than the estimated size at birth for *M. birostris.*

Using the nursery habitat criteria proposed by Heupel et al. (2007), Stewart et al. (2018b) suggested that the FGBNMS may contain nursery habitat for giant manta rays because juveniles, which are generally rare, are found in this area, remain in the area for a period of several days to months, and have been sighted with gaps of more than a year between re-sightings. The FGBNMS is a unique area, situated over 100 miles offshore of the Texas/Louisiana border and comprised of shallow, underwater features, called salt domes, upon which diverse coral reef communities have developed and thrived. There is substantial upwelling, distinct thermoclines, and unique eddies that form in the area, presumably due to interactions between currents and the pronounced benthic features. Stewart et al. (2018b) proposed that the FGBNMS may be an optimal nursery ground because it contains habitat near the edge of the continental shelf and in proximity to abundant pelagic food resources. Important prey for manta rays, like euphausiids, are abundant in the deep scattering layers in the basin waters of the Gulf of Mexico (Stewart et al. 2018b). The authors state that an additional benefit of the FGBNMS is that the shallow bottom habitat may protect juvenile rays from predation while they rest and recover their body temperature in the warm mixed layer after deep foraging dives (Stewart et al. 2018b).

However, while the FGBNMS provides habitat for juvenile giant manta rays, the available data do not indicate any specific physical and biological features within the FGBNMS that are essential for supporting pupping behavior or necessary for a manta ray nursery. For example, in examining specific physical features, like temperature, we found that the majority of individuals (~75 percent) at the FGBNMS were sighted between July and September (Stewart et al. 2018b). Sea surface temperatures during these sightings ranged from 20 °C to 32 °C, with ~75 percent of mantas observed in 28 °C to 31 °C (C. Jones unpublished data). However, dives during which observations were collected were skewed towards summer months (*i.e.,* warmer temperatures) and specific sites and depths (limited to areas above 150 ft (45.7 m)), meaning that the increased observations of giant manta rays in the higher temperature range may be a consequence of the survey methodology and not a reflection of an essential feature of the habitat.

Next, we reviewed the available data regarding behavior to see if we could identify specific habitat features based on use of the habitat that are necessary to support pupping. As stated in Stewart et al. (2018b) and Childs (2001), the primary behavior of manta rays observed in the FGBNMS was mainly swimming, with manta rays swimming above reef crest and sand flats, along escarpments, and in the water column. Although more juveniles were sighted at East and West Flower Garden Banks (hermatypic coral habitat) than at Stetson Bank (silt/claystone dominated coral community), acoustic telemetry tagging has shown that juvenile mantas move between East, West, Stetson, and Bright Bank within FGBNMS (R. Graham, Wildlife Conservation Society, pers. comm. to C. Horn, NMFS SERO, 2018). Stewart et al. (2018b) suggest the FGBNMS likely provides ample feeding opportunities for juveniles, but they acknowledge that foraging behavior is only rarely observed. Similarly, Childs (2001) mentioned that foraging behavior at the FGBNMS was observed in only two months (February and March) of his study despite manta rays occurring in the area during all months.

While the presence of young giant manta rays suggest potential pupping in the vicinity of the area (Childs 2001), the available data do not allow us to identify where this pupping is occurring. Additionally, the available data do not explain why or how giant manta rays are using this particular habitat (*e.g.,* foraging, transiting, resting) or allow us to identify the essential

physical or biological features of the habitat. Therefore, we cannot identify any pupping areas that meet the definition of critical habitat.

Research (supported by NMFS and the National Ocean Service, in collaboration with the Manta Trust) on the movements and genetics of giant manta rays continues in the FGBNMS and may help provide answers to these questions in the future. However, at this time, the available data do not indicate any physical or biological features of this habitat that are essential for the conservation of the species.

Similar to the FGBNMS, juvenile *M. birostris* have also been regularly observed off the east coast of Florida in the past several years. Since 2016, researchers with the Marine Megafauna Foundation have been conducting annual surveys along a small transect off Palm Beach, Florida, between Jupiter Inlet and Boynton Beach Inlet (~44 km, 24 nautical miles) (J. Pate, MMF, pers. comm. to M. Miller, NMFS OPR, 2018). Results from these surveys indicate that juvenile manta rays are present in these waters for the majority of the year (observations span from May to December), with re-sightings data that suggest some manta rays may remain in the area for extended periods of time or return in subsequent years (J. Pate unpublished data). For example, one satellite tagged male has been re-sighted multiple times in the past 3 years (Marine Megafauna Foundation 2019). However, similar to the limitations of the FGBNMS data and the level of resolution, it is currently unclear what physical or biological characteristics of this habitat are necessary to facilitate successful pupping behavior or are essential for nursery habitat. Manta rays are difficult to detect using boat-based observation. When an observer spotted a manta ray, he/she would get into the water and collect habitat information, behavioral data, as well as photos of the manta ray. This type of data collection has limitations. For example, water turbidity, depth, and weather conditions may make manta rays harder to spot from a boat. As such, the fact that the majority of manta rays were spotted over sand is likely due to increased visibility over this type of habitat compared to others (such as reef habitat) (J. Pate, personal communication, 2018) as opposed to a biological necessity for this type of habitat. Additionally, the main behavior observed in the transect area was swimming, with occasional observations of foraging behavior near Jupiter Inlet (J. Pate, MMF, pers. comm. to M. Miller, NMFS OPR, 2018). In other words, similar to the FGBNMS, the available data only indicate juvenile manta ray presence in these areas and does not explain why or how giant manta rays are using the particular habitat that would help us identify any physical or biological features that are essential for the conservation of the species. We also note that the majority, if not all, of these juvenile manta rays observed off the east coast of Florida are thought to be *M. cf. birostris* (J. Pate, MMF pers. comm. to M. Miller, NMFS OPR, 2018) and not *M. birostris.* NMFS researchers are currently collaborating with colleagues at the Marine Megafauna Foundation to tag these manta rays off the Florida coast and collect genetic information in order to inform taxonomy, determine population structure, and learn more about their movements to gain a better understanding of their habitat use in this region. Anecdotal observations from some of these recent tagging trips (June and August 2019) suggest this area may provide foraging opportunities (N. Farmer, NMFS SERO, pers. comm. to M. Miller, NMFS OPR, 2019); however, further investigation is required as the available information does not indicate any specific physical and biological features of this area that are essential to support the life-history needs of the species.

We also obtained anecdotal observations of juvenile giant manta rays in the U.S. Caribbean from off Puerto Rico (n=10; sightings dating back to 2004) and the U.S. Virgin Islands (n=16; sightings dating back to 2012), and in the U.S. Pacific from off Hawaii and the Pacific Remote Island Areas (n=24; sightings dating back to 2003) that indicate the use of these waters by young giant manta rays (NMFS unpublished data). However, as stated before, simply the observation of the presence of juveniles using these waters (and further confounded by a lack of known abundance, duration, movement, or frequency of occurrence in these areas) is not enough information to indicate that these areas contain physical and biological features that are essential to the conservation of the species.

In summary, while we have evidence of the presence and use of specific areas by juvenile giant manta rays, the available information does not allow us to identify any physical or biological features within these areas that are essential to support the life-history needs of the species. Without knowledge of the essential features that create meaningful pupping and nursery grounds, we cannot identify any areas that meet the definition of critical habitat at this time.

The Physical and Biological Features of Migratory Habitat That Are Essential to the Conservation of the Species

Based on the available data, it is evident that both small and large-scale migratory movements are a necessary component in the life-history of the giant manta ray. Seasonal sightings data suggests that large-scale movements are undertaken primarily for foraging purposes, correlated with the movement of zooplankton and influenced by current circulation and tidal patterns, seasonal upwelling, and seawater temperature (Luiz et al. 2009; Couturier et al. 2012; Freedman and Roy 2012; Graham et al. 2012; Sobral and Afonso 2014; De Boer et al. 2015; Girondot et al. 2015; Armstrong et al. 2016; Hacohen-Domené et al. 2017). Small-scale movements also appear to be associated with exploiting local prey patches in addition to refuging and cleaning activities (O'Shea et al. 2010; Marshall et al. 2011; Graham et al. 2012; Rohner et al. 2013; Stewart et al. 2016a; Stewart et al. 2016b; Sotelo 2018). However, as sightings of giant manta rays tend to be sporadic, with the species more commonly found offshore and in oceanic waters, it is difficult to track small-scale and large-scale migratory behavior of the species. For logistical reasons, survey effort tends to be focused in nearshore habitats. Yet, through the opportunistic tagging of giant manta rays with pop-up satellite archival tags when in these nearshore areas, researchers have been able to provide evidence of the migratory nature of giant manta rays and demonstrate the species' ability to make large-scale migrations. For example, satellite tracking has registered movements of the giant manta ray from Mozambique to South Africa (a distance of 1,100 km), around Ecuador and its islands (between the Isla de la Plata, Bajo Cope, and Isla Santa Clara (El Oro, Ecuador); around 230 km), and from the Yucatán, Mexico into the Gulf of Mexico (448 km) (Marshall et al. 2011; Guerrero and Hearn 2017; Sotelo 2018). Off Mexico's Yucatán peninsula, Graham et al. (2012) calculated a maximum distance travelled by a giant manta ray to be 1,151 km (based on a cumulative straight line distance between locations; tag period ranged from 2 to 64 days). Similarly, Hearn et al. (2014) report on a tagged *M. birostris* that was tracked from Isla de la Plata (Ecuador) to west of Darwin Island (tag was released after 104 days), a straight-line distance of 1,500 km, further confirming that the species is capable of fairly long distance migrations.

For the most part, these larger-scale migrations appear to be seasonally-based for foraging purposes, as described previously, with giant manta rays appearing in areas undergoing seasonal upwelling events. For example, through analysis of photographs and videos of mobulids from 1990 to 2013, Sobral and Afonso (2014) confirmed the presence of *M. birostris* at the Azores islands and noted that its occasional presence (several encounters per year) at these remote islands indicates a strong seasonal migratory behavior. However, the origin of these mantas, and the potential migratory paths that they use to get to these remote islands, remain unknown.

Similarly, seasonal sightings of *M. birostris* off the Isla de la Plata, Ecuador, predominantly occur from August to October, with a peak in early September (Guerrero and Hearn 2017); however, from where these mantas originate is currently under investigation. Recently, Sotelo (2018) examined the genetic diversity of these manta rays from 2010 to 2013 and found that it was moderately high, with an average expected heterozygosity value (He = 0.679) comparable to similar species that are known to undertake long-distance migrations. The results also suggest that the manta rays may migrate in family groups, but that they may not always visit the same areas consistently. For example, Sotelo (2018) found population structure between the manta rays sampled in 2013 compared to the years 2010, 2011, and 2012, with the 2013 manta rays representing a different population. The authors note that copepod numbers peaked at the Isla de la Plata in May of 2013, two months later than the previous years in the study (Sotelo 2018). As manta rays demonstrate high plasticity in terms of their movements in search of prey, Sotelo (2018) reasoned that the change in timing of the copepod peak likely explains why a different manta ray population visited the island in 2013 compared to previous years. However, again, the origin of these mantas, and the potential migratory routes traveled by these mantas to the Isla de la Plata are currently unknown.

While long-distance migratory information is lacking, scientists have tagged some of these mantas during their seasonal visitation to these nearshore areas, and have gained additional information on their smaller-scale movement patterns around and from these sites. For example, in Isla de la Plata, two mantas were tagged from September 2017 to January 2018 with tracks that revealed coastal movements between Ecuador and northern Peru (Sotelo 2018). These two mantas remained within 200 km of the shoreline and did not move more than 300 km south of Isla de la Plata, where they were originally tagged. However, based on the track lines (see Annex C; Sotelo 2018), there is no clear migratory corridor that they appear to use, with movements traversing throughout the entire area.

Off the Yucatán peninsula, Graham et al. (2012) tagged 6 giant manta rays (4 females, 1 male, and 1 juvenile) and tracked their movements for up to 64 days. The tagged manta rays traversed the frontal zones repeatedly, probably in search of prey (Graham et al. 2012), with no clear migratory route. The majority of manta ray tracks were more than 20 km offshore, in water depths of less than 50 m, and the animals traveled up to 116 km from their original tagging location (Graham et al. 2012). The authors also noted that there were no differences in movement patterns based on sex, body size, or ambient water-column temperature. Their conclusion, based on the tracking data, was that giant manta rays forage over large spatial scales (~100 km long) that are too far offshore and wide-ranging to be completely captured in the existing Marine Protected Area networks within the Mexican Exclusive Economic Zone (Graham et al. 2012). In other words, there does not appear to be a specific migratory corridor that dictates these smaller-scale foraging movements. Rather, manta rays appear to be opportunistic feeders, with movements in and around frontal zones or areas that are likely to contain prey.

While the available data indicate that giant manta rays may be capable of long-distance movements, a recent study by Stewart et al. (2016a) suggests that the species may not be as highly migratory as previously thought. Using pop-up satellite archival tags in combination with analyses of stable isotope and genetic data, the authors found evidence that *M. birostris* off the Pacific coast of Mexico may actually exist as well-structured subpopulations that exhibit a high degree of residency. For example, unlike the giant manta ray in the Hearn et al. (2014) study (that traveled from Isla de la Plata to the Galapagos Islands), tagged *M. birostris* individuals from locations nearshore to Mexico (Bahia de Banderas; n=5) and offshore Mexico (Revillagigedo Islands; n=4) showed no movements between locations (tag deployment length ranged from 7 days to 193 days) (Stewart et al. 2016a). The stable isotope analysis showed higher $\delta^{13}C$ values for the nearshore mantas compared to those offshore, indicating these mantas were foraging in their respective locations rather than moving between nearshore and offshore environments (Stewart et al. 2016a). Additionally, the genetic analysis provided evidence of population structure between the coastal Mexico and offshore Mexico populations (Stewart et al. 2016a). While the authors note that the species may be capable of occasional long-distance movements, the results from their study indicate that, for some populations, these types of long-distance movements may be rare and may not contribute to substantial gene flow or inter-population mixing of individuals (Stewart et al. 2016a).

Overall, the available data indicate that giant manta rays undergo both short- and long-distance migrations; however, the space or any specific migratory corridor used by the species during these migrations remains unknown. In addition, we have no information on any potential migratory corridors that may exist within waters under U.S. jurisdiction for the giant manta ray. As mentioned previously, we are currently supporting and conducting tracking studies of giant manta rays within U.S. waters to better understand the fine-scale movements of the species off the coast of Florida and within the FGBNMS. Data from these or similar studies may reveal potential migratory corridors preferred by giant manta rays. Similarly, survey efforts by the Georgia Aquarium off the coast of St. Augustine, Florida, may also help elucidate some of these questions in the future.

As noted previously in this determination, giant manta rays appear to have a seasonal pattern of occurrence along the east coast of Florida, showing up with greater frequencies (and in greater numbers) in the spring and summer months. In fact, sightings of manta rays in the region signal to fishermen the start of cobia fishing as fishermen have found that cobia tend to closely associate with the manta rays as they migrate along the east coast of Florida. Based on information from recreational cobia fishing articles, manta rays tend to appear off Florida's coast when water temperatures climb above 20 °C to 21 °C; however, Levesque (2019) notes that it is ''impossible to predict when they will show up from one year to the next.'' Killer (2010) states that in Florida's Treasure Coast waters, mantas may not show up every year, and it is unclear where they come from or where they go after they leave the area. Quoting two charter vessel captains, Killer (2010) reports that the mantas have been observed along the coast moving from south to north as waters warm, but have also been observed doing the opposite migration,

with some potentially moving from offshore to inshore waters as well during this time. McNally (2012) believes that the spring migration of rays off northeast Florida is occurring much farther offshore than in the past, noting that the mantas used to be observed just off the beach breakers but are now more than 10 miles offshore. We also note that during the migratory season, manta rays tend to be found in both shallow and deep waters (Killer 2010; Levesque 2019), with no information to suggest they are restricted to a certain area off the coast of Florida.

While the available information confirms the migratory behavior of the species in U.S. waters, the data do not indicate that there are any specific routes or corridors that are consistently used by the species during their migration. In fact, as noted previously, McNally (2012) suggests that a dedicated corridor may not exist, or that some other unknown feature may be influencing their spatial patterns during these migrations. Additionally, Roberts (2016) notes that ''no studies have shown a correlation of bottom structure (reef lines, continental shelf, *etc.*) and the ray's migration pattern,'' nor have we come across any studies since that article was published. Therefore, at this time, and based on the foregoing information, we cannot identify any specific essential features that define migratory habitat for giant manta rays.

The Physical and Biological Features of Breeding Habitat That Are Essential to the Conservation of the Species

Little information exists on the reproductive ecology of the giant manta ray as mating behavior of *M. birostris* is rarely observed in the wild. However, based primarily on observations of *M. alfredi* mating behavior, Stevens et al. (2018b) identified seven stages of courtship for manta rays: (1) Initiation, (2) endurance, (3) evasion, (4) pre-copulation positioning, (5) copulation, (6) post-copulation holding, (7) separation. The initiation stage involves males shadowing females at normal cruising speeds. During this stage, males will often attempt to facilitate female receptiveness by using the cephalic fins to gently stroke the females' dorsal surface. During the endurance stage, swimming speeds increase and from 1 to 8 males follow closely behind a single female. The evasion stage is characterized by continued close following at increased speeds with the female incorporating rapid maneuvers, somersaults, and flips, with males attempting to stay right behind her. Pre-copulation positioning involves the male using his cephalic fins to guide himself down the females' back along the leading edge of her pectoral fin. Once at the fin's tip, the male grasps it firmly with his mouth then rotates his body so that he is underneath the female and the two are abdomen to abdomen. Copulation then occurs, usually initiating near the surface, with the male continuing to move his fins to maintain position while the female ceases movement. The clasper is inserted in the cloaca and copulation lasts between 30 and 90 seconds, while the pair slowly sinks (Stevens et al. 2018b).

Only a few instances of courtship involving giant manta rays have actually been observed, with only a single instance resulting in copulation. On two separate occasions, in early August 1996 at the Ogasawara Islands, Japan, Yano et al. (1999) witnessed a male *M. birostris* chasing closely behind a female at relatively high speeds (~10 km/hr). In both instances, the behavior was observed for approximately 40 minutes but did not result in copulation. Stevens et al. (2018b) also witnessed two occurrences of this ''endurance'' stage in *M. birostris,* one involving a single female followed by a single male, and the other involving a single female followed by eight males. Both of these observations were made off of the remote island of Fuvahmulah in the Maldives, lasted approximately one minute, and neither resulted in observed copulation. The only observation of successful copulation was reported by Yano et al. (1999) who witnessed two males chasing a single female in a zigzag pattern off the Ogasawara Islands in early July 1997. Speeds were similar to those witnessed during other observations; however, these chases progressed all the way through the rest of the stages of copulatory behavior (Yano et al. 1999). The chases occurred approximately 30 minutes apart, with both males observed inserting their claspers into the same female (Yano et al. 1999).

In terms of habitat characteristics, the mating behavior in the Maldives location occurred at a known aggregation site for the species (Stevens et al. 2018b). Females were chased along the reef crest of the atolls in the area (Stevens et al. 2018b). However, while the authors noted that most of the mating behavior for *M. alfredi* happened at cleaning stations, for *M. birostris,* the mating occurred at locations where giant manta rays tend to just pass through (Stevens et al. 2018b). In other words, the area where the mating behavior was observed did not appear to have any other significance for the species. Off the Ogasawara Islands, Japan, Yano et al. (1999) described the site of the mating behavior as 100–200 m offshore of the east coast of Chichijima (one of the Ogasawara Islands), within an area comprised of rocky reefs in 10–20 m depth. The authors noted that each copulation event happened within one meter of the surface (Yano et al. 1999).

Giant manta ray breeding sites are also thought to occur off Ecuador and the Galapagos Islands based on the presence of pregnant females and recent mating scars. In fact, some of the first pregnant females ever seen in the wild have been sighted in the productive coastal waters off Isla de la Plata in the Machalilla National Park, Ecuador. According to Guerrero and Hearn (2017), between 2009 and 2015, 8 pregnant giant mantas were observed off Isla de La Plata, with 7 of these reported in 2011. Additionally, photographic records from 2012 to 2015 showing fresh scars on the pectoral fins of mature female giant manta rays around Isla de la Plata and Bajo Copé indicate the likely use of these Ecuadorian aggregation sites as mating areas (Guerrero and Hearn 2017). In terms of habitat characteristics of these areas, the authors note that the majority of giant manta rays seen in Isla de la Plata are off the northwest area of the island, in Punta El Faro, Roca Honda, and La Pared (Guerrero and Hearn 2017). These particular areas are close to deep waters, with a bottom characterized by coarse sand and scattered rocks. Calcareous coral formations can be found between 0 and 14 m depths and soft corals (gorgonians) can be found in deeper depths (Guerrero and Hearn 2017). La Pared, in particular, contains pinnacles and rocks that extend to the northwest and create an edge with a steep drop to 52 m depths (Guerrero and Hearn 2017). The authors state that giant manta rays do not remain in the area for very long (usually around a few days to a week), but may return in multiple years and hypothesize that their purpose for visiting the island could be primarily for cleaning purposes, mating, and/or feeding as all three behaviors are observed at this site (Guerrero and Hearn 2017).

Within U.S. waters, there are very few observations of mating behavior. In our collection of manta ray sightings and videos, there are only 4 records of ''chasing'' or ''courtship'' behavior of *M. birostris.* Three of the records are from diver observations off the west coast of Hawaii (Manta Pacific Research Foundation 2019), and the fourth is from an instagram video off Avon Fishing Pier, North Carolina, taken in July 2019 (G. Stevens, Manta Trust,

pers. comm. to C. Horn, NMFS SERO, 2019); however, there is no corresponding information regarding habitat features related to these records (just individual sightings data). Given that the areas where giant manta ray mating occurs remain largely unknown, with only a few, opportunistic observations of courtship behavior or evidence of breeding (*i.e.,* mating scars, pregnant females) in a couple of locations, there has not been any systematic evaluation of the particular physical or biological features that facilitate or are necessary for mating to occur. The general habitat characteristics mentioned above in relation to the observations of mating behavior, including presence of rocky and coral reefs, shallow depths, coarse sand, and reef crests adjacent to deep water, are found throughout the species' range and are commonly associated with giant manta ray sightings (Yano et al. 1999; Childs 2001; Kashiwagi et al. 2011; Marshall et al. 2011; Stevens et al. 2018b; Stewart et al. 2018b). However, not all areas with the above features provide meaningful mating habitat as, for example, many of the observations from the studies previously discussed (for foraging, pupping, and migratory habitat) also noted the presence of these habitat features but did not observe mating behavior in *M. birostris.* As such, at this time, the available information does not allow us to identify any physical or biological features within these areas where mating has been observed that are essential to support this behavior.

Unoccupied Areas

Section 3(5)(A)(ii) of the ESA defines critical habitat to include specific areas outside the geographical area occupied by a threatened or endangered species at the time it is listed if the areas are determined by the Secretary to be essential for the conservation of the species. Regulations at 50 CFR 424.12(b)(2) address designation of unoccupied area as critical habitat and the regulations at 50 CFR 424.12(g) state that critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction.

As discussed previously, the waters off the U.S. west coast are not considered part of the geographical area occupied by giant manta ray at the time of listing. We also conclude that it is not an unoccupied area essential to the species' conservation given the rare, errant use of the area by a vagrant giant manta ray in the past, and no information to suggest the area is essential to the conservation of the species. The other geographical areas under U.S. jurisdiction that were not included in the discussion of occupied areas by the giant manta ray (*i.e.,* U.S. waters north of Long Island, New York) are considered to be out of the species' livable range and, thus, would not be essential to the conservation of the species. As such, we find that there are no specific areas outside the geographical areas occupied by *M. birostris* that would meet the definition of critical habitat for the giant manta ray.

Critical Habitat Determination

Given the best available information and the above analysis of this information, we find that there are no identifiable occupied areas under the jurisdiction of the United States with physical or biological features that are essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species. Therefore, we conclude that there are no specific areas within the giant manta ray range and under U.S. jurisdiction that meet the definition of critical habitat. Per 50 CFR 424.12(a)(1)(iv), if no areas meet the definition of ''critical habitat,'' then we can conclude that a designation of critical habitat is not prudent.

Although we have made this ''not prudent'' determination, the areas occupied by giant manta rays under U.S. jurisdiction will continue to be subject to conservation actions implemented under section 7(a)(1) of the ESA, as well as consultation pursuant to section 7(a)(2) of the ESA for Federal activities that may affect the giant manta ray, as determined on the basis of the best available information at the time of the action. Through the consultation process, we will continue to assess effects of Federal actions on the species and its habitat.

Additionally, we remain committed to promoting the recovery of the giant manta ray through both domestic and international efforts. As noted in the proposed and final rules (82 FR 3694, January 12, 2017; 83 FR 2916, January 22, 2018, respectively), the most significant threat to the giant manta ray is overutilization by commercial and artisanal fisheries operating within the Indo-Pacific and eastern Pacific portions of its range, primarily in areas outside of U.S. jurisdiction. Giant manta rays are both targeted and caught as bycatch in a number of fisheries throughout their range, and while the majority of these fisheries target manta rays for their meat, there has been an increasing demand for manta ray gill plates for use in Asian medicine, primarily in the Indo-West Pacific. Efforts to address overutilization of the species through regulatory measures appear inadequate, with evidence of targeted fishing of the species despite prohibitions in a number of countries, and only one regional fisheries management organization measure to address bycatch issues (Miller and Klimovich 2017). Thus, recovery of the giant manta ray is highly dependent upon international conservation efforts. To address this, we have developed a recovery plan outline that provides our preliminary strategy for the conservation of the giant manta ray. This outline can be found on our website at: *https://www.fisheries.noaa.gov/species/giant-manta-ray# resources* and provides an interim recovery action plan as well as preliminary steps we will take towards the development of a full recovery plan.

Currently, we are actively engaged in manta ray research to gain a better understanding of the biology, behavior, and ecology of this threatened species. We are presently working on collecting and assimilating anecdotal and survey-related manta sightings and effort data to support the development of an ensemble species distribution model for the southeastern United States. We are also collaborating with partners to examine giant manta ray movements in U.S. waters off Florida and within the FGBNMS. This data will provide a better understanding of giant manta ray movements and habitat use, including environmental drivers of movement. We are also supporting research projects assessing the survivorship of giant manta rays caught in Peruvian and Indonesian artisanal gillnet fisheries.

We have developed safe handling and release guidelines for fishermen (available at: *https://www.fisheries.noaa.gov/webdam/download/91927887*). In an effort to address species identification issues during aerial surveys, we have also developed an aerial survey mobulid species identification key that will facilitate accurate species identification in the future. We added the giant manta ray to our Northeast and Southeast Observer Program capture reports, logbooks, and manuals/reports, and provided a guide to the identification of mobulid rays to observers to gain more accurate information regarding the species' distribution and prevalence in U.S. fisheries. In addition, we have set up a dedicated email (*i.e., manta.ray@noaa.gov*) for the public to report giant manta ray encounters to help us learn more about *M. birostris* movement patterns, habitat use, and human interactions in our waters. We will continue to work towards the

conservation and recovery of giant manta rays, both on a domestic and global level, including with our international partners and within regional fisheries management organizations and other international bodies to promote the adoption of conservation and management measures for the threatened giant manta ray.

References

A complete list of all references cited herein is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 2, 2019.

Samuel D. Rauch III,

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

[FR Doc. 2019–26265 Filed 12–4–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Occupational Safety and Health Programs for Federal Employees

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Army Corps of Engineers (USACE) Safety and Health Requirements Manual (EM 385–1–1) is the gold standard for Safety and Occupational Health regulations. The manual holds a long history dating back to 1941 and is designed to facilitate the standardization of all safety programs. The EM 385–1–1 prescribes the safety and health requirements for all Corps of Engineers activities and operations. The USACE is soliciting comments on the proposed revisions to EM 385–1–1.

DATES: Consideration will be given to all comments received by January 30, 2020.

ADDRESSES:

Electronic: You may submit comments concerning the EM 385–1–1 electronically by accessing the USACE Safety and Occupational Office website at the following location: *https://www.usace.army.mil/missions/safety-and-occupational-health/next-gen-em385-1-1/.* Follow the instructions at the listed website where comments will be collected and reviewed.

Mail/Hand Delivery/Courier: Due to security requirements and tracking, we will not accept or receive comments by hand delivery or courier. Comments for considerations will only be accepted by electronic submission.

FOR FURTHER INFORMATION CONTACT: Steven Washington, Headquarters, U.S. Army Corps of Engineers, Safety and Occupational Health Office, in Washington, DC at 202–761–7678.

SUPPLEMENTARY INFORMATION: Executive Order (E.O.) 12196, Occupational Safety and Health Programs for Federal Employees, was issued in 1980 and directed agencies heads to (1) Furnish to employees places and conditions of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm; (2) Operate an occupational safety and health program in accordance with the requirements of this order and basic program elements promulgated by the Secretary. DoDI 6055.1 was issued in 2014 (incorporated changes in 2018) and the DoD policy. Following issuance of DoD Safety and Occupational Health (SOH) Program DODI 6055.01; the AR–385–10, Army Safety Program implements the requirements of the Occupational Safety and Health Act of 1970 as implemented in E.O. 12196; 29 CFR 1960; DODI 6055.1; DoDI 6055.4; and DoDI 6055.7. Following the issuance of the AR–385–10; the EM 385–1–1 U.S. Army Corps of Engineers Safety and Health Requirements Manual prescribes the safety and health requirements for all Corps of Engineers activities and operations. The manual applies to Headquarters, US Army Corps of Engineers (HQUSACE) elements, major subordinate commands, districts, centers, laboratories, and field operating activities (FOA), as well as USACE contracts and those administered on behalf of USACE. Applicability extends to occupational exposure for missions under the command of the Chief of Engineers, whether accomplished by military, civilian, or contractor personnel. USACE intends to update the manual within two years, and periodically thereafter, to reflect such public input, experience, and innovation. The agency will address significant comments received in the next revision of this manual. All comments are welcomed and encouraged for any section of the EM 385–1–1, Safety and Health Requirements Manual. All suggestions such as additions, deletions, or revisions will be considered and reviewed by established EM 385–1–1 Rewrite PDT for adjudication. A process was created to clarify the information needed to make a suggestion and to minimize the burden of the information collected. The goal of the collection notice is to notify all external stakeholders that the USACE Safety and Health Requirements Manual is under review. In addition, the Corps created an inclusive process that will allow stakeholders to provide comments and recommendations that will be considered in the updated version of the manual. All input and comments received will help improve the overall quality of the EM 385–1–1 which will prevent injuries and save lives.

Instructions for Providing Comments

USACE is requesting assistance in the form of data, comments, literature references, or field experiences, to help clarify the policy requirements for implementing Safety and Occupational Health activities for both Corps and contractor personnel. The current version of the Safety and Health Requirements Manual (EM 385–1–1, Nov 2014) is available for review on the USACE Publications website *https://www.publications.usace.army.mil/Portals/76/Publications/EngineerManuals/EM_385-1-1.pdf*). Additionally, a series of questions has been provided for reviewers to consider as they evaluate the document. While USACE welcomes any and all feedback on this Engineering Manual, detailed responses to the questions provided will be particularly helpful to USACE in clarifying, revising, adding, or deleting information in a particular area/section/chapter. The most useful comments will be derived from on-the-job experiences that are covered within the topics of the manual. Commenters should use their knowledge of working with USACE on various types of federal actions as well as their understanding of consensus standards and other federal Safety and Health regulations.

Comments and responses based on the current version of the Safety and Health Requirements Manual (EM 385–1–1, Nov 2014) and the guiding questions are being accepted through the website only. Literature citations, experiential references, data, and other relevant reports may be uploaded on the website with all comments prior to submission. All comments will be compiled and sent to the EM 385–1–1 Rewrite PDT for their consideration.

Future Actions

Feedback and comments provided through this notice will be considered and the current version of the Safety and Health Requirements Manual (EM 385–1–1, Nov 2014) will be updated as appropriate. When the manual is finalized and published, a notice will be placed in the **Federal Register**, on the

USACE Safety and Occupational Health Office website, and the document itself will be made available through the typical publication process.

Dated: November 26, 2019.

R.D. James,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 2019–26275 Filed 12–4–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2934–029]

New York State Electric & Gas Corporation; Notice of Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2934–029.

c. *Date Filed:* April 1, 2019.

d. *Applicant:* New York State Electric & Gas Corporation (NYSEG).

e. *Name of Project:* Upper Mechanicville Hydroelectric Project.

f. *Location:* The existing project is located on the Hudson River, in Saratoga and Rensselaer Counties, New York. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David W. Dick, Manager, NYSEG and RG&E Hydro Engineering, 1300 Scottsville Road, Rochester, NY 14624; (585) 724–8535; *david_dick@rge.com*.

i. *FERC Contact:* Jody Callihan, (202) 502–8278 or *jody.callihan@ferc.gov*.

j. Deadline for filing comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All filings must (1) bear in all capital letters the title COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, PRELIMINARY TERMS AND CONDITIONS, or PRELIMINARY FISHWAY PRESCRIPTIONS; (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 submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, preliminary terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing 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 4.34(b) and 385.2010.

The Commission strongly encourages electronic filing. Please file comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions 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–2934–029.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person 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. This application has been accepted for filing and is now ready for environmental analysis.

l. *The existing Upper Mechanicville Hydroelectric Project consists of:* (1) A 700-foot-long concrete gravity dam with a crest elevation of 66.6 feet National Geodetic Vertical Datum of 1929 (NGVD29); (2) 3 spillway bays each extending 222 feet across the length of the dam and separated by a 7.5-foot to 10.5-foot-wide concrete pier, with each spillway bay containing 12 pneumatic Obermeyer crest gates that are 6 feet high; (3) a 1.8-mile-long impoundment with a 380-acre surface area and gross storage capacity of 10,735 acre-feet at a normal pool elevation of 72.6 feet NGVD29; (4) an intake channel with two reinforced guide walls and three 35-foot-diameter cofferdam walls constructed of sheet piling; (5) a 20-foot-wide and 7.5-foot-high intake bypass sluice gate; (6) a 105.5-foot-long by 122-foot-wide powerhouse containing two 12,780 horsepower Kaplan turbines and two Siemens-Allis generators each having a rated capacity of 8,265 kilowatts; (7) a tailrace approximately 1,200 feet long and 120 feet wide with a bi-level bottom designed to minimize cross-currents; (8) one 1.10-mile-long, 34.5-kilovolt transmission line; and (9) appurtenant facilities.

During the non-navigation season (typically from December 1 through April 30), NYSEG operates the project in a run-of-river (ROR) mode and maintains the impoundment at an elevation of 72.6 feet NGVD29. During the navigation season (typically May 1 through November 30), NYSEG periodically spills water to lower the impoundment up to 3 feet below full pool, as directed by the New York State Canal Corporation, to accommodate navigation at lock C–3, and uses all available remaining inflow (that is not used to support navigation) for generation purposes. NYSEG proposes to continue operating the project as it does currently, to support both generation and navigation. In addition, NYSEG proposes to enhance fish passage at the project by: (1) Installing upstream passage for American eel (4 years post-license); (2) developing an agreement with the New York State Canal Corporation to modify lock operations to accommodate the upstream passage of blueback herring and American shad (commencing 2 years post-license); and (3) modifying the project's intake bypass sluice gate to provide an additional route of downstream fish passage from April 1 through November 30. The project currently generates an annual average of 88,537 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the Mechanicville District Public Library located at 190 North Main Street, Mechanicville, NY 12118 and the A.E. Diver Memorial

Library located at 136 Main Street, Schaghticoke, NY 12154.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following revised schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions	January 2020.
Commission issues Environmental Assessment (EA)	July 2020.
Comments on EA	August 2020.
Modified Terms and Conditions	October 2020.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

p. *A license applicant must file no later than 60 days following the date of issuance of this notice:* (1) A copy of the water quality certification; (2) a copy of the request for the certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: November 29, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–26255 Filed 12–4–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–801–008.

Applicants: Constellation Power Source Generation, LLC.

Description: Compliance filing: Informational Filing Regarding Notch Cliff Units 5–8 Retirements to be effective N/A.

Filed Date: 11/27/19.

Accession Number: 20191127–5161.

Comments Due: 5 p.m. ET 12/18/19.

Docket Numbers: ER20–491–000.

Applicants: Lake Lynn Generation, LLC.

Description: § 205(d) Rate Filing: Revised Reactive Service Tariff to be effective 1/1/2020.

Filed Date: 11/29/19.

Accession Number: 20191129–5001.

Comments Due: 5 p.m. ET 12/20/19.

Docket Numbers: ER20–492–000.

Applicants: York Haven Power Company, LLC.

Description: § 205(d) Rate Filing: Revised Reactive Service Tariff to be effective 1/1/2020.

Filed Date: 11/29/19.

Accession Number: 20191129–5003.

Comments Due: 5 p.m. ET 12/20/19.

Docket Numbers: ER20–493–000.

Applicants: New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Dec 2019 Membership Filing to be effective 12/1/2019.

Filed Date: 11/29/19.

Accession Number: 20191129–5019.

Comments Due: 5 p.m. ET 12/20/19.

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: November 29, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–26256 Filed 12–4–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR20–4–000]

Phillips 66 Pipeline LLC; Notice of Request for Emergency Relief

Take notice that on November 27, 2019, NGL Supply Wholesale, LLC (NGL) filed a request for the Commission to exercise its emergency powers pursuant to Section 1(15) of the Interstate Commerce Act (ICA), to allow, or if necessary direct, Phillips 66 Pipeline LLC (Phillips 66 Pipeline) to temporarily provide priority treatment of propane shipments to Jefferson City, Missouri and East St. Louis, Illinois. NGL submits that early weather conditions requiring propane for heating and high moisture grain requiring propane for crop drying have driven demand for propane by NGL's customers. Specifically, NGL requests that the Commission direct Phillips 66 Pipeline to prioritize the transportation of propane over butane in its Blue Line to maximize the volume of propane for thirty days from the date of a Commission order, subject to further extensions if the conditions continue.

Notice is given that the deadline pursuant to 18 CFR 343.3 for filing comments is hereby shortened to and including December 6, 2019.

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.

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 December 6, 2019.

Dated: November 29, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–26254 Filed 12–4–19; 8:45 am]

BILLING CODE 6717–01–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Regular Meeting; Farm Credit System Insurance Corporation Board

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Notice; regular meeting.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATES: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 12, 2019, from 11:00 a.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056, *aultmand@fca.gov.*

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit System Insurance Corporation Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- September 19, 2019

B. Business Reports

- FCSIC Financial Reports
- Report on Insured and Other Obligations
- Report on Annual Performance Plan

C. New Business

- Strategic Plan 2020–2025

Closed Session

- FCSIC Report on Insurance Risk

Closed Session—Audit Committee

A. Federal Managers Financial Integrity Act Vulnerability Review
B. Audit Plan for the Year Ended December 31, 2019
C. Executive Session of the Audit Committee With Auditor

Dated: December 2, 2019.

Dale Aultman,

Secretary, Farm Credit System Insurance Corporation.

[FR Doc. 2019–26286 Filed 12–4–19; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 19–1212]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing the meeting of the North American Numbering Council (NANC).

DATES: December 16, 2019. The meeting will come to order at 9:30 a.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marilyn Jones, Designated Federal Officer of the NANC, at *marilyn.jones@fcc.gov.,* or (202) 418–2357; Jordan Reth, Alternate DFO, at *jordan.reth@fcc.gov,* or 202–418–1418; or Carmell Weathers, Special Assistant to the DFO at *carmell.weathers@fcc.gov,* or (202) 418–2325. The fax number is: (202) 418–1413. The TTY number is: (202) 418–0484. More information about the NANC is available at *https://www.fcc.gov/about-fcc/advisory-committees/general/north-american-numbering-council.*

SUPPLEMENTARY INFORMATION: The NANC meeting is open to the public. The FCC will accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will also provide audio coverage of the meeting. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau @ (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days advance notice for accommodation requests; last minute requests will be accepted but may not be possible to accommodate.

Members of the public may submit comments to the NANC in the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs.* Comments to the NANC should be filed in CC Docket No. 92–237.

Requests to make an oral statement or provide written comments to the NANC should be sent to Carmell Weathers, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 12th Street SW, Room 5–C162, Washington, DC 20554 or emailed to *Carmell.Weathers@fcc.gov.*

This is a summary of the Commission's document in CC Docket No. 92–237, DA 19–1212 released November 26, 2019. The complete text in this document is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW, Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the internet at *http://www.bcpiweb.com.* It is available on the Commission's website at *http://www.fcc.gov.*

Proposed Agenda: The primary agenda of this meeting will be to introduce members of the Committee, discuss the technical required documents for the Reassigned Numbers Database, and provide more information about the working group charges. This agenda may be modified at the discretion of the NANC Chair and the Designated Federal Officer (DFO).

Federal Communications Commission.

Marilyn Jones,

Senior Counsel for Number Administration, Wireline Competition Bureau.

[FR Doc. 2019–26277 Filed 12–4–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, December 12, 2019 at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC (12th Floor).

STATUS: The December 12, 2019 Open Meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Acting Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2019–26346 Filed 12–3–19; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, December 5, 2019 at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC (12th Floor).

STATUS: The December 5, 2019 Open Meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Acting Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2019–26348 Filed 12–3–19; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201325.

Agreement Name: Sealand/Network Space Charter Agreement.

Parties: Maersk A/S d/b/a Sealand and Network Shipping, Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes Sealand to charter space to Network Shipping in the trade between ports in Ecuador, Panama, Costa Rica, El Salvador, Guatemala, Nicaragua, and Mexico on the one hand and ports in California on the other hand.

Proposed Effective Date: 1/11/2020.

Location: *https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/25450.*

Dated: December 2, 2019.

JoAnne O'Bryant,

Program Analyst.

[FR Doc. 2019–26262 Filed 12–4–19; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3179]

Request for Nominations on Public Advisory Panels of the Medical Devices Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of nonvoting industry representatives to serve on certain panels of the Medical Devices Advisory Committee (MDAC or Committee) in the Center for Devices and Radiological Health (CDRH) notify FDA in writing. FDA is also requesting nominations for nonvoting industry representatives to serve on certain device panels of the MDAC in the CDRH. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current and upcoming vacancies effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to FDA by January 6, 2020 (see sections I and II of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by January 6, 2020.

ADDRESSES: All statements of interest from industry organizations interested in participating in the selection process of nonvoting industry representative nomination should be sent to Margaret Ames (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives should be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Margaret Ames, Division of Management Services, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5213, Silver Spring, MD 20993, 301–796–5960, Fax: 301–847–8505, email: *margaret.ames@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency is requesting nominations for nonvoting industry representatives to the panels listed in the table in this document.

I. Medical Devices Advisory Committee

The Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. The panels engage in a number of activities to fulfill the functions that the Federal Food, Drug, and Cosmetic Act (FD&C Act) envisions for device advisory panels. With the

exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, advises the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification or reclassification of devices into one of three regulatory categories; advises on any possible risks to health associated with the use of devices; advises on formulation of product development protocols; reviews premarket approval applications for medical devices; reviews guidelines and guidance documents; recommends exemption of certain devices from the application of portions of the FD&C Act; advises on the necessity to ban a device; and responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices. The Committee also provides recommendations to the Commissioner or designee on complexity categorization of in vitro diagnostics under the Clinical Laboratory Improvement Amendments of 1988.

Panels	Function
Dental Products Panel (one representative—to represent the dental drug industry).	Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational products for use in dentistry, endodontics or bone physiology relative to the oral and maxillofacial area and makes appropriate recommendations to the Commissioner of Food and Drugs.
Ear, Nose, and Throat Devices Panel	Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational ear, nose, and throat devices and makes appropriate recommendations to the Commissioner of Food and Drugs.
General and Plastic Surgery Devices Panel	Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational general and plastic surgery devices and makes appropriate recommendations to the Commissioner of Food and Drugs.
Hematology and Pathology Devices Panel	Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational in vitro devices for use in clinical laboratory medicine including pathology, hematology, histopathology, cytotechnology and molecular biology and makes appropriate recommendations to the Commissioner of Food and Drugs.
Orthopaedic and Rehabilitation Devices Panel ..	Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational orthopedic and rehabilitation devices and makes appropriate recommendations to the Commissioner of Food and Drugs.

II. Qualifications

Persons nominated for the device panels should be full-time employees of firms that manufacture products that would come before the panel, or consulting firms that represent manufacturers, or have similar appropriate ties to industry.

III. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations; and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for a particular device panel. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

IV. Application Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Nomination must include a current, complete résumé or curriculum vitae for each nominee including current business address and telephone number, email address if available, and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). Nominations must also specify the advisory panel for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the particular device panels listed in the table. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process).

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore encourages nominations of appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: December 2, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–26276 Filed 12–4–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5464]

Novel Excipient Review Program Proposal; Request for Information and Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for information and comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the establishment of a docket to obtain information and comments that will assist the Agency in determining whether it should establish a pilot program for the toxicological and

quality evaluation of novel excipients intended for use in human drugs. The Agency hopes to obtain information and comments on several aspects of such a program before deciding whether to develop it.

DATES: Submit written or electronic comments and information on the notice by February 3, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before February 3, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 3, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2019–N–5464 for ''Novel Excipient Review Program Proposal; Request for Information and Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: Karen Davis Bruno, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6428, Silver Spring, MD 20993–0002, 301–796–1199, *karen.davisbruno@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

We use the term ''excipient'' in this notice to mean any ingredient intentionally added to a drug product (including biological drug products) that is not intended to exert therapeutic effects at the intended dosage, although it may improve product delivery (see FDA guidance for industry ''Nonclinical Studies for the Safety Evaluation of Pharmaceutical Excipients'' (Excipients guidance), May 2005, p. 1 (available at *https://www.fda.gov/media/72260/download*)). The term ''inactive ingredient'' is often used to mean the same thing. Examples of excipients include fillers, extenders, diluents, wetting agents, solvents, emulsifiers, preservatives, flavors, absorption enhancers, sustained-release matrices, and coloring agents (see Excipients guidance, pp. 1–2). For purposes of this notice, FDA would expect a novel excipient to be an excipient that has not been previously used in FDA-approved drug products and that does not have established use in food.

FDA reviews excipients used in a drug product as part of an investigational new drug application (IND) or a marketing application to determine whether they are safe for use in human pharmaceuticals. Historically, FDA has not reviewed the safety of novel excipients outside the context of an IND, a new drug application (NDA), or a biologics license application (BLA) describing a finished product to which the excipient has been added.[1]

Stakeholders have encouraged FDA to establish a program for the submission and review of toxicological and quality data supporting the use of novel excipients in drug products outside the context of an IND, an NDA, or a BLA. They state that certain novel excipients may provide public health benefits, such as improved drug delivery or utility in abuse-deterrent opioid formulations, for example. Proponents of an FDA novel excipient review program believe FDA's recognition of a novel excipient would reassure drug developers that the novel excipient can be used in a drug development program

[1] A proposed drug product that contains an excipient that would require clinical investigations to establish safety of the excipient for use in a particular drug product would not be permitted in an abbreviated new drug application (ANDA) but may be submitted in a 505(b)(2) application.

while minimizing the risk that safety concerns would be raised by FDA during application review. They have also cited a perceived risk aversion on the part of drug developers, such that novel excipients may be avoided in drug development programs, even when the excipients have potential public health benefits.

With this information in mind, FDA's Center for Drug Evaluation and Research is considering developing a pilot program for the toxicological and quality evaluation of novel excipients. The Agency seeks information and comment on several aspects of such a program before deciding whether to develop it.

II. Possible Approach To Reviewing Novel Excipients

FDA is considering establishing a pilot program that would review a limited number of submissions per year. Any program developed by the Agency would be voluntary. FDA recognition of a novel excipient would not be necessary for the novel excipient to be included in a finished drug product described in an IND, an NDA, or a BLA.

Generally, FDA anticipates that a submission to a potential novel excipient review program would include toxicological studies supporting the safety of the novel excipient at anticipated levels and duration of exposure, by anticipated routes of administration. Additionally, FDA anticipates that submitters would provide identification and control information, including compositional and purity specifications for the novel excipient (see Excipients guidance).

FDA recognition of a novel excipient would mean that, based on a review of safety, manufacturing, and compositional information, FDA has determined that the proposed context of use (*e.g.,* acute or chronic exposure by specified route(s) of administration up to specified amounts) is expected to be safe. This determination would obviate the need for FDA review of the excipient in the context of an IND if its use in the investigational product is consistent with the recognized context of use. In the case of an NDA or a BLA seeking marketing approval or licensure of a finished drug or biological product containing a recognized excipient, FDA would review all information in the application relating to safety of the finished product. FDA expects that excipients reviewed under this program, after they are used in approved formulations, would be listed in the Inactive Ingredient Database.

III. Requested Information and Comments

Interested persons are invited to provide detailed comment on all aspects of this issue. Please read the information above regarding the submission of comments and confidential information. FDA is particularly interested in responses to the following questions:

1. What drug development challenges do drug sponsors encounter that could be addressed by using novel excipients?

2. Can stakeholders identify examples (specific or general) of novel excipients that have potential public health benefits?

3. FDA anticipates that a novel excipient recognition program would be limited to excipients that do not have a well-established history of safe use in food and that have potential public health benefits. We would be interested in stakeholder comment on these criteria.

4. Would FDA recognition of a novel excipient be sufficient to overcome any reluctance on the part of drug developers to use the novel excipient in a drug development program? Do drug development sponsors also look for a history of safe use in marketed drug products?

5. FDA envisions that an individual excipient manufacturer participating in a novel excipient recognition program would submit a complete package of safety data and certain chemistry, manufacturing, and controls information to support FDA's recognition of a novel excipient. This data and information would be based upon nonclinical studies of sufficient quality and quantity to allow for a safety evaluation, consistent with the Excipients guidance. We would be interested in stakeholder comment on this approach.

6. Are there adequate incentives for excipient manufacturers to engage in this process, particularly in situations in which multiple manufacturers may be undertaking to develop closely related novel excipients? If not, what incentives would encourage excipient manufacturers to engage in this process?

7. What information, if any, should FDA affirmatively disclose about a novel excipient evaluated under an eventual program in order to ensure the success of the program? For example, should FDA's evaluation be posted and explained publicly? Please note that FDA would handle disclosure of information submitted under the program in accordance with applicable law.

Dated: December 2, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–26266 Filed 12–4–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2019–E–1059; FDA–2019–E–1060; and FDA–2019–E–1061]

Determination of Regulatory Review Period for Purposes of Patent Extension; ANDEXXA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ANDEXXA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by February 3, 2020. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 2, 2020. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before February 3, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 3, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2019–E–1059; FDA–2019–E–1060; and FDA–2019–E–1061 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ANDEXXA.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product ANDEXXA (coagulation factor Xa (recombinant) inactivated-zhzo). ANDEXXA is indicated for patients treated with rivaroxaban or apixaban, when reversal of anticoagulation is needed, due to life-threatening or uncontrolled bleeding. This indication is approved under accelerated approval based on the change from baseline in anti-human Factor Xa activity in healthy volunteers. An improvement in hemostasis has not been established. Continued approval for this indication may be contingent upon the results of studies to demonstrate an improvement in hemostasis in patients.

Subsequent to this approval, the USPTO received a patent term restoration application for ANDEXXA (U.S. Patent Nos. 8,153,590; 8,889,129; and 9,388,401) from Portola Pharmaceuticals, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated May 13, 2019, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of ANDEXXA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ANDEXXA is 2,171 days. Of this time, 1,302 days occurred during the testing phase of the regulatory review period, while 869 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* May 25, 2012. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 25, 2012.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* December 17, 2015. FDA has verified the applicant's claim that the biologics license application (BLA) for ANDEXXA (BLA 125586) was initially submitted on December 17, 2015.

3. *The date the application was approved:* May 3, 2018. FDA has verified the applicant's claim that BLA 125586 was approved on May 3, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 661 days, 693 days, or 1,066 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 26, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–26251 Filed 12–4–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0731]

Agency Information Collection Activities; Proposed Collection; Comment Request; Human Cells, Tissues, and Cellular and Tissue-Based Products: Establishment Registration and Listing; Eligibility Determination for Donors; and Current Good Tissue Practice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements for FDA regulations related to human cells, tissues, and cellular and tissue-based products (HCT/Ps) involving establishment registration and listing; eligibility determination for donors; and current good tissue practice (CGTP).

DATES: Submit either electronic or written comments on the collection of information by February 3, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before February 3, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 3, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2013–N–0731 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Human Cells, Tissues, and Cellular and Tissue-Based Products: Establishment Registration and Listing; Eligibility Determination for Donors; and Current Good Tissue Practice.'' Received comments, those filed in a timely manner (see **ADDRESSES**) will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential

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

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

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Human Cells, Tissues, and Cellular and Tissue-Based Products: Establishment Registration and Listing; Eligibility Determination for Donors; and Current Good Tissue Practice

OMB Control Number 0910–0543—Extension

Under section 361 of the Public Health Service Act (the PHS Act) (42 U.S.C. 264), FDA may issue and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between the States or possessions or from foreign countries into the States. As derivatives of the human body, all HCT/Ps pose some risk of carrying pathogens that could potentially infect recipients or handlers. FDA has issued regulations related to HCT/Ps involving electronic establishment registration and listing using an electronic system, eligibility determination for donors, and CGTP.

I. Electronic Establishment Registration and Listing

The regulations in part 1271 (21 CFR part 1271) require domestic and foreign establishments that recover, process, store, label, package, or distribute an HCT/P regulated solely under section 361 of the PHS Act and described in § 1271.10(a) (21 CFR 1271.10(a)), or that perform screening or testing of the cell or tissue donor, to register electronically with FDA (§§ 1271.1(a) (21 CFR 1271.1(a)) and 1271.10(b)(1)) and submit a list electronically of each HCT/P manufactured (§§ 1271.1(a) and 1271.10(b)(2)). Section 1271.21(a) (21 CFR 1271.21(a)) requires an establishment to follow certain procedures for initial registration and listing of HCT/Ps, and § 1271.25(a) and (b) (21 CFR 1271.25(a) and (b)) identifies the required initial registration and HCT/P listing information. Section 1271.21(b), in brief, requires an annual update of the establishment registration. Section 1271.21(c)(ii) requires establishments to submit HCT/P listing updates if a change as described in § 1271.25(c) has occurred. Section 1271.25(c) identifies the required HCT/P listing update information. Section 1271.26 (21 CFR 1271.26) requires establishments to submit an amendment if ownership or location of the establishment changes, or if there is a change in the U.S. agent's name, address, telephone number, or email address. FDA requires the use of an electronic registration and listing system entitled ''eHCTERs'' (Electronic Human Cell and Tissue Establishment Registration System) to submit the required information (§§ 1271.10, 1271.21, 1271.25, and 1271.26)). Under § 1271.23 (21 CFR 1271.23), manufacturers may request a waiver from the requirements in 21 CFR 1271.22 that information must be provided to FDA in electronic format.

II. Eligibility Determination for Donors

In brief, FDA requires certain HCT/P establishments described in § 1271.1(b) to determine donor eligibility based on donor screening and testing for relevant communicable disease agents and diseases except as provided under 21 CFR 1271.90. The documented determination of a donor's eligibility is made by a responsible person as defined in § 1271.3(t) (21 CFR 1271.3(t)) and is based on the results of required donor screening, which includes a donor medical history interview (defined in § 1271.3(n)), and testing (§ 1271.50(a) (21 CFR 1271.50(a)). Certain records must accompany an HCT/P once the donor-eligibility determination has been made (§ 1271.55(a) (21 CFR 1271.55(a))). This requirement applies both to an HCT/P from a donor who is determined to be eligible as well as to an HCT/P from a donor who is determined to be ineligible or where the donor-eligibility determination is not complete if there is a documented urgent medical need, as defined in § 1271.3(u) (§§ 1271.60 and 1271.65 (21 CFR 1271.60 and 1271.65)). Once the donor-eligibility determination has been made, the HCT/P must be accompanied by a summary of records used to make the donor-eligibility determination (§ 1271.55(b)), and a statement whether, based on the results

of the screening and testing of the donor, the donor is determined to be eligible or ineligible (§ 1271.55(a)(2)). Records used in determining the eligibility of a donor, *i.e.,* results and interpretations of testing for relevant communicable disease agents, the donor-eligibility determination, the name and address of the testing laboratory or laboratories, and the name of the responsible person (defined in § 1271.3(t)) who made the donor-eligibility determination and the date of the determination, must be maintained (§ 1271.55(d)(1)). If any information on the donor is not in English, the original record must be maintained and translated to English and accompanied by a statement of authenticity by the translator (§ 1271.55(d)(2)). HCT/P establishments must retain the records pertaining to a particular HCT/P at least 10 years after the date of its administration, or, if the date of administration is not known, then at least 10 years after the date of the HCT/P's distribution, disposition, or expiration, whichever is latest (§ 1271.55(d)(4)).

When a product is shipped in quarantine, as defined in § 1271.3(q), before completion of screening and testing, the HCT/P must be accompanied by records identifying the donor (*e.g.,* by a distinct identification code affixed to the HCT/P container) stating that the donor-eligibility determination has not been completed and stating that the product must not be implanted, transplanted, infused, or transferred until completion of the donor-eligibility determination, except in cases of urgent medical need, as defined in § 1271.3(u) (§ 1271.60(c)). When an HCT/P is used in cases of documented urgent medical need, the results of any completed donor screening and testing, and a list of any required screening and testing that has not yet been completed also must accompany the HCT/P (§ 1271.60(d)(2)). When a HCT/P is used in cases of urgent medical need or from a donor who has been determined to be ineligible (as permitted under § 1271.65), documentation by the HCT/P establishment is required, showing that the recipient's physician received notification that the testing and screening were not complete (in cases of urgent medical need), and upon the completion of the donor-eligibility determination, of the results of the determination (§§ 1271.60(d)(3) and (4), and 1271.65(b)(3)).

An HCT/P establishment is also required to establish and maintain procedures for all steps that are performed in determining eligibility (§ 1271.47(a) (21 CFR 1271.47(a)), including the use of a product from a donor of viable, leukocyte-rich cells or tissue testing reactive for cytomegalovirus (§ 1271.85(b)(2) (21 CFR 1271.85(b)(2))). The HCT/P establishment must record and justify any departure from a procedure relevant to preventing risks of communicable disease transmission at the time of its occurrence (§ 1271.47(d)).

III. Current Good Tissue Practice (CGTP)

FDA requires HCT/P establishments that manufacture HCT/Ps that are regulated solely under section 361 of the PHS Act to follow CGTP (§ 1271.1(b)). Section 1271.155(a) (21 CFR 1271.155(a)) permits the submission of a request for FDA approval of an exemption from or an alternative to any requirement in subpart C or D of part 1271. Section 1271.290(c) (21 CFR 1271.290(c)) requires establishments to affix a distinct identification code to each HCT/P that they manufacture that relates the HCT/P to the donor and to all records pertaining to the HCT/P. Whenever an establishment distributes an HCT/P to a consignee, § 1271.290(f) requires the establishment to inform the consignee, in writing, of the product tracking requirements and the methods the establishment uses to fulfill these requirements. Non-reproductive HCT/P establishments described in § 1271.10 are required under § 1271.350(a)(1) and (3) (21 CFR 1271.350(a)(1) and (3)) to investigate and report to FDA adverse reactions (defined in § 1271.3(y)) using Form FDA–3500A (§ 1271.350(a)(2)). Form FDA–3500A is approved under OMB control number 0910–0291. Section 1271.370(b) and (c) (21 CFR 1271.370(b) and (c)) requires establishments to include specific information either on the HCT/P label or with the HCT/P.

The standard operating procedures (SOP) provisions under part 1271 include the following: (1) Section 1271.160(b)(2) (21 CFR 1271.160(b)(2)) (receiving, investigating, evaluating, and documenting information relating to core CGTP requirements, including complaints, and for sharing information with consignees and other establishments); (2) § 1271.180(a) (21 CFR 1271.180(a)) (to meet core CGTP requirements for all steps performed in the manufacture of HCT/Ps); (3) § 1271.190(d)(1) (21 CFR 1271.190(d)(1)) (facility cleaning and sanitization); (4) § 1271.200(b) (21 CFR 1271.200(b)) (cleaning, sanitizing, and maintenance of equipment); (5) § 1271.200(c) (calibration of equipment); (6) § 1271.230(a) and (c) (21 CFR 1271.230(a) and (c)) (validation of a process and review and evaluation of changes to a validated process); (7) § 1271.250(a) (21 CFR 1271.250(a)) (controls for labeling HCT/Ps); (8) § 1271.265(e) (21 CFR 1271.265(e)) (receipt, predistribution shipment, availability for distribution, and packaging and shipping of HCT/Ps); (9) § 1271.265(f) (suitable for return to inventory); (10) § 1271.270(b) (21 CFR 1271.270(b)) (records management system); (11) § 1271.290(b)(1) (21 CFR 1271.290(b)(1)) (system of HCT/P tracking); and (12) § 1271.320(a) (21 CFR 1271.320(a)) (review, evaluation, and documentation of complaints as defined in § 1271.3(aa)).

Section 1271.155(f) requires an establishment operating under the terms of an exemption or alternative to maintain documentation of FDA's grant of the exemption or approval and the date on which it began operating under the terms of the exemption or alternative. Section 1271.160(b)(3) requires the quality program of an establishment that performs any step in the manufacture of HCT/Ps to document corrective actions relating to core CGTP requirements. Section 1271.160(b)(6) requires documentation of HCT/P deviations. Section 1271.160(d) requires, in brief, documentation of validation of computer software if the establishment relies upon it to comply with core CGTP requirements. Section 1271.190(d)(2) requires documentation of all cleaning and sanitation activities performed to prevent contamination of HCT/Ps. Section 1271.195(d) requires documentation of environmental control and monitoring activities. Section 1271.200(e) requires documentation of all equipment maintenance, cleaning, sanitizing, calibration, and other activities. Section 1271.210(d) (21 CFR 1271.210(d)) requires, in brief, documentation of the receipt, verification, and use of each supply or reagent. Section 1271.230(a) requires documentation of validation activities and results when the results of processing described in 21 CFR 1271.220 cannot be fully verified by subsequent inspection and tests. Section 1271.230(c) requires that when changes to a validated process subject to § 1271.230(a) occur, documentation of the review and evaluation of the process and revalidation, if necessary, must occur. Section 1271.260(d) and (e) (21 CFR 1271.260(d) and (e)) requires documentation of any corrective action taken when proper storage conditions are not met and documentation of the storage temperature for HCT/Ps. Section 1271.265(c)(1) requires documentation

that all release criteria have been met before distribution of an HCT/P. Section 1271.265(c)(3) requires documentation of any departure from a procedure relevant to preventing risks of communicable disease transmission at the time of occurrence. Section 1271.265(e) requires documentation of the activities in paragraphs (a) through (d) of that section, which must include identification of the HCT/P and the establishment that supplied the HCT/P, activities performed and the results of each activity, date(s) of activity, quantity of HCT/P subject to the activity, and disposition of the HCT/P. Section 1271.270(a) requires documentation of each step in manufacturing required in part 1271, subparts C and D. Section 1271.270(e) requires documentation of the name and address, and a list of responsibilities of any establishment that performs a manufacturing step for the establishment. Section 1271.290(d) and (e) require documentation of a method for recording the distinct identification code and type of each HCT/P distributed to a consignee to enable tracking from the consignee to the donor and to enable tracking from the donor to the consignee or final disposition. Section 1271.320(b) requires an establishment to maintain a record of each complaint that it receives. The complaint file must contain sufficient information about each complaint for proper review and evaluation of the complaint and for determining whether the complaint is an isolated event or represents a trend.

Section 1271.420(a) (21 CFR 1271.420(a)) requires importers of HCT/Ps to notify the FDA District Director having jurisdiction over the port of entry through which the HCT/Ps are offered for import. The HCT/Ps must be held intact or transported under quarantine until they are inspected and released by FDA.

Respondents to this information collection are establishments that recover, process, store, label, package or distribute any HCT/P that is regulated solely under section 361 of the PHS Act or perform donor screening or testing. The estimates provided below are based on most recent available information from FDA's database system and trade organizations. The hours per response and hours per record are based on data provided by the Eastern Research Group, or FDA experience with similar recordkeeping or reporting requirements.

There are an estimated 2,736 HCT/P establishments (conventional tissue, eye tissue, peripheral blood stem cell, stem cell products from cord blood, reproductive tissue, and sperm banks), including 1,004 manufacturers of HCT/Ps regulated under the Federal Food, Drug, and Cosmetic Act and section 351 of the PHS Act (42 U.S.C 262), that have registered and listed with FDA. In addition, we estimate that 193 new establishments have registered with FDA (§§ 1271.10(b)(1) and (2) and 1271.25(a) and (b)). There are an estimated 1,062 listing updates (§§ 1271.10(b)(2), 1271.21(c)(ii), and 1271.25(c)) and 358 location/ownership amendments (§ 1271.26).

Under § 1271.23, FDA estimates an average of one waiver request annually.

Under § 1271.55(a), an estimated total of 2,594,415 HCT/Ps (which include conventional tissues, eye tissues, hematopoietic stem cells/progenitor cells, and reproductive cells and tissues), and an estimated total of 2,454,415 non-reproductive cells and tissues (total HCT/Ps minus reproductive cells and tissues) are distributed per year by an estimated 1,632 establishments (2,736 − 1,104 = 1,632).

Under § 1271.60(c) and (d)(2), FDA estimates that 1,611 establishments shipped an estimated 572,000 HCT/P under quarantine, and that an estimated 15 establishments requested 64 exemptions from or alternative to any requirement under part 1271, subpart C or D, specifically under § 1271.155(a).

Under §§ 1271.290(c) and 1271.370(b) and (c), the estimated 2,109 non-reproductive HCT/P establishments label each of their 2,441,644 HCT/Ps with certain information. These establishments are also required to inform their consignees in writing of the requirements for tracking and of their established tracking system under § 1271.290(f).

FDA estimates 13 HCT/P establishments submitted 188 adverse reaction reports with 162 involving a communicable disease (§ 1271.350(a)(1)).

FDA estimates that 193 new establishments will create SOPs, and that 2,736 establishments will review and revise existing SOPs annually.

FDA estimates that 1,368 HCT/P establishments (2,736 × 50 percent = 1,368) and 1,055 non-reproductive HCT/P establishments (2,109 × 50 percent = 1,055) record and justify a departure from the procedures (§§ 1271.47(d) and 1271.265(c)(3)).

Under § 1271.50(a), HCT/P establishments are required to have a documented medical history interview about the donor's medical history and relevant social behavior as part of the donor's relevant medical records for each of the estimated total of 109,019 donors (which include conventional tissue donors, eye tissue donors, peripheral and cord blood stem cell donors, and reproductive cell and tissue donors), and the estimated total of 103,419 non-reproductive cells and tissue donors (total donors minus reproductive cell and tissue donors).

FDA estimates that 821 HCT/P establishments (2,736 × 30 percent = 821) document an urgent medical need of the product to notify the physician using the HCT/P (§§ 1271.60(d)(3) and 1271.65(b)(3)).

FDA also estimates that 2,189 HCT/P establishments (2,736 × 80 percent = 2,189) have to maintain records for an average of 2 contract establishments to perform their manufacturing process (§ 1271.270(e) and 1,687 HCT/P establishments (2,109 × 80 percent = 1,687) maintain an average of 5 complaint records annually (§ 1271.320(b)).

FDA estimates that under § 1271.420(a), 200 establishments will submit 560 reports of HCT/Ps offered for imports.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR part 1271; human cells, tissues, and cellular and tissue-based products	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [3]
1271.10(b)(1) and 1271.21(b) [2]	2,736	1	2,736	0.5 (30 minutes)	1,368
1271.10(b)(1) and (2), 1271.21(a), and 1271.25(a) and (b) [2].	193	1	193	0.75 (45 minutes)	145
1271.10(b)(2), 1271.21(c)(2)(ii) and 1271.25(c) [2]	1,062	1	1,062	0.5 (30 minutes)	531
1271.23	1	1	1	1	1
1271.26 [2]	358	1	358	0.25 (15 minutes)	90

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR part 1271; human cells, tissues, and cellular and tissue-based products	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [3]
1271.155(a)	15	4.27	64	3	192
1271.350(a)(1) and (3)	13	14.46	188	1	188
1271.420(a)	200	2.8	560	0.25 (15 minutes)	140
Total					2,655

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Using eHCTERS.
[3] Rounded to the nearest whole number.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR part 1271; human cells, tissues, and cellular and tissue-based products	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours [3]
New SOPs [2]	193	1	193	48	9,264
SOP Update [2]	2,736	1	2,736	24	65,664
1271.47(d)	1,368	1	1,368	1	1,368
1271.50(a)	2,736	39.846	109,019	5	545,095
1271.55(d)(1)	2,736	39.846	109,019	1	109,019
1271.55(d)(2)	2,736	1	2,736	1	2,736
1271.55(d)(4)	2,736	1	2,736	120	328,320
1271.60(d)(3) and (4) 1271.65(b)(3)(iii)	821	1	821	2	1,642
1271.155(f)	15	4.27	64	0.25 (15 minutes)	16
1271.160(b)(3) and (6)	2,109	12	25,308	1	25,308
1271.160(d)	2,109	12	25,308	1	25,308
1271.190(d)(2)	2,109	12	25,308	1	25,308
1271.195(d)	2,109	12	25,308	1	25,308
1271.200(e)	2,109	12	25,308	1	25,308
1271.210(d)	2,109	12	25,308	1	25,308
1271.230(a)	2,109	12	25,308	1	25,308
1271.230(c)	2,109	1	2,109	1	2,109
1271.260(d)	2,109	12	25,308	0.25 (15 minutes)	6,327
1271.260(e)	2,109	365	769,785	0.083 (5 minutes)	63,892
1271.265(c)(1)	2,109	1,163.781	2,454,415	0.083 (5 minutes)	203,716
1271.265(c)(3)	1,055	1	1,055	1	1,055
1271.265(e)	2,109	1,163.781	2,454,415	0.083 (5 minutes)	203,716
1271.270(a)	2,109	1,163.781	2,454,415	0.25 (15 minutes)	613,604
1271.270(e)	2,189	2	4,378	0.5 (30 minutes)	2,189
1271.290(d) and (e)	2,109	49.037	103,419	0.25 (15 minutes)	25,855
1271.320(b)	1,687	5	8,435	1	8,435
Total					2,371,178

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Sections 1271.47(a), 1271.85(b)(2), 1271.160(b)(2) and (d)(1), 1271.180(a), 1271.190(d)(1), 1271.200(b), 1271.200(c), 1271.230(a), 1271.250(a), and 1271.265(e).
[3] Rounded to the nearest whole number.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR part 1271; human cells, tissues, and cellular and tissue-based products	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
1271.55(a)	1,632	1,589.715	2,594,415	0.5 (30 minutes)	1,297,208
1271.60(c) and (d)(2)	1,611	355.06	572,000	0.5 (30 minutes)	286,000
1271.290(c)	2,109	1,163.781	2,454,415	0.083 (5 minutes)	203,716
1271.290(f)	2,109	1	2,109	1	2,109
1271.370(b) and (c)	2,109	1,163.781	2,454,415	0.25 (15 minutes)	613,604
Total					2,402,637

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Rounded to the nearest whole number.

Our estimated burden for the information collection reflects an overall increase of 628,585 hours (111 reporting burden hours; 305,118 recordkeeping hours; and 323,356 disclosure burden hours) and a corresponding increase of annual responses, annual records, and annual disclosures. We attribute this

adjustment to an increase in the number HCT/P establishments and an increase in the number HCT/Ps distributed over the past few years.

Dated: November 26, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–26234 Filed 12–4–19; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1619]

Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's regulations regarding current good manufacturing practice (CGMP) for dietary supplements.

DATES: Submit either electronic or written comments on the collection of information by February 3, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before February 3, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 3, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2013–N–1619 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling or Holding Operations for Dietary Supplements.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an

existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements—21 CFR Part 111

OMB Control Number 0910–0606—Revision

The Dietary Supplement Health and Education Act (DSHEA) (Pub. L. 103–417) added section 402(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 342(g)), which provides, in part, that the Secretary of Health and Human Services may, by regulation, prescribe good manufacturing practice for dietary supplements. Section 402(g) of the FD&C Act also stipulates that such regulations will be modeled after CGMP regulations for food and may not impose standards for which there are no current, and generally available, analytical methodology. Section 402(g)(1) of the FD&C Act states that a dietary supplement is adulterated if it has been prepared, packed, or held under conditions that do not meet current good manufacturing practice regulations.

Accordingly, we have promulgated regulations in part 111 (21 CFR part 111) establishing minimum CGMP requirements pertaining to the manufacturing, packaging, labeling, or holding of dietary supplements to ensure their quality. Included among the requirements is recordkeeping, documenting, planning, control, and improvement processes of a quality control system. Implementation of these processes in a manufacturing operation serves as the backbone to CGMP. The records must show what is being manufactured and whether the controls in place ensure the product's identity, purity, strength, and composition, and that limits on contaminants and measures to prevent adulteration are effective. Further, records must show whether and what deviations from control processes occurred, facilitate evaluation and corrective action concerning these deviations (including, where necessary, whether associated batches of product should be recalled from the marketplace), and enable a manufacturer to assure that the corrective action was effective. We believe the regulations in part 111 establish the minimum manufacturing practices necessary to ensure that dietary supplements are manufactured, packaged, labeled, or held in a manner that will ensure the quality of the dietary supplements during manufacturing, packaging, labeling or holding operations.

Specifically, the recordkeeping requirements of the regulations in part 111 include establishing written procedures and maintaining records pertaining to: (1) Personnel; (2) sanitation; (3) calibration of instruments and controls; (4) calibration, inspection, or checks of automated, mechanical, or electronic equipment; (5) maintaining, cleaning, and sanitizing equipment and utensils and other contact surfaces; (6) water used that may become a component of the dietary supplement; (7) production and process controls; (8) quality control; (9) components, packaging, labels, and product received for packaging and labeling; (10) master manufacturing and batch production; (11) laboratory operations; (12) manufacturing operations; (13) packaging and labeling operations; (14) holding and distributing operations; (15) returned dietary supplements; and (16) product complaints.

Section 111.75 (21 CFR 111.75) reflects FDA's determination that manufacturers that test or examine 100 percent of the incoming dietary ingredients for identity can be assured of the identity of the ingredient. However, we recognize that it may be possible for a manufacturer to demonstrate, through various methods and processes in use over time for its particular operation, that a system of less than 100 percent identity testing would result in no material diminution of assurance of the identity of the dietary ingredient as compared to the assurance provided by 100 percent identity testing. Section 111.75 provides an opportunity for a manufacturer to make such a showing and reduce the frequency of identity testing of components that are dietary ingredients from 100 percent to some lower frequency. Section 111.75 sets forth the information a manufacturer is required to submit for an exemption from the requirement of 100 percent identity testing when a manufacturer petitions the Agency for such an exemption to 100 percent identity testing under 21 CFR 10.30 and the Agency grants such exemption. This reporting burden is currently accounted for under OMB control number 0910–0608, Petition to Request an Exemption from 100 Percent Identity Testing of Dietary Ingredients: CGMP in Manufacturing, Packaging, Labeling or Holding Operations for Dietary Supplements. With this notice, we propose to consolidate information collection under § 111.75 into the instant and related information collection.

Description of Respondents: Manufacturers, dietary supplement manufacturers, packagers and repackagers, labelers and re-labelers, holders, distributors, warehousers, exporters, importers, large businesses, and small businesses engaged in the dietary supplement industry.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
111.14; records of personnel practices, including documentation of training.	15,000	4	60,000	1	60,000
111.23; records of physical plant sanitation practices, including pest control and water quality.	15,000	1	15,000	0.2 (12 minutes)	3,000
111.35; records of equipment and utensils calibration and sanitation practices.	400	1	400	12.5	5,000
111.95; records of production and process control systems	250	1	250	45	11,250
111.140; records that quality control personnel must make and keep	240	1,163	279,120	1	279,120

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

21 CFR section; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
111.180; records associated with components, packaging, labels, and product received for packaging and labeling as a dietary supplement.	240	1,163	279,120	1	279,120
111.210; requirements for what the master manufacturing record must include.	240	1	240	2.5	600
111.260; requirements for what the batch record must include	145	1,408	204,160	1	204,160
111.325; records that quality control personnel must make and keep for laboratory operations.	120	1	120	15	1,800
111.375; records of the written procedures established for manufacturing operations.	260	1	260	2	520
111.430; records of the written procedures for packaging and labeling operations.	50	1	50	12.6	630
111.475; records of product distribution and procedures for holding and distributing operations.	15,000	1	15,000	0.4 (24 minutes)	6,000
111.535; records for returned dietary supplements	110	4	440	13.5	5,940
111.570; records regarding product complaints	240	600	144,000	0.5 (30 minutes)	72,000
Total					929,140

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
111.75; petition for exemption from 100 percent identity testing	1	1	1	8	8

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We have made no changes to our estimate of the information collection based on our most recent review. However, in consolidating burden from information collection previously accounted for under OMB control number 0910–0608, the information collection reflects an increase of 8 hours and one response annually.

Dated: November 26, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–26250 Filed 12–4–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3207]

Request for Nominations of Voting Members on a Public Advisory Committee; National Mammography Quality Assurance Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the National Mammography Quality Assurance Advisory Committee in the Center for Devices and Radiological Health. Nominations will be accepted for upcoming vacancies effective with this notice.

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Nominations received on or before February 3, 2020, will be given first consideration for membership on the National Mammography Quality Assurance Advisory Committee. Nominations received after February 3, 2020, will be considered for nomination to the committee as later vacancies occur.

ADDRESSES: All nominations for membership should be submitted electronically by logging into the FDA Advisory Nomination Portal at *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm*.

FOR FURTHER INFORMATION CONTACT: *Regarding all nomination questions for membership:* Sara Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5210, Silver Spring, MD 20993, 301–796–7047, email: *Sara.Anderson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members to fill upcoming vacancies on the National Mammography Quality Assurance Advisory Committee.

I. General Description of the Committee Duties

The National Mammography Quality Assurance Advisory Committee advises the Commissioner of Food and Drugs (the Commissioner) or designee on: (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; (6) reporting new developments concerning breast imaging that should be

considered in the oversight of mammography facilities; (7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999; and (9) determining the costs and benefits of compliance with these requirements.

II. Criteria for Voting Members

The committee consists of a core of 15 members, including the Chair. Members and the Chair are selected by the Commissioner or designee from among physicians, practitioners, and other health professionals, whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography. Almost all non-Federal members of this committee serve as Special Government Employees. Members will be invited to serve for terms of up to 4 years.

III. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the advisory committee. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee, including current business address, telephone number, and email address if available, and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Nomination Portal (see **ADDRESSES**). Nominations must specify the advisory committee for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters related to financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: December 2, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–26279 Filed 12–4–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–4656]

Interstitial Cystitis/Bladder Pain Syndrome: Establishing Effectiveness of Drugs for Treatment; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Interstitial Cystitis/Bladder Pain Syndrome (IC/BPS): Establishing Effectiveness of Drugs for Treatment.'' There is pharmaceutical and stakeholder interest in the development of new drugs for patients with IC/BPS. This draft guidance provides FDA's recommendations for clinical trials intended to establish clinical effectiveness and safety for drugs intended to treat IC/BPS.

DATES: Submit either electronic or written comments on the draft guidance by February 3, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

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

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2019–D–4656 for ''Interstitial Cystitis/Bladder Pain Syndrome (IC/BPS): Establishing Effectiveness of Drugs for Treatment.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

Docket: For access to the docket to read background documents or the

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

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

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Margaret Kober, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5376, Silver Spring, MD 20993–0002, 301–796–0934.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Interstitial Cystitis/Bladder Pain Syndrome (IC/BPS): Establishing Effectiveness of Drugs for Treatment.'' IC/BPS is a complex, poorly understood syndrome of unknown etiology. This draft guidance provides recommendations for establishing effectiveness for drugs intended to treat patients with IC/BPS. This draft guidance incorporates recommendations the FDA received at a December 2017 advisory committee meeting on trial design features (see the meeting material available at *https://www.fda.gov/advisory-committees/advisory-committee-calendar/december-7-2017-meeting-bone-reproductive-and-urologic-drugs-advisory-committee-12062017-12062017*), including enrollment criteria and acceptable efficacy endpoints for drugs intended to treat IC/BPS.

This draft guidance includes key considerations in trial design including enrollment criteria and efficacy endpoint selection. The draft guidance also provides general recommendations on design features and statistical considerations. This draft guidance also provides the FDA's current recommendations on the use of patient-reported outcome instruments to evaluate patient symptoms to demonstrate a clinically meaningful change with treatment.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Interstitial Cystitis/Bladder Pain Syndrome (IC/BPS): Establishing Effectiveness of Drugs for Treatment.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs* or *https://www.regulations.gov.*

Dated: November 29, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–26264 Filed 12–4–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–E–2596]

Determination of Regulatory Review Period for Purposes of Patent Extension; LUXTURNA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for LUXTURNA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by February 3, 2020. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 2, 2020. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before February 3, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 3, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets

Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–E–2596 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; LUXTURNA.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product LUXTURNA (voretigene neparvovec-rzyl). LUXTURNA is indicated for treatment of patients with confirmed biallelic *RPE65* mutation-associated retinal dystrophy. Subsequent to this approval, the USPTO received a patent term restoration application for LUXTURNA (U.S. Patent No. 9,433,688) from Trustees of the University of Pennsylvania, the University of Florida Research Foundation, Inc., and Cornell Research Foundation, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 13, 2019, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of LUXTURNA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for LUXTURNA is 3,809 days. Of this time, 3,591 days occurred during the testing phase of the regulatory review period, while 218 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* July 18, 2007. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on July 18, 2007.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* May 16, 2017. FDA has verified the applicant's claim that the biologics license application (BLA) for LUXTURNA (BLA 125610) was initially submitted on May 16, 2017.

3. *The date the application was approved:* December 19, 2017. FDA has verified the applicant's claim that BLA 125610 was approved on December 19, 2017.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 344 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of

§ 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 26, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–26252 Filed 12–4–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Autism Spectrum Disorder (ASD) Research Portfolio Analysis, NIMH

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: The Office of Autism Research Coordination, NIMH, NIH, Neuroscience Center, 6001 Executive Boulevard, MSC 9663, Room 6184, Bethesda, Maryland 20892 or can email your request, including your address to: *iaccpublicinquiries@mail.nih.gov* or *nimhprapubliccomments@mail.nih.gov* or can call Melba O. Rojas, NIMH, NIH at 301–402–0279. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on October 3, 2019, page 52888 (84 FR 52888) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of Mental Health (NIMH), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Autism Spectrum Disorder (ASD) Research Portfolio Analysis, NIMH, 0925–0682, expiration date 12/31/2019, EXTENSION, National Institute of Mental Health (NIMH), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of the ASD research portfolio analysis is to collect research funding data from U.S. and international ASD research funders, to assist the Interagency Autism Coordinating Committee (IACC) in fulfilling the requirements of the Autism Collaboration, Accountability, Research, Education and Support (CARES) Act of 2019, and to inform the committee and interested stakeholders of the funding landscape and current directions for ASD research. Specifically, these analyses will continue to examine the extent to which current funding and research topics align with the *IACC Strategic Plan for ASD Research*. The findings will help guide future funding priorities by outlining current gaps and opportunities in ASD research as well as serving to highlight annual activities and research progress.

OMB approval is requested for three years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 714.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of projects per respondent	Average time per response (in hours)	Total burden hours
U.S. Federal	25	88	15/60	550
U.S. Private	9	63	15/60	142
Individuals/households—International Government	1	61	15/60	15
Individuals/households—International Private	2	13	15/60	7
Total		1434		714

Dated: November 27, 2019.

Melba O. Rojas,

Project Clearance Liaison, National Institute of Mental Health, National Institutes of Health.

[FR Doc. 2019–26260 Filed 12–4–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Jenish Patel, Ph.D., 240–669–2894; *jenish.patel@nih.gov.* Licensing information and copies of the U.S. patent application listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD, 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Broadly Protective Influenza Vaccine Comprising a Cocktail of Inactivated Avian Influenza Viruses

Description of Technology: There is a great need for broadly protective, ''universal'' influenza virus vaccines given the antigenic drift and shift of influenza viruses and the variable protective efficacy of the current influenza vaccines. This technology relates to a broadly protective, ''universal'' influenza vaccine candidate composed of a cocktail of different low pathogenicity avian influenza virus subtypes inactivated by betapropiolactone (BPL). Vaccinating animals with BPL-inactivated whole virus vaccine comprising influenza virus strains belonging to four or more different low pathogenicity avian influenza hemagglutinin subtypes, intranasally or intramuscularly, provided extremely broad protection and heterosubtypic protection to lethal challenge with influenza viruses in both mice and ferrets. This influenza vaccine technology has a great potential to offer broad protection against both seasonal and pandemic-potential influenza viruses.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404.

Potential Commercial Applications:

- Vaccine against viruses
- Vaccines against influenza virus
- Universal influenza virus vaccine

Competitive Advantages:

- Broad protection to both seasonal and pandemic-potential influenza viruses
- Easy and cost-effective inactivation method
- Effective immune response due to the use of authentic viral antigens
- Animal data available

Development Stage:

- In vivo (animal)

Inventors: Jeffery K. Taubenberger, M.D., Ph.D., (NIAID) and Louis Merican Schwartzman, Ph.D. (NIAID).

Publications: None.

Intellectual Property: HHS Reference No. E–033–2018/0—PCT Application filed January 18, 2019—PCT/US2019/014220.

Licensing Contact: To license this technology, please contact Jenish Patel, Ph.D., 240–669–2894; *jenish.patel@nih.gov*.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is also seeking statements of capability or interest from parties interested in collaborative research. NIAID would like a prospective collaborator to have the capacity to generate clinical grade materials and perform clinical studies. NIAID will consider executing a Confidentiality Agreement with a prospective collaborator to facilitate receipt of a Capability Statement if requested. For collaboration opportunities, please contact Jenish Patel, Ph.D., 240–669–2894; *jenish.patel@nih.gov.*

Dated: November 27, 2019.

Wade W. Green,

Acting Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2019–26278 Filed 12–4–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Autism Spectrum Disorder (ASD) Research Portfolio Analysis, NIMH

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: The Office of Autism Research Coordination, NIMH, NIH, Neuroscience Center, 6001 Executive Boulevard, MSC 9663, Room 6184, Bethesda, Maryland 20892 or can email your request, including your address to: *iaccpublicinquiries@mail.nih.gov* or *nimhprapubliccomments@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on October 3, 2019, page 52888 (84 FR 52888) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of Mental Health (NIMH), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or

after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Autism Spectrum Disorder (ASD) Research Portfolio Analysis, NIMH, 0925–0682, expiration date 12/31/2019, EXTENSION, National Institute of Mental Health (NIMH), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of the ASD research portfolio analysis is to collect research funding data from U.S. and international ASD research funders, to assist the Interagency Autism Coordinating Committee (IACC) in fulfilling the requirements of the Autism Collaboration, Accountability, Research, Education and Support (CARES) Act of 2019, and to inform the committee and interested stakeholders of the funding landscape and current directions for ASD research. Specifically, these analyses will continue to examine the extent to which current funding and research topics align with the *IACC Strategic Plan for ASD Research.* The findings will help guide future funding priorities by outlining current gaps and opportunities in ASD research as well as serving to highlight annual activities and research progress.

OMB approval is requested for three years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 714.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of projects per respondent	Average time per response (in hours)	Total burden hours
U.S. Federal	25	88	15/60	550
U.S. Private	9	63	15/60	142
Individuals/households—International Government	1	61	15/60	15
Individuals/households—International Private	2	13	15/60	7
Total	37	2854	.....	714

Dated: December 2, 2019.

Melba O. Rojas,

Project Clearance Liaison, National Institute of Mental Health, National Institutes of Health.

[FR Doc. 2019–26294 Filed 12–4–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of April 17, 2020 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Coummunity map repository address
Lincoln County, Georgia and Incorporated Areas Docket No.: FEMA–B–1861	
City of Lincolnton	City Hall, 125 North Peachtree Street, Lincolnton, GA 30817.
Unincorporated Areas of Lincoln County	Lincoln County Courthouse, 210 Humphrey Street, Lincolnton, GA 30817.
Mills County, Iowa and Incorporated Areas Docket No.: FEMA–B–1859	
City of Emerson	City Hall, 410 Manchester Street, Emerson, IA 51533.
City of Glenwood	City Hall, 5 North Vine Street, Glenwood, IA 51534.
City of Hastings	City Hall, 401 Indian Avenue, Hastings, IA 51540.
City of Henderson	City Office, 310 Maple Street, Henderson, IA 51541.
City of Malvern	City Hall, 107 East 4th Street, Malvern, IA 51551.
City of Pacific Junction	City Hall, 407 Lincoln Avenue, Pacific Junction, IA 51561.
City of Silver City	City Hall, 417 Main Street, Silver City, IA 51571.
Unincorporated Areas of Mills County	Mills County Engineer's Office, 403 Railroad Avenue, Glenwood, IA 51534.
Dodge County, Nebraska and Incorporated Areas Docket No.: FEMA–B–1859	
City of Hooper	City Office, 124 North Main Street, Hooper, NE 68031.
Unincorporated Areas of Dodge County	Dodge County Courthouse, 435 North Park Avenue, Fremont, NE 68025.
Passaic County, New Jersey (All Jurisdictions) Docket Nos.: FEMA–B–1532 and FEMA–B–1800	
Borough of Bloomingdale	Municipal Building, Clerk's Office, 101 Hamburg Turnpike, Bloomingdale, NJ 07403.
Borough of Haledon	Municipal Complex, Building Department, 510 Belmont Avenue, Haledon, NJ 07508.
Borough of Hawthorne	Borough Hall, Engineering Department, 445 Lafayette Avenue, Hawthorne, NJ 07506.
Borough of North Haledon	Municipal Building, Construction Office, 103 Overlook Avenue, North Haledon, NJ 07508.
Borough of Pompton Lakes	Municipal Building, 25 Lenox Avenue, Pompton Lakes, NJ 07442.
Borough of Prospect Park	Municipal Building, 106 Brown Avenue, Prospect Park, NJ 07508.
Borough of Ringwood	Municipal Building, Clerk's Office, 60 Margaret King Avenue, Ringwood, NJ 07456.
Borough of Totowa	Municipal Complex, Clerk's Office, 537 Totowa Road at Cherba Place, Totowa, NJ 07512.
Borough of Wanaque	Municipal Building, 579 Ringwood Avenue, Wanaque, NJ 07465.
Borough of Woodland Park	Municipal Building, Code Enforcement Office, 5 Brophy Lane, Woodland Park, NJ 07424.
City of Clifton	City Hall, Engineering Department, 900 Clifton Avenue, Clifton, NJ 07013.
City of Passaic	City Hall, 330 Passaic Street, Passaic, NJ 07055.
City of Paterson	City Hall, Clerk's Office, 155 Market Street, Paterson, NJ 07505.
Township of Little Falls	Township Hall, 225 Main Street, Little Falls, NJ 07424.
Township of Wayne	Township Hall, Engineering Department, 475 Valley Road, Wayne, NJ 07470.
Township of West Milford	Department of Public Works, Administration Building, Engineering Division, 1480 Union Valley Road, West Milford, NJ 07480.
Fairfield County, Ohio and Incorporated Areas Docket No.: FEMA–B–1851	
Unincorporated Areas of Fairfield County	Fairfield County Regional Planning Commission, 210 East Main Street, Lancaster, OH 43130.
Village of Bremen	Village Office, 9090 Marietta Street, Bremen, OH 43107.

[FR Doc. 2019–26247 Filed 12–4–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Arizona:					
Greenlee (FEMA Docket No.: B–1942).	Unincorporated Areas of Greenlee County (18–09–1753P).	The Honorable Richard Lunt, Chairman, Board of Supervisors, Greenlee County, 253 5th Street, Clifton, AZ 85534.	Greenlee County, Planning and Zoning Department, 253 5th Street, Clifton, AZ 85534.	Oct. 3, 2019	040110
Maricopa (FEMA Docket No.: B–1942).	City of Buckeye (18–09–2110P).	The Honorable Jackie A. Meck, Mayor, City of Buckeye, 530 East Monroe Avenue, Buckeye, AZ 85326.	Engineering Department, 530 East Monroe Avenue, Buckeye, AZ 85326.	Oct. 4, 2019	040039
Maricopa(FEMA Docket No.: B–1949).	City of Chandler (19–09–0018P).	The Honorable Kevin Hartke, Mayor, City of Chandler, 175 South Arizona Avenue, Chandler, AZ 85225.	Transportation & Development Department, 215 East Buffalo Street, Chandler, AZ 85225.	Oct. 11, 2019	040040
Maricopa (FEMA Docket No.: B–1937).	City of Peoria (19–09–0336P).	The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	Sep. 13, 2019	040050
Maricopa (FEMA Docket No.: B–1949).	City of Tempe (19–09–0018P).	The Honorable Mark Mitchell, Mayor, City of Tempe, P.O. Box 5002, Tempe, AZ 85280.	City Hall, Engineering Department, 31 East 5th Street, Tempe, AZ 85281.	Oct. 11, 2019	040054
Maricopa (FEMA Docket No.: B–1942).	Unincorporated Areas of Maricopa County (18–09–2110P).	The Honorable Bill Gates, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	Oct. 4, 2019	040037
Pima (FEMA Docket No.: B–1937).	City of Tucson (18–09–2360P).	The Honorable Jonathan Rothschild, Mayor, City of Tucson, City Hall, 255 West Alameda Street, 10th Floor, Tucson, AZ 85701.	Planning and Development Services, Public Works Building, 201 North Stone Avenue, Tucson, AZ 85701.	Aug. 23, 2019	040076

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Pima (FEMA Docket No.: B–1926).	Town of Oro Valley (18–09–2032P).	The Honorable Joe Winfield, Mayor, Town of Oro Valley, Town Hall, 11000 North La Cañada Drive, Oro Valley, AZ 85737.	Planning and Zoning Department, 11000 North La Cañada Drive, Oro Valley, AZ 85737.	Aug. 6, 2019	040109
Pima (FEMA Docket No.: B–1930).	Town of Oro Valley (18–09–2035P).	The Honorable Joe Winfield, Mayor, Town of Oro Valley, Town Hall, 11000 North La Cañada Drive, Oro Valley, AZ 85737.	Planning and Zoning Department, 11000 North La Cañada Drive, Oro Valley, AZ 85737.	Aug. 15, 2019	040109
Pima (FEMA Docket No.: B–1937).	Unincorporated Areas of Pima County (18–09–2360P).	The Honorable Richard Elias, Chairman, Board of Supervisors, Pima County, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 201 North Stone Avenue, 9th Floor, Tucson, AZ 85701.	Aug. 23, 2019	040073
California:					
Contra Costa (FEMA Docket No.: B–1949).	City of Oakley (18–09–2401P).	The Honorable Claire Alaura, Mayor, City of Oakley, 3231 Main Street, Oakley, CA 94561.	Public Works and Engineering Department, 3231 Main Street, Oakley, CA 94561.	Oct. 8, 2019	060766
Orange (FEMA Docket No.: B–1937).	City of Irvine (19–09–0114P).	The Honorable Christina L. Shea, Mayor, City of Irvine, 1 Civic Center Plaza, Irvine, CA 92606.	City Hall, 1 Civic Center Plaza, Irvine, CA 92606.	Sep. 20, 2019	060222
Santa Clara (FEMA Docket No.: B–1949).	City of San Jose (18–09–2460P).	The Honorable Sam Liccardo, Mayor, City of San Jose, Mayor's Office, 200 East Santa Clara Street, 18th Floor, San Jose, CA 95113.	Department of Public Works, 200 East Santa Clara Street Tower, 5th Floor, San Jose, CA 95113.	Oct. 10, 2019	060349
Florida:					
Clay (FEMA Docket No.: B–1937).	Unincorporated Areas of Clay County (19–04–2097P).	Ms. Diane Hutchings, Commissioner, Clay County Board of County Commissioners, P.O. Box 1366, Green Cove Springs, FL 32043.	Clay County, Public Works Department, 5 Esplanade Avenue, Green Cove Springs, FL 32043.	Aug. 30, 2019	120064
St. Johns (FEMA Docket No.: B–1926).	Unincorporated Areas of St. Johns County (19–04–0059P).	Mr. Paul M. Waldron, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32085.	Jul. 24, 2019	125147
St. Johns (FEMA Docket No.: B–1930).	Unincorporated Areas of St. Johns County (19–04–1638P).	Mr. Paul M. Waldron, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32084.	Aug. 16, 2019	125147
Illinois:					
Cook (FEMA Docket No.: B–1926).	Village of Franklin Park (18–05–6092P).	The Honorable Barrett F. Pedersen, Village President, Village of Franklin Park, 9500 Belmont Avenue, Franklin Park, IL 60131.	Village Hall, 9500 Belmont Avenue, Franklin Park, IL 60131.	Aug. 2, 2019	170094
Grundy (FEMA Docket No.: B–1949).	Unincorporated Areas of Grundy County (18–05–6349P).	Mr. Chris Balkema, Chairman, Grundy, County Board, 1320 Union Street, Morris, IL 60450.	Grundy County Administration Building, 1320 Union Street, Morris, IL 60450.	Oct. 18, 2019	170256
Grundy (FEMA Docket No.: B–1949).	Village of Carbon Hill (18–05–6349P).	The Honorable Richard Jurzak, Mayor, Village of, Carbon Hill, 695 North Holcomb Street, Carbon Hill, IL 60416.	Village Hall, 695 North Holcomb, Carbon Hill, IL 60416.	Oct. 18, 2019	170257
Grundy (FEMA Docket No.: B–1949).	Village of Coal City (18–05–6349P).	The Honorable Terry Halliday, Mayor, Village of Coal City, 515 South Broadway Street, Coal City, IL 60416.	Village Hall, 515 South Broadway Street, Coal City, IL 60416.	Oct. 18, 2019	170258
Grundy (FEMA Docket No.: B–1949).	Village of Diamond (18–05–6349P).	The Honorable Teresa Kernc, Mayor, Village of Diamond, 1750 East Division Street, Diamond, IL 60416.	Village Hall, 1750 East Division Street, Diamond, IL 60416.	Oct. 18, 2019	170259
Jackson County (FEMA Docket No.: B–1913).	Unincorporated Areas of Jackson County (18–05–4175P).	The Honorable John S. Rendleman, Chairman, Jackson County Board, Jackson County Courthouse, 1001 Walnut Street, Murphysboro, IL 62966.	Jackson County Assessment Office, 20 South 10th Street, Murphysboro, IL 62966.	Jun. 12, 2019	170927
Jackson County (FEMA Docket No.: B–1913).	Village of Dowell (18–05–4175P).	The Honorable Charles D. Horn, Village President, Village of Dowell, P.O. Box 92, Dowell, IL 62927.	Village Hall, 213 Union Avenue, Dowell, IL 62927.	Jun. 12, 2019	170875
Kane County (FEMA Docket No.: B–1919).	Village of Hampshire (18–05–5585P).	The Honorable Jeffrey Magnussen, Village President, Village of Hampshire, P.O. Box 457, Hampshire, IL 60140.	Village Hall, 234 South State Street, Hampshire, IL 60140.	Jun. 20, 2019	170327
Whiteside (FEMA Docket No.: B–1949).	City of Morrison (19–05–1824P).	The Honorable R. Everett Pannier, Mayor, City of Morrison, 200 West Main Street, Morrison, IL 61270.	City Hall, 200 West Main Street, Morrison, IL 61270.	Sep. 25, 2019	170691
Whiteside (FEMA Docket No.: B–1949).	Unincorporated Areas of Whiteside County (19–05–1824P).	The Honorable James C. Duffy, Chairman, Whiteside County Board, 200 East Knox Street, Morrison, IL 61270.	Whiteside County Courthouse, 200 East Knox Street, Morrison, IL 61270.	Sep. 25, 2019	170687
Indiana:					
Dubois (FEMA Docket No.: B–1930).	City of Jasper (18–05–2105P).	The Honorable Terry Seitz, Mayor, City of Jasper, 610 Main Street, Jasper, IN 47546.	City Hall, 610 Main Street, Jasper, IN 47547.	Aug. 8, 2019	180055

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Dubois (FEMA Docket No.: B–1930).	Unincorporated Areas of Dubois County (18–05–2105P).	Mr. Elmer Brames, Dubois County Commissioner, District 2, 2490 South Timerlin Drive, Jasper, IN 47546.	Dubois County Courthouse, 1 Courthouse Square, Jasper, IN 47546.	Aug. 8, 2019	180054
Kansas:					
Riley (FEMA Docket No.: B–1942).	City of Manhattan (18–07–1218P).	The Honorable Linda Morse, Mayor, City of Manhattan, 1101 Poyntz Avenue, Manhattan, KS 66502.	City Hall, 1101 Poyntz Avenue, Manhattan, KS 66502.	Sep. 18, 2019	200300
Riley (FEMA Docket No.: B–1942).	Unincorporated Areas of Riley County (18–07–1218P).	Mr. Ron Wells, Chairperson, Riley County, 3609 Anderson Avenue, Manhattan, KS 66503.	Riley County Office Building, 110 Courthouse Plaza, Manhattan, KS 66502.	Sep. 18, 2019	200298
Michigan:					
Washtenaw (FEMA Docket No.: B–1937).	Township of Scio (19–05–0515P).	Mr. Jack Knowles, Supervisor, Township, of Scio, 100 North 5th Avenue, Ann Arbor, MI 48104.	Township Hall, 827 North Zeeb Road, Ann Arbor, MI 48103.	Aug. 9, 2019	260537
Wayne (FEMA Docket No.: B–1937).	Township of Canton (18–05–5772P).	The Honorable Pat Williams, Township Supervisor, Township of Canton, Canton Municipal Complex, 1150 South Canton Center Road, Canton, MI 48188.	Municipal Complex, 1150 South Canton Center Road, Canton, MI 48188.	Aug. 30, 2019	260219
Minnesota: Dakota (FEMA Docket No.: B–1926).	City of Lakeville (18–05–4867P).	The Honorable Douglas P. Anderson, Mayor, City of Lakeville, 20195 Holyoke Avenue, Lakeville, MN 55044.	City Hall, 20195 Holyoke Avenue, Lakeville, MN 55044.	Aug. 5, 2019	270107
Nebraska: Washington (FEMA Docket No.: B–1937).	City of Blair (18–07–0934P).	The Honorable Richard Hansen, Mayor, City of Blair, 218 South 16th Street, Blair, NE 68008.	City Hall, 218 South 16th Street, Blair, NE 68008.	Sep. 23, 2019	310228
Nevada:					
Clark (FEMA Docket No.: B–1942).	City of Las Vegas (18–09–1622P).	The Honorable Carolyn G. Goodman, Mayor, City of Las Vegas, City Hall, 495 South Main Street, Las Vegas, NV 89101.	Planning and Zoning Department, 333 North Rancho Drive, Las Vegas, NV 89106.	Oct. 4, 2019	325276
Clark (FEMA Docket No.: B–1926).	City of Las Vegas (18–09–1695P).	The Honorable Carolyn G. Goodman, Mayor, City of Las Vegas, City Hall, 495 South Main Street, Las Vegas, NV 89101.	Planning and Zoning Department, 333 North Rancho Drive, Las Vegas, NV 89106.	Aug. 1, 2019	325276
Clark (FEMA Docket No.: B–1930).	Unincorporated Areas of Clark County (18–09–0991P).	The Honorable Marilyn Kirkpatrick, Chair, Board of Commissioners, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89106.	Clark County, Office of the Director of Public Works, 500 South Grand Central Parkway, 2nd Floor, Las Vegas, NV 89155.	Aug. 13, 2019	320003
Clark (FEMA Docket No.: B–1926).	Unincorporated Areas of Clark County (18–09–1695P).	The Honorable Marilyn Kirkpatrick, Chair, Board of Commissioners, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89106.	Clark County, Office of the Director of Public Works, 500 South Grand Central Parkway, 2nd Floor, Las Vegas, NV 89155.	Aug. 1, 2019	320003
New York:					
Rockland (FEMA Docket No.: B–1926).	Town of Clarkstown (19–02–0292P).	The Honorable George Hoehmann, Supervisor, Town of Clarkstown, Town Hall, 10 Maple Avenue, New City, NY 10956.	Town Hall, 10 Maple Avenue, New City, NY 10956.	Sep. 27, 2019	360679
Suffolk (FEMA Docket No.: B–1930).	Village of Sagaponack (19–02–0133P).	The Honorable Donald Louchheim, Mayor, Village of Sagaponack, P.O. Box 600, Sagaponack, NY 11962.	Village Hall, 3175 Montauk Highway, Sagaponack, NY 11962.	Sep. 27, 2019	361487
Westchester (FEMA Docket No.: B–1937).	Village of Mamaroneck (19–02–0392P).	The Honorable Thomas A. Murphy, Mayor, Village of Mamaroneck, 123 Mamaroneck Avenue, Mamaroneck, NY 10543.	Building Inspector, Village Hall, 3rd Floor, 169 Mount Pleasant Avenue, Mamaroneck, NY 10543.	Oct. 18, 2019	360916
Ohio:					
Franklin (FEMA Docket No.: B–1926).	City of Grove City (18–05–5403P).	The Honorable Richard L. Stage, Mayor, City of Grove City, City Hall, 4035 Broadway, Grove City, OH 43123.	City Hall, 4035 Broadway, Grove City, OH 43123.	Jul. 19, 2019	390173
Greene (FEMA Docket No.: B–1930).	City of Xenia (18–05–6514P).	The Honorable Marsha J. Bayless, Mayor, City of Xenia, City Hall, 101 North Detroit Street, Xenia, OH 45385.	City Hall, 101 North Detroit Street, Xenia, OH 45385.	Aug. 9, 2019	390197
Greene (FEMA Docket No.: B–1930).	Unincorporated Areas of Greene County (18–05–6514P).	Mr. Tom R. Koogler, Commissioner, Greene County, 35 Greene Street, Xenia, OH 45385.	Greene County Engineering, 667 Dayton-Xenia Road, Xenia, OH 45385.	Aug. 9, 2019	390193
Oregon: Multnomah (FEMA Docket No.: B–1942).	City of Portland (19–10–0138P).	The Honorable Ted Wheeler, Mayor, City of Portland, 1221 Southwest 4th Avenue, Room 340, Portland, OR 97204.	Bureau of Environmental Services, 1221 Southwest 4th Avenue, Room 230, Portland, OR 97204.	Oct. 7, 2019	410183
Texas:					
Dallas (FEMA Docket No.: B–1937).	City of Mesquite (19–06–0203P).	The Honorable Stan Pickett, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	City Engineering Services, 1515 North Galloway Avenue, Mesquite, TX 75185.	Aug. 27, 2019	485490

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Tarrant (FEMA Docket No.: B–1942).	City of North Richland Hills (19–06–0154P).	The Honorable Oscar Trevino, Jr., Mayor, City of North Richland Hills, 4301 City Point Drive, North Richland Hills, TX 76180.	City Hall, 4301 City Point Drive, North Richland Hills, TX 76180.	Sep. 30, 2019	480607
Virginia: Fairfax (FEMA Docket No.: B–1942).	Unincorporated Areas of Fairfax County (18–03–1211P).	Mr. Bryan Hill, Fairfax County Executive, 12000 Government Center Parkway, Fairfax, VA 22035.	Fairfax County Community Map Repository/Stormwater Planning, 12000 Government Center Parkway, Suite 449, Fairfax, VA 22035.	Sep. 30, 2019	515525
Wisconsin:					
Kenosha (FEMA Docket No.: B–1926).	City of Kenosha (18–05–5192P).	The Honorable John M. Antaramian, Mayor, City of Kenosha, City Hall, 625 52nd Street, Room 300, Kenosha, WI 53140.	City Hall, 625 52nd Street, Kenosha, WI 53140.	Jul. 17, 2019	550209
Kenosha (FEMA Docket No.: B–1930).	Village of Bristol (18–05–1772P).	The Honorable Michael Farrell, Village of Bristol Board President, 19801 83rd Street, Bristol, WI 53104.	Village Hall, 19801 83rd Street, Bristol, WI 53104.	Aug. 9, 2019	550595
Kenosha (FEMA Docket No.: B–1930).	Village of Pleasant Prairie (18–05–1772P).	The Honorable John Steinbrink, Village of Pleasant Prairie Board President, 8640 88th Avenue, Pleasant Prairie, WI 53158.	Village Hall, 9915 39th Avenue, Pleasant Prairie, WI 53158.	Aug. 9, 2019	550613
Milwaukee (FEMA Docket No.: B–1926).	City of Milwaukee (18–05–6243P).	The Honorable Tom Barrett, Mayor, City of Milwaukee, 200 East Wells Street, Room 201, Milwaukee, WI 53202.	City Hall, 200 East Wells Street, Milwaukee, WI 53202.	Aug. 2, 2019	550278

[FR Doc. 2019–26248 Filed 12–4–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1976]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before March 4, 2020.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1976, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and

technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Pulaski County, Arkansas and Incorporated Areas	
Project: 15–06–1728S Preliminary Date: July 29, 2019	
City of Little Rock.	Public Works Administration Building, 701 West Markham Street, Little Rock, AR 72201.

[FR Doc. 2019–26249 Filed 12–4–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Fish and Wildlife Service

[20X LLUTC03000 L14400000 ER0000 LXSSJ0740000; UTU–93620; 13–08807]

Notice of Intent To Prepare an Environmental Impact Statement To Consider a Highway Right-of-Way With Associated Issuance of an Incidental Take Permit, and Resource Management Plan Amendments, Washington County, UT

AGENCY: Bureau of Land Management, Interior; Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), the Federal Land Policy and Management Act of 1976, as amended, and the Endangered Species Act of 1973 (ESA), as amended, the Bureau of Land Management (BLM), and the Fish and Wildlife Service (FWS), as co-lead agencies, intend to prepare an Environmental Impact Statement (EIS) to consider a right-of-way application submitted by the Utah Department of Transportation (referred to henceforth as the Northern Corridor project), potential amendments to the St. George Field Office and Red Cliffs National Conservation Area (NCA) Resource Management Plans (RMPs), and the issuance of an Incidental Take Permit (ITP) to Washington County, Utah, under Section 10(a)(1)(B) of the ESA.

DATES: This Notice initiates the public scoping process. Scoping comments may be submitted in writing until January 6, 2020. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through a news release to local and regional media outlets and the BLM website at: *https://www.blm.gov/news/utah.* In order to be considered during the preparation of the Draft EIS, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. The BLM and FWS will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit written comments related to the proposed actions by any of the following methods:

- *Website: https://go.usa.gov/xpC6H.*
- *Email: BLM_UT_NorthernCorridor@blm.gov.*
- *Mail:* Bureau of Land Management, Attn: Northern Corridor, 345 East Riverside Drive, St. George, UT 84790.

Documents pertinent to this proposal may be examined at the BLM St. George Field Office, 345 East Riverside Drive, St. George, Utah 84790 and FWS Utah Ecological Services Field Office, 2369 W. Orton Circle, West Valley City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Gloria Tibbetts, Color Country District Planning and Environmental Coordinator, telephone (435) 865–3063; address 176 DL Sargent Dr., Cedar City, UT 84721; email *BLM_UT_NorthernCorridor@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Tibbetts during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: On September 4, 2018, the Utah Department of Transportation submitted an application for a right-of-way (ROW) grant for the Northern Corridor project north of the city of St. George, Utah, on BLM-managed public lands in the Red Cliffs NCA and the Red Cliffs Desert Reserve—an area set aside for Mojave desert tortoise mitigation under the 1995 Washington County Habitat Conservation Plan (HCP). The FWS is working with Washington County (County) on an HCP pursuant to Section 10(a)(1)(B) of the ESA in response to the proposed Northern Corridor project and other development in the county. The BLM is also considering amendments to the St. George Field Office and Red Cliffs NCA RMPs that would allow consideration of and mitigation for the proposed Northern Corridor project.

The EIS will analyze four proposed actions: (1) Whether the BLM will approve a 1.75-mile ROW section of the approximately 4-mile long Northern Corridor project that crosses the 62,000-acre Red Cliffs Desert Reserve and the 45,000-acre congressionally established Red Cliffs NCA; (2) Whether the BLM will amend the Red Cliffs NCA RMP to allow for a transportation ROW and/or corridor within the NCA; (3) Whether the BLM will amend the St. George Field Office RMP to modify management on approximately 6,800 acres outside the Reserve and NCA to offset the ROW impacts; and (4) Whether the FWS will issue an associated ITP for the Mojave desert tortoise for specific land use and land development activities in Washington County.

The BLM and FWS decisions that will stem from the Northern Corridor project analysis in the EIS are related, allowing the Department of the Interior to consolidate the effort. The BLM will work jointly with the FWS to ensure both agencies' requirements are addressed through all aspects of the NEPA process and development of the EIS. For these reasons, the agencies are analyzing these connected actions within one EIS.

ITP—Background

Section 9 of the ESA prohibits ''take'' of fish and wildlife species listed as endangered or threatened. *See* 16 U.S.C. 1538(a). 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.'' 50 CFR 17.3. ''Such an act 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.'' *Id.* The term ''harass'' is also further defined in the regulations as ''an intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering.'' *Id.*

Under Section 10(a)(l)(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. Section 10(a)(2)(A) requires that the conservation plan describe: (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 FWS may require as being necessary or appropriate for the purposes of the plan. Issuance criteria under Section 10(a)(2)(B) for an ITP require the FWS 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, that FWS requires 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.

Washington County's ITP expired in 2016 and the FWS granted an extension to allow time for a renewal. If approved, the Northern Corridor would require an amendment to the HCP because it would impact the Red Cliff Desert Reserve's function as mitigation under the HCP. Before renewal of the ITP can be approved, the Utah Department of Transportation and the County must demonstrate that impacts to the previous value of the Reserve from the highway would be fully offset.

RMPs—Background

The BLM approved the Red Cliffs RMP on December 21, 2016. The Approved RMP satisfies the legislative direction in Section 1974(d)(1) of the Omnibus Public Land Management Act of 2009 (16 U.S.C 460www, Pub. L. 111–11) that the Secretary of the Interior, through the BLM, develop a comprehensive RMP for the Red Cliffs NCA to achieve the following Congressionally-defined purposes: ''(1) To conserve, protect, and enhance for the benefit and enjoyment of present and future generations the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources of the National Conservation Area; and (2) To protect each species that is located in the National Conservation Area; and listed as a threatened or endangered species on the list of threatened species or the list of endangered species published under [the Endangered Species Act of 1973].'' 16 U.S.C. 460www(a).

The St. George Field Office RMP was approved on March 15, 1999, to fulfill the planning requirements of the Federal Land Policy and Management Act of 1976 and to provide a vision and direction for future public land management in Washington County. The BLM approved an amendment to the St. George Field Office RMP on December 21, 2016, to protect endangered native plant species listed as threatened and endangered and to update OHV area designations. The BLM is considering amending the St. George RMP again to allow for possible measures that the County proposed to mitigate the potential loss of tortoise habitat by any development of a ROW corridor. Specifically, the County has proposed creating a new habitat Zone 6 in the Reserve to provide additional desert tortoise habitat and to offset habitat loss potentially occurring from a ROW.

NEPA Process

The BLM and FWS will use an interdisciplinary approach to develop the EIS in order to consider the variety of resource issues and concerns identified during the scoping period. Potential direct, indirect, residual, and cumulative impacts from the proposed actions will be analyzed in the EIS.

The purpose of the public scoping process is to identify relevant subject areas that will influence the scope of the environmental analysis, including potential alternatives, and guide the process for developing the EIS. At present, the BLM and FWS have identified the following preliminary subject areas: Impacts to threatened and endangered species, including the federally listed Mojave desert tortoise; impacts to the mitigation for the 1995 HCP; impacts to the Red Cliffs NCA's purposes for designation, impacts to recreation and livestock grazing, and socioeconomic and transportation impacts in the surrounding communities.

The BLM and FWS will follow the NEPA public participation requirements to satisfy the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). Any information about historic and cultural resources within the area potentially affected by the proposed project will assist the BLM and FWS in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM and FWS will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed Northern Corridor project, associated RMP amendments, and possible ESA 10(a)(1)(b) permit issuance are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

(Authority: 40 CFR 1501.7 and 43 CFR 1610.2)

Edwin L. Roberson,

State Director.

Noreen Walsh,

Regional Director.

[FR Doc. 2019–26287 Filed 12–4–19; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2019–N123; FXES11130600000–201–FF06E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments by January 6, 2020.

ADDRESSES: *Document availability and comment submission:* Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* TE123456):

- *Email: permitsR6ES@fws.gov.*
- *U.S. Mail:* Marjorie Nelson, Chief, Division of Ecological Services, U.S. Fish and Wildlife Service, 134 Union Blvd., Suite 670, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Kathy Konishi, Recovery Permits Coordinator, Ecological Services, 303–236–4224 (phone), or *permitsR6ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies; Tribes; and the public to comment on the following applications.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
TE067729–6	Kansas State University, Manhattan, Kansas.	• Topeka shiner (*Notropis topeka*) • Razorback sucker (*Xyrauchen texanus*) • Colorado pikeminnow (*Ptychocheilus lucius*).	CO, KS, UT	Capture, handle, insert PIT tags, clip fins, and release.	Renew.
TE53607D–0	Colorado Parks and Wildlife, Denver, Colorado.	• Razorback sucker (*Xyrauchen texanus*) • Colorado pikeminnow (*Ptychocheilus lucius*). • Bonytail chub (*Gila elegans*)	CO	Capture, handle, measure, insert PIT tags, tissue sample for genetic analysis, and release.	New.
TE080647–1	Wildlife Specialties, LLC, Lyons, Colorado.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	CO	Pursue for presence/absence surveys.	Renew.
TE42721B–1	City of Fort Collins Natural Areas Department, Fort Collins, Colorado.	• Black-footed ferret (*Mustela nigripes*)	CO	Pursue for presence/absence surveys, capture, mark, vaccinate, release, reintroduce, and monitor populations.	Renew.
TE57437D–0	Timothy Carden, Monte Vista, Colorado.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	CO	Pursue for presence/absence surveys.	New.
TE73239C–1	U.S. Army Corps of Engineers, Kansas City, Missouri.	• Pallid sturgeon (*Scaphirhynchus albus*)	KS, MO	Capture, handle, measure, insert PIT tags, tissue sample for genetic analysis, and release.	Amend.
TE66521B–2	Western Biology, LLC, Hotchkiss, Colorado.	• Southwestern willow flycatcher (*Empidonax traillii extimus*). • Black-footed ferret (*Mustela nigripes*)	AZ, CA, CO, NV, NM, TX, UT. CO, WY, MT, UT, KS, NE, SD, ND.	Pursue for presence/absence surveys.	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Stephen Small,

Assistant Regional Director, U.S. Fish and Wildlife Service, Department of the Interior Unified Regions 5 and 7.

[FR Doc. 2019–26253 Filed 12–4–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Numerical Propulsion System Simulation

Notice is hereby given that, on November 13, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Numerical Propulsion System Simulation (''NPSS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Baker Hughes TPS, Firenze, ITALY, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NPSS intends to file additional written notifications disclosing all changes in membership or planned activities.

On December 11, 2013, NPSS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 20, 2014 (79 FR 9767).

The last notification was filed with the Department on September 11, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 8, 2019 (84 FR 60454).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit Antitrust Division.

[FR Doc. 2019–26243 Filed 12–4–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on ROS-Industrial Consortium Americas

Notice is hereby given that, on November 13, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium-Americas (''RIC-Americas'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, GKN Aerospace North America, Inc., Hazelwood, MO, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RIC-Americas intends to file additional written notifications disclosing all changes in membership.

On April 30, 2014, RIC-Americas filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on October 17, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 12, 2019 (84 FR 61070).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit Antitrust Division.

[FR Doc. 2019–26242 Filed 12–4–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Execution of Rendezvous and Servicing Operations

Notice is hereby given that, on November 11, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Consortium for Execution of Rendezvous and Servicing Operations (''CONFERS'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lockheed Martin Corporation, Bethesda, MD; Trensipo, Inc., Hayward, CA; Colorado Center for Astrodynamics Research, Boulder, CO; SRI International, Menlo Park, CA; Stellar Exploration, Inc., San Luis Obispo, CA; OneWeb, McLean, VA; Space Law & Policy Solutions, E. Rochester, NH; Space Applications Services, Sint-Stevens-Woluwe, BELGIUM; GITAI, Inc., Tokyo, JAPAN; Marsh & McLennan Companies, New York, NY; KinetX Aerospace, Inc., Tempe, AZ; and Protean Industries, LLC, LaFayette, NJ, have been added as parties to this venture.

Also, Space Initiatives, Inc., Palm Bay, FL; SES Government Solutions, Inc., Reston, VA; and Hoffer Flow Controls, Inc., Elizabeth City, NC, have withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CONFERS intends to file additional written notifications disclosing all changes in membership.

On September 10, 2018, CONFERS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 19, 2018 (83 FR 53106).

The last notification was filed with the Department on May 6, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 29, 2019 (84 FR 24818).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit Antitrust Division.

[FR Doc. 2019–26245 Filed 12–4–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Space Enterprise Consortium

Notice is hereby given that, on November 7, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Space Enterprise Consortium (''SpEC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Atlas Business Consulting, Inc., Irvine, CA; Attollo Engineering, LLC, Camarillo, CA; Augustus Aerospace Company, Colorado Springs, CO; Boecore, Inc., Colorado Springs, CO; Bradford Space, Inc., San Jose, CA; Certus Solutions, LLC, Fredericksburg, VA; Chemring Energetic Devices, Downers Grove, IL; Cisco Systems, San Jose, CA; Cornerstone Defense, LLC, Hanover, MD; CubeCab Co., Mountain View, CA; Davidson Technologies, Inc., Huntsville, AL; Fibertek, Inc., Herndon, VA; GreenDart Incorporated, San Pedro, CA; Hill Engineering LLC, Rancho Cordova, CA; Integrated Solutions for Systems, Inc., Huntsville, AL; Keysight Technologies, Santa Rosa, CA; Longbow Software, LLC, Englewood, CO; Nuvotronics, Inc., Durham, NC; Omnispace LLC, McLean, VA; Orbital Micro Systems, Inc., Boulder, CO; Palantir USG, Inc., Palo Alto, CA; QUISnet, Inc., Draper, UT; RBC Signals LLC, Redmond, WA; RUAG Space USA, Inc., Huntsville, AL; Smart Security Systems LLC, Boulder, CO; SpinLaunch, Inc., Long Beach, CA; Systems Planning & Analysis, Inc., Alexandria, VA; TAU Technologies, Albuquerque, NM; The NAVSYS Corporation, Colorado Springs, CO; and Velos LLC, Princess Anne, MD, have been added as parties to this venture.

Also, AKELA, Santa Barbara, CA; ATA Aerospace, Albuquerque, NM; Carillon, Alexandria, VA; Integrity Communication Solutions, Colorado Springs, CO; L–3 Communication E.O.–IR, Santa Rosa, CA; Loadpath, Albuquerque, NM; Polaris Alpha, Colorado Springs, CO; Projects Unlimited, Dayton, OH; Research Innovations, Alexandria, VA; Solers, Inc., Arlington, VA; Solidyn Solutions, Greenwood Village, CO; and Space Systems Integration, Great Falls, VA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SpEC intends to file additional written notifications disclosing all changes in membership.

On August 23, 2018, SpEC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 2, 2018 (83 FR 49576).

The last notification was filed with the Department on August 5, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 4, 2019 (84 FR 46566).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit Antitrust Division.

[FR Doc. 2019–26241 Filed 12–4–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Border Security Technology Consortium

Notice is hereby given that, on November 13, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Border Security Technology Consortium (''BSTC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alakai Defense, Largo, CA; COLSA Corporation, Huntsville, AL; Chakrabarti Management Consultancy, Inc. (CMCI), Fairfax, VA; Ernst & Young, LLP, Tysons, VA; TRABUS (dba Trabus Technologies), San Diego, CA; Bruker Detection Corporation, Billerica, MA; Block MEMS LLC, Southborough, MA; Sonalysts, Inc., Waterford, CT; and OceanAero, Inc., San Diego, CA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and BSTC intends to file additional written notifications disclosing all changes in membership.

On May 30, 2012, BSTC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 18, 2012 (77 FR 36292).

The last notification was filed with the Department on July 25, 2019. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 4, 2019 (84 FR 46567).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit Antitrust Division.

[FR Doc. 2019–26244 Filed 12–4–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Group, L.L.C.

Notice is hereby given that, on November 12, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Open Group, L.L.C. (''TOG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ALVRO S.à.r.l., Luxembourg City, LUXEMBOURG; Avanade, Inc., Seattle, WA; Beijing Pitaya Software Engineering Technology Center, Beijing, PEOPLE'S REPUBLIC OF CHINA; BHP Billiton Deepwater, Inc., Houston, TX; Carrtelcom Nigeria Company Limited, Iju-Shaga, NIGERIA; CGI Nederland B.V., Rotterdam, THE NETHERLANDS; Common Data Access Limited, London, UNITED KINGDOM; COTSWORKS, LLC, Highland Heights, OH; Desmond Fitzgerald & Associates T/A Intrepid Geophysics, Brighton, AUSTRALIA; Doccmott Enterprise Solutions (Pty) Ltd, Johannesburg, SOUTH AFRICA; Earth Science Analytics AS, Stavanger, NORWAY; EnergyIQ LLC, Littleton, CO; Enterprise Architecture Training LLC, Cuming, GA; Enthought, Inc., Austin, TX; Environmental Systems Research Institute, Redlands, CA; EXB Solutions, Minneapolis, MN; Foster Findlay Associates Ltd, Newcastle Upon Tyne,

UNITED KINGDOM; Georgia Tech Research Institute, Atlanta, GA; GrammaTech, Inc., Ithaca, NY; Great River Technology, Inc., Albuquerque, NM; Hint Americas Inc., Houston, TX; Interface Concept Inc., Naperville, IL; KAPPA Engineering, Paris, FRANCE; Maana, Inc., Menlo Park, CA; MAILLANCE SAS, Paris, FRANCE; Micro Focus (US) Inc., Downington, PA; Noble Energy, Inc., Houston, TX; Oil and Gas Authority, London, UNITED KINGDOM; Petrabytes Corporation, Bellaire, TX; PETRONAS Carigali Sdn. Bhd, Kuala Lumpur, MALAYSIA; RagnaRock Geo, Trondheim, NORWAY; Rococo Co. Ltd, Chuo-ku, JAPAN; RTD Embedded Technologies, Inc., State College, PA; Ruths Analytics and Innovation, Inc. (d/b/a ''Petro.ai''), Houston, TX; SAS Management, Inc., Makati City, PHILIPPINES; SMART Embedded Computing, Tempe, AZ; Stonebridge Consulting, LLC, Tulsa, OK; Sustainable Evolution, Inc., Seattle, WA; Teradata Corporation, London, UNITED KINGDOM; US Army Project Manager Electronic Warfare and Cyber, APG, MD; vCISO Services, LLC, Franklin, TN; and wolfSSL, Inc., Edmonds, WA, have been added as parties to this venture.

Also, 4IT GROUP Sp. zo.o., Wroclaw, POLAND; acQuire Technology Solutions Pty, Ltd, Applecross, AUSTRALIA; Banco de México, Mexico City, MEXICO; CS Inc., East Hartford, CT; Curtiss-Wright Controls Defense Solutions, Santa Clarita, CA; Devon Energy Corporation, Oklahoma City, OK; Edifit Limited, Coventry, UNITED KINGDOM; Garmin International, Olathe, KS; Geco, Inc., Mesa, AZ; Macro Services Solutions, Bogota, COLOMBIA; PDM Technology Services Pty. Ltd., Midrand, SOUTH AFRICA; QR Systems Inc., Woodbridge, CANADA; Quinsigamond Community College, Worcester, MA; Rio Tinto, London, UNITED KINGDOM; Service-Flow Corp., Helsinki, FINLAND; Solventa BV, Nieuwegein, THE NETHERLANDS; and University of Southern California USC Energy Institute, Los Angeles, CA, have withdrawn as parties to this venture.

In addition, U.S. Army RDECOM CERDEC Intelligence and Information Warfare Directorate has changed its name to AFC CCDC C5ISR Center, Aberdeen Proving Ground, MD; CXOWARE, Inc. to RiskLens, Inc., Spokane, WA; and Integrata Cegos GmbH to Integrata AG, Stuttgart, GERMANY.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TOG intends to file additional written notifications disclosing all changes in membership.

On April 21, 1997, TOG filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on August 6, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 16, 2019 (84 FR 42011).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit Antitrust Division.

[FR Doc. 2019–26246 Filed 12–4–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0144]

Proposed Extension of Information Collection; Mine Rescue Teams; Arrangements for Emergency Medical Assistance and Transportation for Injured Persons; Agreements; Reporting Requirements; Posting Requirements

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Mine Rescue Teams; Arrangements for Emergency Medical Assistance and Transportation for Injured Persons; Agreements; Reporting Requirements; Posting Requirements.

DATES: All comments must be received on or before February 3, 2020.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number [MSHA–20##–0###].
- *Regular Mail:* Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.
- *Hand Delivery:* USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

In this revision to OMB No. 1219–0144, it is being combined with OMB No. 1219–0078 (Expiring 2/29/2020) to be housed in OMB No. 1219–0144 only. The 5000–3 Form, which currently belongs to both OMB No.'s, will then cover one OMB No.

30 CFR part 49, subpart B—Mine Rescue Teams for Underground Coal Mines, sets standards related to the availability of mine rescue teams; alternate mine rescue capability for small and remote mines; inspection and maintenance records of mine rescue equipment and apparatus; physical requirements for mine rescue team members and alternates; and experience and training requirements for team members and alternates. The collection of information under 30 CFR part 49, subpart B, covers the following requirements for underground coal mines.

Section 49.12 requires each operator of an underground coal mine to send the District Manager a statement describing the mine's method of compliance with this standard.

Section 49.13 provides that operators of small and remote mines may submit an application for alternative mine rescue capability to MSHA for approval.

Section 49.16 requires that a person trained in the use and care of a breathing apparatus must inspect and test the apparatus at intervals not exceeding 30 days and must certify by signature and date that the required inspections and tests were done, and record any corrective action taken.

Section 49.17 requires that each member of a mine rescue team be examined annually by a physician who must certify that each person is physically fit to perform mine rescue and recovery work.

Section 49.18 requires that a record of the training received by each mine rescue team member be made and kept on file at the mine rescue station for a period of one year. The operator must provide the District Manager information concerning the schedule of upcoming training when requested.

Section 49.19 requires that each mine have a mine rescue notification plan outlining the procedures to be followed in notifying the mine rescue teams when there is an emergency that requires their services.

Section 49.50 requires underground coal mine operators to certify that each designated coal mine rescue team meets the requirements of 30 CFR part 49 subpart B.

Sections 75.1713–1 and 77.1702 require operators to make arrangements for 24-hour emergency medical assistance and transportation for injured persons and to post this information at appropriate places at the mine, including the names, titles, addresses, and telephone numbers of all persons or services currently available under those arrangements.

Under 30 CFR part 49 subpart A, Mine Rescue Teams for Underground Metal and Nonmetal Mines, requires every operator of an underground mine to assure the availability of mine rescue capability for purposes of emergency rescue and recovery. This collection of information relates to the availability of mine rescue teams; alternate mine rescue capability for small and remote mines and mines with special mining conditions; inspection and maintenance records of mine rescue equipment and apparatus; physical requirements for team members and alternates; and experience and training requirements for team members and alternates.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Mine Rescue Teams; Arrangements for Emergency Medical Assistance and Transportation for Injured Persons; Agreements; Reporting Requirements; Posting Requirements. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL-Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Mine Rescue Teams; Arrangements for Emergency Medical Assistance and Transportation for Injured Persons; Agreements; Reporting Requirements; Posting Requirements. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Revision of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0144.

Affected Public: Business or other for-profit.

Number of Respondents: 577.

Frequency: On occasion.

Number of Responses: 40,588.

Annual Burden Hours: 13,107 hours.

Annual Respondent or Recordkeeper Cost: $1,980,169.

MSHA Forms: MSHA Form 2000–224, Operator's Annual Certification of Mine Rescue Team Qualifications and MSHA Form 5000–3, Certificate of Physical Qualification for Mine Rescue Work.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2019–26261 Filed 12–4–19; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2020–010]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed extension request.

SUMMARY: NARA proposes to request an extension from the Office of Management and Budget (OMB) of approval to use an information collection on statistical research. We collect certain information on research plans and requested records from researchers who wish to do biomedical statistical research in archival records containing highly personal information. We invite you to comment on this proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: We must receive written comments on or before February 3, 2020.

ADDRESSES: Send comments to Paperwork Reduction Act Comments (MP), Room 4100; National Archives and Records Administration; 8601 Adelphi Road, College Park, MD 20740–6001, fax them to 301.837.7409, or email them to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Tamee Fechhelm by telephone at 301.837.1694 or fax at 301.837.7409 with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for us to properly perform our functions; (b) our estimate of the burden of the proposed information collection and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether this collection affects small businesses. We will summarize any comments you submit and include the summary in our request for OMB approval. All comments will become a matter of public record. In this notice, we solicit comments concerning the following information collection:

Title: Statistical Research in Archival Records Containing Personal Information.

OMB number: 3095–0002.

Agency form number: None.

Type of review: Regular.

Affected public: Individuals.

Estimated number of respondents: 1.

Estimated time per response: 7 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 7 hours.

Abstract: The information collection is prescribed by 36 CFR 1256.28 and 36 CFR 1256.56. Respondents are researchers who wish to do biomedical statistical research in archival records containing highly personal information. We need the information to evaluate requests for access to ensure that the requester meets the criteria in 36 CFR 1256.28 for access to, and use of, the information, and will take the proper safeguards to protect the information.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2019–26289 Filed 12–4–19; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Maximum Borrowing Authority

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before February 3, 2020 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; Fax No. 703–519–8579; or Email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Dawn Wolfgang at the address above or telephone 703–548–2279.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0168.

Title: Maximum Borrowing Authority, 12 CFR 741.2.

Type of Review: Extension of a currently approved collection.

Abstract: The collection of information requirement is for those federally insured state-chartered credit unions seeking a waiver from the maximum borrowing limitation of 50% of paid-in and unimpaired capital and surplus. The credit union needs to submit a request to the regional director. The request must include a detailed safety and soundness analysis, a proposed aggregate amount, a letter from the state regulator approving the request and an explanation of the need for the waiver. This is necessary to protect the National Credit Union Share Insurance Fund.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 2.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Responses: 2.

Estimated Burden Hours per Response: 8.

Estimated Total Annual Burden Hours: 16.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on December 2, 2019.

Dated: December 2, 2019.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2019–26238 Filed 12–4–19; 8:45 am]

BILLING CODE 7535–01–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 January 6, 2020. 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 671), 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: 2020–022

1. *Applicant:* Chris Eckstrom, Frans Lanting Studio, 108 High Road at Delaware Avenue, Santa Cruz, CA 95060.

Activity for Which Permit is Requested: Waste management. The applicant proposes to operate small, battery-operated remotely piloted aircraft systems (RPAS) consisting, in part, of a quadcopter equipped with cameras to collect commercial and educational footage of the Antarctic. The quadcopter would not be flown over concentrations of birds or mammals, or over Antarctic Specially Protected Areas or Historic Sites and Monuments. The RPAS would only be operated by pilots with extensive experience, who are approved by the Tour Operator. Several measures would be taken to prevent against loss of the quadcopter including painting the them a highly visible color; only flying when the wind is less than 25 knots; flying for only until reaching 25% battery life level; having prop guards on propeller tips, a flotation device if operated over water, and an ''auto go home'' feature in case of loss of control link or low battery; having an observer on the lookout for wildlife, people, and other hazards; and ensuring that the separation between the operator and quadcopter does not exceed visual line of sight of the pilot or observer. The applicant is seeking a Waste Permit to cover any accidental releases that may result from operating the RPAS.

Location: Antarctic Peninsula region.

Dates of Permitted Activities: January 1–February 28, 2020.

Permit Application: 2020–024

2. *Applicant:* David Lloyd, 40 Bertrand Drive, Princeton, NJ 08540.

Activity for Which Permit is Requested: Waste management.

Location: Signy Island, South Orkney Islands, Antarctica. The applicant proposes to conduct waste management activities an amateur (ham) radio expedition to Signy Island. The applicant would set up a temporary amateur radio station for a period of approximately two weeks to allow other amateur radio operators around the world the opportunity to make a radio contact with Signy Island. To support expedition goals, the applicant would establish a camp near Waterpipe Beach on Signy Island with two shelters. One would be used for the radio communication equipment, another as a rest area and for storage. Several radio antennas would be erected around the camp. No permanent structures would be constructed. Upon completion of the radio operations the camp and antennas would be completely dismantled and the site would be thoroughly inspected to ensure that no trace of the visit remains. Logistical support, including transport of personnel, equipment, prepared food, and fuel from the vessel to the island, transport of waste from the island back to the vessel, and transport of all personnel and equipment off the island at the end of the expedition would be provided by the crew of a chartered vessel. Fuel (unleaded gasoline) for portable generators used to power the radio equipment would be transported and stored in sealed plastic containers. Minimal amounts of fuel would be stored at the camp and best practices, including secondary containment, would be used to minimize the risk of spill during storage or fueling generators. If a liquid or semi-liquid waste or spill occurs, the applicant would collect the spilled materials along with a margin of soil or snow and dispose of the material in a bag contained within a waste drum which will be returned to the support vessel. All waste generated would be securely contained until it can be removed from the island. All waste would be disposed of in port after our return from Antarctica. No waste would be incinerated or left in Antarctica.

Dates of Permitted Activities: February 15–March 31, 2020.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2019–26239 Filed 12–4–19; 8:45 am]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings: Regular Board of Directors Meeting

TIME AND DATE: 2:00 p.m., Tuesday, December 17, 2019.

PLACE: NeighborWorks America—Gramlich Boardroom 999 North Capitol Street, NE, Washington, DC 20002.

STATUS: Open (with the exception of Executive Session).

MATTERS TO BE CONSIDERED: The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552 (b)(2) and (4) permit closure of the following portion(s) of this meeting:

- Report from CEO

Agenda

I. Call to Order
II. Approval of Minutes
III. Executive Session: Report from CEO
IV. Action Item Health Insurance Delegation of Authority in 2020
V. Action Item Wells Fargo Home Ownership Counseling Initiative
VI. Discussion Item Non-Core Funds
VII. Discussion Item Governance Working Group Report
VIII. Management Program Background and Updates
IX. Adjournment

CONTACT PERSON FOR MORE INFORMATION: Rutledge Simmons, EVP & General Counsel/Secretary, (202) 760–4105; *Rsimmons@nw.org.*

Rutledge Simmons,

EVP & General Counsel/Corporate Secretary.

[FR Doc. 2019–26383 Filed 12–3–19; 4:15 pm]

BILLING CODE 7570–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–42 and CP2020–40]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 9, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the

Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–42 and CP2020–40; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 133 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 27, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 9, 2019.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

This Notice will be published in the **Federal Register**.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–26257 Filed 12–4–19; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 5, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 27, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 133 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–42, CP2020–40.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–26263 Filed 12–4–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87641; File No. SR–BOX–2019–19]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as the Boston Security Token Exchange LLC

November 29, 2019.

On September 27, 2019, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules governing the listing and trading of equity securities that would be NMS stocks on the Exchange through a facility of the Exchange known as the Boston Security Token Exchange LLC. The proposed rule change was published for comment in the **Federal Register** on October 18, 2019.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is December 2, 2019.

The Commission hereby is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates January 16, 2020, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–BOX–2019–19).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–26229 Filed 12–4–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87287 (October 11, 2019), 84 FR 56022.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33706]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

November 29, 2019.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of November 2019. A copy of each application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 24, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

Equity/Long Short Opportunities Fund [File No. 811–22611]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On July 11, 2019, applicant made a final liquidating distribution to its shareholders based on net asset value. Expenses of $285,369 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on September 18, 2019, and amended on November 13, 2019.

Applicant's Address: 50 South LaSalle Street, Chicago, Illinois 60603.

Forum ETF Trust [File No. 811–22679]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on August 20, 2019, and amended on November 1, 2019.

Applicant's Address: 3 Canal Plaza, Portland, Maine 04101–4080.

Guggenheim Floating Rate & Income Fund [File No. 811–22914]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed July 23, 2019, and amended on October 31, 2019.

Applicant's Address: 227 West Monroe Street, Chicago, Illinois 60606.

Guggenheim Global Equity Fund [File No. 811–23070]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed July 23, 2019, and amended on October 31, 2019.

Applicant's Address: 227 West Monroe Street, Chicago, Illinois 60606.

Guggenheim Middle Market & Income Fund [File No. 811–23021]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed July 23, 2019, and amended on October 31, 2019.

Applicant's Address: 227 West Monroe Street, Chicago, Illinois 60606.

John Hancock Investment Trust III [File No. 811–04630]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 17, 2019, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of approximately $2,000 incurred in connection with the liquidation were paid by applicant's investment adviser. Applicant has also retained $9,675 for the purpose of paying final accrued expenses and outstanding liabilities.

Filing Dates: The application was filed on September 6, 2019, and amended on November 14, 2019.

Applicant's Address: 200 Berkeley Street, Boston, Massachusetts 02116.

MarketShares ETF Trust [File No. 811–22817]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed July 15, 2019, and amended on October 31, 2019.

Applicant's Address: 4265 San Felipe, 8th Floor, Houston, Texas 77027.

Oaktree Funds [File No. 811–22997]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 17, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $16,591 incurred in connection with the liquidation were paid by Oaktree High Yield Bond Fund, the sole series of the applicant.

Filing Dates: The application was filed on July 23, 2019, and amended on November 18, 2019.

Applicant's Address: 333 South Grand Avenue, 28th Floor, Los Angeles, California 90071.

Olstein Funds [File No. 811–09038]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Managed Portfolio Series, and on September 14, 2018, made a final distribution to its shareholders based on net asset value. Expenses of $428,352 incurred in connection with the reorganization were paid by the applicant and the applicant's investment adviser.

Filing Dates: The application was filed on August 26, 2019, and amended on October 30, 2019.

Applicant's Address: 4 Manhattanville Road, Purchase, New York 10577.

Oppenheimer Portfolio Series [File No. 811–21686]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to AIM Growth Series (Invesco Growth Series), and on May 24, 2019 made a final distribution to its shareholders based on net asset value. Expenses of $1,300,306.94 incurred in connection with the reorganization were paid by the applicant's investment adviser and the acquiring fund's investment adviser, and/or their affiliates.

Filing Dates: The application was filed on September 12, 2019, and amended on October 30, 2019.

Applicant's Address: 6803 South Tucson Way, Centennial, Colorado 80112.

PSG Capital Management Trust [File No. 811–22657]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 29, 2019, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $8,074 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on August 22, 2019, and amended on November 4, 2019.

Applicant's Address: 8161 Maple Lawn Boulevard, Suite 400, Maple Law, Maryland 20759.

Trust for Advisor Solutions [File No. 811–21079]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Staar Disciplined Strategies Fund, a series of the Staar Investment Trust, and on March 28, 2019, made a final distribution to its shareholders based on net asset value. Expenses of $12,447.25 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Dates: The application was filed on September 6, 2019, and amended on November 6, 2019.

Applicant's Address: 8510 Colonnade Center Drive, Suite 150, Raleigh, North Carolina 27615.

Underlying Funds Trust [File No. 811–21895]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 26, 2017, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $2,348 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on September 6, 2019, and amended on November 6, 2019.

Applicant's Address: 8510 Colonnade Center Drive, Suite 150, Raleigh, North Carolina 27615.

Vanguard Morgan Growth Fund [File No. 811–01685]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Vanguard U.S. Growth Fund, a series of Vanguard World Fund, and on April 4, 2019, made a final distribution to its shareholders based on net asset value. Expenses of $223,115.83 incurred in connection with the reorganization were paid by the applicant.

Filing Dates: The application was filed on July 16, 2019, and amended on November 8, 2019.

Applicant's Address: P.O. Box 2600, Valley Forge, Pennsylvania 19482.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–26230 Filed 12–4–19; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Information Collection for STEP Grant Program

AGENCY: U.S. Small Business Administration.

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 February 3, 2020.

ADDRESSES: Send all comments to James Parker, STEP Program Director, Office of International Trade, Small Business Administration, 409 3rd Street, 2nd Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: James Parker, STEP Program Director, Office of International Trade, Small Business Administration, *james.parker@sba.gov,* 202–205–3644, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The primary objective of the STEP Client Report form is to collect data on the quarterly progress of grantees of the SBA's State Trade and Export Promotion (STEP) program. These data will be used to understand how states have improved their trade and export activities and revenue. The STEP program has two primary objectives: (1) Increase the number of small businesses that are exporting and (2) increase the value of exports for small businesses that are currently exporting. To achieve these objectives, SBA provides state-level grant recipients with funding for nine activities, including participation in foreign trade missions, design of marketing media, and trade show exhibitions.

Data from the STEP Client Report will provide SBA with critical information about the impact of various strategies used to advance trade and export activities in each state. These data will also provide an understanding of the specific ways in which funded activities meet SBA's goal of improving small business trade and export productivity. These data may inform strategies that can be replicated by other small businesses. These data are not currently being collected elsewhere and are critical to understanding the outcomes of STEP grantee activities.

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.

Summary of Information Collection

Title: STEP Program Quarterly Client Reporting Form.

Description of Respondents: State administrators in states that receive an SBA STEP grant.

Form Number: N/A.

Total Estimated Annual Responses: 90.

Total Estimated Annual Hour Burden: 360 hours.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–26235 Filed 12–4–19; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2019–0052]

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes one new collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2019–0052].

The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than February 3, 2020. Individuals can obtain copies of the collection instruments by writing to the above email address.

Electronic Consent Based Social Security Number Verification—20 CFR 400.100—0960–NEW. The electronic Consent Based Social Security Number Verification (eCBSV) is a fee-based Social Security Number (SSN) verification service that will allow permitted entities (a financial institution or service provider, subsidiary, affiliate, agent, subcontractor, or assignee of a financial institution as defined by Section 509 of the Gramm-Leach-Bliley Act. 42 USCA 405b(b)(4), Pub. L. 115–174, Title II, 215(b)(4).) to verify an individual's SSN based on the SSN holder's signed consent in connection with a credit transaction or any circumstance described in section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b).

Background

We are creating this system due to section 215 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (Banking Bill), Public Law 115–174. Permitted entities will be able to submit an SSN, name, and date of birth (DOB) to SSA for verification via an application programming interface. The purpose of the information collection is for SSA to verify for the permitted entity that the submitted name, DOB, and SSN matches, or does not match, the data contained in our records. After completing the enrollment process; paying for services; and obtaining SSN holder consent, the permitted entity submits the names, DOBs, and SSNs of number holders who gave valid consents to the eCBSV service. SSA matches the information against our Master File, using SSN, name, and DOB. The eCBSV Service will respond in real time with a match/no match indicator (and an indicator if our records show that the SSN Holder died). SSA does not provide specific information on what data elements did not match, nor does SSA provide any SSNs or other identifying information. In addition, the verification does not authenticate the identity of individuals or conclusively prove the individuals we verify are who they claim to be.

Consent Requirements

Under eCBSV, the permitted entity does not submit the number holder's consent documents to SSA. SSA requires each permitted entity to retain a valid consent for each SSN verification request for a period of five years from the date of receipt of the consent form. The Banking Bill permits a Financial Institution's service provider, subsidiary, affiliate, agent, subcontractor, or assignee to seek verification of the SSN Holder's SSN on behalf of a financial institution pursuant to the terms of the SSN Holder's consent. In this case, the permitted entity shall ensure that the Financial Institution use the verification only for the purposes stated in the consent, and make no further use or disclosure of the verified SSN. The relationship will be subject to the contractual obligations as specified in the User Agreement that the permitted entity signs and submits to SSA.

Compliance Review

SSA requires each permitted entity to undergo compliance reviews to ensure the permitted entities obtained valid consent from number holders. An SSA approved certified public accountant (CPA) firm will conduct the compliance reviews. The reviews will ensure the permitted entities meet all terms and conditions of the User Agreement. The eCBSV fee will include all compliance review costs. In general, we will request annual reviews with additional reviews as necessary. The CPA follows review standards established by the American Institute of Certified Public Accountants and contained in the Generally Accepted Government Audit Standards (GAGAS). At any time, SSA may conduct onsite inspections of the requester's site, including a systems review, to ensure they adhered to the applicable requirements associated with collection and maintenance of consent forms, and to assess systems security overall.

The respondents to the eCBSV collection are the permitted entities; members of the public who consent to the SSN verification; and CPAs who provide compliance review services.

Type of Request: Request for a new information collection.

TIME BURDEN

Requirement	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
(a) Complete eCBSV enrollment process ***	10	1	120	20	* $36.98	** $740
(a) Configure customer system for ability to send in verification requests	10	1	2,400	400	* 36.98	** 14,792
(a) People whose SSNs SSA will verify—Reading and Signing	307,000,000	1	3	15,350,000	* 10.22	** 156,877,000
(a) Sending in the verification request, calling our system, getting a response	307,000,000	1	1	5,116,667	* 36.98	** 189,214,346
(b) Follow SSA requirements to configure application program interface	10	1	4,800	800	* 36.98	** 29,584
(c) CPA Compliance Review and Report ****	10	1	4,800	800	* 33.89	** 27,112
Totals	614,000,040			20,468,687		** 346,163,574

* We based these figures on average Business and Financial operations occupations and Certified Public Accountants' hourly salaries, as reported by Bureau of Labor Statistics data, and per average Disability Insurance (DI) payments, as reported in SSA's DI payment data.

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

*** The enrollment process entails reviewing and completing eCBSV User Agreement and financial requirements package; visiting the Department of the Treasury's *Pay.gov* to make payment for services; and submitting a permitted entity certification via email.

**** There will be one CPA firm respondent (an SSA-approved contractor) to conduct compliance reviews and prepare written reports of findings on the 10 permitted entities.

Cost Burden

The public cost burden is dependent upon the number of permitted entities and annual transaction volume. In FY 2019, 10 companies enrolled out of 124 applications received to participate in eCBSV. We based the cost estimates below on 10 participating permitted entities in FY 2020 submitting an anticipated volume of 307,000,000 transactions. The Banking Bill requires that we collect at least 50 percent of the start-up costs (*i.e.,* that we collect $9.2 million) before we may begin development of the eCBSV verification system. SSA will recover the remaining development costs over three years using the following tier fee schedule:

eCBSV TIER FEE SCHEDULE

Tier	Volume threshold	Annual fee
1	1–1,000	$400
2	1,001–10,000	3,030
3	10,001–200,000	14,300
4	200,001–50 million	276,500
5	50,000,001–2 billion	860,000

Each enrolled permitted entity will be required to remit the above tier based subscription fee for the 365-day agreement period and the appropriate administrative fee. We will charge newly enrolled entities a startup administrative fee of $3,693. After the initial year, we will charge the entities a renewal administrative fee of $1,691 each time the agreement is renewed or amended. We calculated the fees based on forecasted systems and operational expenses; agency oversight, overhead and CPA audit contract costs.

In addition, SSA will periodically recalculate costs to provide eCBSV services and adjust the fees charged as needed. We will notify companies of a fee adjustment at the renewal of the eCBSV User Agreement and via notice in the **Federal Register**; companies have the opportunity to cancel the agreement or continue service using the new fee.

Dated: December 2, 2019.

Faye I. Lipsky,

Director, Office of Regulations and Reports Clearance, Social Security Administration.

[FR Doc. 2019–26259 Filed 12–4–19; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–20

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Revenue Procedure 2001–20, Voluntary Compliance on Alien Withholding Program (''VCAP'').

DATES: Written comments should be received on or before February 3, 2020 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 the revenue procedure should be directed to Sara Covington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Voluntary Compliance on Alien Withholding Program (''VCAP'').

OMB Number: 1545–1735.

Revenue Procedure Number: Revenue Procedure 2001–20.

Abstract: This revenue procedure will improve voluntary compliance of colleges and universities in connection with their obligations to report, withhold and pay taxes due on compensation paid to foreign students and scholars (nonresident aliens). The revenue procedure provides an optional opportunity for colleges and universities which have not fully complied with

their tax obligations concerning nonresident aliens to self-audit and come into compliance with applicable reporting and payment requirements.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 495.

Estimated Time per Respondent: 700 hours.

Estimated Total Annual Burden Hours: 346,500.

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: November 27, 2019.

Philippe Thomas,

IRS Supervisory Tax Analyst.

[FR Doc. 2019–26237 Filed 12–4–19; 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Revenue Procedure 2004–12, Health Insurance Costs of Eligible Individuals.

DATES: Written comments should be received on or before February 3, 2020 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 the information collection should be directed to Sara Covington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or at (202) 317–6038, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Health Insurance Costs of Eligible Individuals.

OMB Number: 1545–1875.

Regulation Project Number: Rev. Proc. 2004–12.

Abstract: Revenue Procedure 2004–12 informs states how to elect a health program to be qualified health insurance for purposes of the health coverage tax credit (HCTC) under section 35 of the Internal Revenue Code. The collection of information is voluntary. However, if a state does not make an election, eligible residents of the state may be impeded in their efforts to claim the HCTC.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: States, Local or Tribal Government.

Estimated Number of Respondents: 51.

Estimated Average Time per Respondent: 30 minutes.

Estimate Total Annual Burden Hours: 26.

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: November 27, 2019.

Philippe Thomas,

IRS Supervisory Tax Analyst.

[FR Doc. 2019–26236 Filed 12–4–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0778]

Agency Information Collection Activity: Disability Benefits Questionnaire (Group 3)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register**

concerning each proposed collection of information, including each proposed reinstatement of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 3, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0778'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Disability Benefits Questionnaires (Group 3).

OMB Control Number: 2900–0778.

Type of Review: Reinstatement of a currently approved collection.

Abstract: VA Form 21–0960 series called Disability Benefits Questionnaire (Group 3) gathers necessary information from a claimant's treating physician regarding the results of medical examinations. VA will gather medical information related to the claimant that is necessary to adjudicate the claim for VA disability benefits. The Disability Benefit Questionnaires (Group 3) is comprised of 17 forms. Each DBQ title includes the names of the specific disability for which it gathers information. VAF 21–0960C–5, *Central Nervous System and Neuromuscular Diseases Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of a central nervous system disease; VAF 21–0960C–8, *Headaches (Including Migraine Headaches) Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of headaches; VAF 21–0960C–9, *Multiple Sclerosis (MS) Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of multiple sclerosis; VAF 21–0960G–1, *Esophageal Disorders (including GERD, Hiatal Hernia, and Other Esophageal Disorders) Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of any esophageal disorders; VAF 21–0960G–2, *Gall Bladder and Pancreas Conditions Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of any gall bladder and pancreas condition; VAF 21–0960G–3, *Intestinal Conditions (Other than Surgical or Infectious) Including Irritable Bowel Syndrome, Crohn's Disease, Ulcerative Colitis, and Diverticulitis Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of any intestinal conditions unrelated to surgery or infection; VAF 21–0960G–4, *Infectious Intestinal Disorders (including Bacterial and Parasitic Infections) Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of any infectious intestinal condition; VAF 21–0960G–5, *Hepatitis, Cirrhosis and other Liver Conditions Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of any liver condition; VAF 21–0960G–6, *Peritoneal Adhesions Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of peritoneal adhesions; VAF 21–0960G–7, *Stomach and Duodenum Conditions (Not Including GERD or Esophageal Disorders) Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of any stomach or duodenum conditions; VAF 21–0960G–8, *Intestinal Surgery (Bowel Resection, Colostomy, Ileostomy) Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of any surgical intestinal condition; VAF 21–0960H–2, *Rectum and Anus Conditions (Including Hemorrhoids) Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of any rectum or anus condition, which includes hemorrhoids; VAF 21–0960K–1, *Breast Conditions and Disorders Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of a breast condition or disorder; VAF 21–0960K–2, *Gynecological Conditions Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of a gynecological condition; VAF 21–0960L–2, *Sleep Apnea Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of sleep apnea; VAF 21–0960M–11, *Osteomyelitis Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of osteomyelitis; and VAF 21–0960N–1, *Ear Conditions (Including Vestibular and Infectious) Disability Benefits Questionnaire,* gathers information related to the claimant's diagnosis of an ear disease.

Affected Public: Individuals and households.

Estimated Annual Burden: 77,500 hours.

Estimated Average Burden per Respondent: 19.4 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250,000.

By direction of the Secretary.

Danny S. Green,

Department Clearance Officer, Office of Quality, Privacy and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2019–26233 Filed 12–4–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0652]

Agency Information Collection Activity: Request for Nursing Home Information in Connection With Claim for Aid and Attendance

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed

extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 3, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0652'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Request for Nursing Home Information in Connection with Claim for Aid and Attendance (VA Form 21–0779).

OMB Control Number: 2900–0652.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0779 is used to gather the necessary information to determine eligibility for pension and aid and attendance benefits based on nursing home status. The form also requests information regarding Medicaid status and nursing home care charges, so VA can determine the proper rate of payment.

Affected Public: Individuals and households.

Estimated Annual Burden: 10,188 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 61,125.

By direction of the Secretary:

Danny S. Green,

Department Clearance Officer, Office of Quality, Privacy and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2019–26240 Filed 12–4–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Funding Availability Under Supportive Services for Veteran Families Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of fund availability.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds for supportive services grants under the Supportive Services for Veteran Families (SSVF) Program. This Notice of Fund Availability (NOFA) contains information concerning the SSVF Program, renewal of supportive services grant application processes, and the amount of funding available. Awards made for supportive services grants will fund operations beginning October 1, 2020.

DATES: Applications for supportive services grants under the SSVF Program must be received by the SSVF Program Office by 4:00 p.m. Eastern Time on January 31, 2020. In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, computer service outages, or other submission-related problems.

ADDRESSES: For a Copy of the Application Package: Copies of the application can be downloaded from the SSVF website at *www.va.gov/homeless/ssvf.* Questions should be referred to the SSVF Program Office by email at *SSVF@va.gov.* For detailed SSVF Program information and requirements, see part 62 of Title 38, Code of Federal Regulations (CFR) (38 CFR part 62).

Submission of Application Package: Applicants must submit applications electronically following instructions found at *www.va.gov/homeless/ssvf.* Applications may not be mailed or sent by facsimile (FAX). Applications must be received in the SSVF Program Office by 4:00 p.m. Eastern Time on the application deadline date. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected. See Section II.C. of this NOFA for maximum allowable grant amounts.

Technical Assistance: Information regarding how to obtain technical assistance with the preparation of a renewal supportive services grant application is available on the SSVF Program website at *www.va.gov/homeless/ssvf.*

FOR FURTHER INFORMATION CONTACT: Mr. John Kuhn, National Director, Supportive Services for Veteran Families, by email at *SSVF@va.gov.*

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: Supportive Services for Veteran Families Program.

Announcement Type: Initial.

Funding Opportunity Number: VA–SSVF–103119.

Catalog of Federal Domestic Assistance Number: 64.033, VA Supportive Services for Veteran Families Program.

I. Funding Opportunity Description

A. *Purpose:* The SSVF Program's purpose is to provide supportive services grants to private non-profit organizations and consumer cooperatives, who will coordinate or provide supportive services to very low-income Veteran families who: (i) Are residing in permanent housing and at risk of becoming homeless; (ii) are homeless and scheduled to become residents of permanent housing within a specified time period; or (iii) after exiting permanent housing within a specified time period, are seeking other housing that is responsive to such very low-income Veteran family's needs and preferences. SSVF prioritizes the delivery of rapid re-housing services to homeless Veteran households.

Rapid re-housing is an intervention designed to help individuals and families quickly exit homelessness, return to housing in the community, and avoid homelessness again in the near term. The core components of a rapid re-housing program are housing identification, move-in and rent financial assistance, and rapid re-housing case management and services. These core components represent the

minimum that a program must be providing to households to be considered a rapid re-housing program, but do not provide guidance for what constitutes an effective rapid re-housing program. Applicants should familiarize themselves with the Rapid Re-housing Performance Benchmarks and Program Standards found at *https://www.va.gov/homeless/ssvf/?page=/ssvf_university/fidelity_tool_ssvf_standards*.

B. *Funding Priorities:* The principle goal for this NOFA is to provide support to those applicants who demonstrate the greatest capacity to end homelessness among Veterans or, in communities that have already met U.S. Interagency Council on Homelessness (USICH) Federal Criteria and Benchmarks, sustain the gains made in ending homelessness among Veterans. Priority will be given to grantees who can demonstrate adoption of evidence-based practices in their application. Under Priority 1, VA will provide funding to those grantees with 3-year accreditation from the Commission on Accreditation of Rehabilitation Facilities (CARF) in Employment and Community Services including: Rapid Rehousing and Homeless Prevention standards, a 4-year accreditation from the Council on Accreditation's (COA) accreditation in Housing Stabilization and Community Living Services standards, or a 3-year accreditation in The Joint Commission's (JC) Behavioral Health Care: Housing Support Services Standards. Priority 2 includes existing grantees with annual awards, seeking to renew their grants not included in Priority 1. Priority 3 includes existing grantees previously awarded 2-year grants stemming from the SSVF NOFA published on December 19, 2018.

C. *Definitions*: Part 62 of title 38, Code of Federal Regulations (38 CFR part 62), contains definitions of terms used in the SSVF Program. In addition to the definitions and requirements described in 38 CFR part 62, this NOFA provides further clarification in this paragraph on the use of *Emergency Housing Assistance* (EHA). EHA may be provided by the SSVF grantee under 38 CFR 62.34(f) to offer transition in place when a permanent housing voucher, such as is offered through the Department of Housing and Urban Development's (HUD) Section 8 program, is available from any source, but access to the permanent housing voucher is pending completion of the housing inspection and administrative processes necessary for leasing. In such circumstances, the EHA payment cannot exceed what would otherwise be paid when the voucher is utilized. EHA may also be used as part of a Rapid Resolution or diversion response that helps Veteran households avoid entry into homelessness through placements with family or friends.

D. *Approach:* Respondents to this NOFA should base their proposals and applications on the current requirements of part 62. Grantees will be expected to leverage supportive services grant funds to enhance the housing stability of very low-income Veteran families who are occupying permanent housing. In doing so, grantees are required to establish relationships with local community resources. Therefore, agencies must work through coordinated partnerships built either through formal agreements or the informal working relationships commonly found among successful social service providers.

As part of the application, all applicants are strongly encouraged to provide letters of support from their respective VA Network Homeless Coordinator (or their designee). In addition, applicants are strongly encouraged to provide letters of support from the Continuum of Care (CoC) where they plan to deliver services that reflect the applicant's engagement in the CoC's efforts to coordinate services. A CoC is a community plan to organize and deliver housing and services to meet the needs of people who are homeless as they move to stable housing and maximize self-sufficiency. The CoC includes action steps to end homelessness and prevent a return to homelessness. CoC locations and contact information can be found at: *https://www.hudexchange.info/grantees/contacts/?params=%7B%22limit%22%3A20%2C%22sortV%22%3A%22%22%2C%22order%22%3A%22%22%2C%22years%22%3A%5B%5D%2C%22searchTerm%22%3A%22%22%2C%22grantees%22%3A%5B%5D%2C%22state%22%3A%22%22%2C%22programs%22%3A%5B3%5D%2C%22coc%22%3Atrue%7D##granteeSearch*.

The CoC's letter of support should note if the applicant is providing assistance to the CoC in building local capacity to build Coordinated Entry Systems (CES) and the value and form of that assistance, whether support is direct funding or staffing. CES requires that providers operating within the CoC's geographic area must also work together to ensure the CoC's coordinated entry process allows for coordinated screening, assessment, and referrals (HUD Notice: CPD–17–01). The CoC's letter of support should also describe the applicant's participation in the CoC's community planning efforts. Failure to provide a letter of support from the CoC as described will limit the maximum award to 90 percent of the award made in the previous fiscal year (as described in II.C.7). In addition, any applicant proposing to serve an Indian Tribal area is strongly encouraged to provide a letter of support from the relevant Indian Tribal Government.

The aim of the provision of supportive services is to assist very low-income Veteran families residing in permanent housing to remain stably housed and to rapidly transition those not currently in permanent housing to stable housing. SSVF emphasizes the placement of homeless Veteran families who are described in 38 CFR 62.11(b)–(c) as (i) very low-income Veteran families who lack a fixed, regular, and adequate nighttime residence and are scheduled to become residents of permanent housing within 90 days pending the location or development of housing suitable for permanent housing, and (ii) very low-income Veteran families who have exited permanent housing within the previous 90 days to seek other housing that is responsive to their needs and preferences. As a crisis intervention program, the SSVF Program is not intended to provide long-term support for participants, nor will it be able to address all of the financial and supportive services needs of participants that affect housing stability. Rather, when participants require long-term support, grantees should focus on connecting such participants to income supports, such as employment and mainstream Federal and community resources (*e.g.,* HUD–VA Supportive Housing program, HUD Housing Choice Voucher programs, McKinney-Vento Funded Supportive Housing Programs, Temporary Assistance for Needy Families (TANF), and Social Security Income/Social Security Disability Insurance (SSI/SSDI), etc.) that can provide ongoing support as required.

Assistance in obtaining or retaining permanent housing is a fundamental goal of the SSVF Program. Grantees must provide case management services in accordance with 38 CFR 62.31. Such case management should include tenant counseling, mediation with landlords, and outreach to landlords.

E. *Authority:* Funding available under this NOFA is authorized by 38 United States Code (U.S.C.) 2044. VA implements the SSVF Program through regulations in 38 CFR part 62. Funds made available under this NOFA are subject to the requirements of these regulations.

F. *Requirements for the Use of Supportive Services Grant Funds:* The applicant's request for funding must be

consistent with the limitations and uses of supportive services grant funds set forth in 38 CFR part 62 and this NOFA. In accordance with the regulations and this NOFA, the following requirements apply to supportive services grants awarded under this NOFA:

1. Grantees may use a maximum of 10 percent of supportive services grant funds for administrative costs identified in 38 CFR 62.70(e).

2. Grantees must use a minimum of 60 percent of the temporary financial assistance portion of their supportive services grant funds to serve very low-income Veteran families who qualify under 38 CFR 62.11(b). (Note: Grantees may request a waiver to decrease this minimum, as discussed in section V.B.3.a.)

3. Priority 1 and 2 grantees may use a maximum of 50 percent of supportive services grant funds to provide the supportive service of temporary financial assistance paid directly to a third party on behalf of a participant for child care, emergency housing assistance, transportation, rental assistance, utility-fee payment assistance, security deposits, utility deposits, moving costs, and general housing stability assistance (which includes emergency supplies), in accordance with 38 CFR 62.33 and 38 CFR 62.34, unless a waiver is granted by the SSVF program office.

4. Priority 3 grantees must use a minimum of 60 percent (the program office may reduce this requirement after October 1, 2021) of funds to support temporary financial assistance with the expectation that much of these funds will be used for rental assistance in accordance with 38 CFR 62.34(8)(e). Priority 3 awards will extend existing awards made from the NOFA published on December 19, 2018. The total of both of these awards will extend to September 30, 2022.

G. *Guidance for the Use of Supportive Services Grant Funds:* Grantees are expected to demonstrate adoption of evidence-based practices most likely to lead to reductions in homelessness or, in communities that have successfully ended homelessness among Veterans as defined by the USICH's Federal Criteria and Benchmarks or, alternatively, Community Solutions' Functional Zero (the latter can be found at *https://cmtysolutions.org/sites/default/files/final_zero_2016_metrics.pdf*), a capacity to sustain these gains. As part of their application, the applying organization's Executive Director must certify on behalf of the agency that they will actively participate in community planning efforts and operate the rapid re-housing component of their SSVF grant in a manner consistent with the Rapid Re-housing Performance Benchmarks and Program Standards found at: *https://www.va.gov/homeless/ssvf/?page=/ssvf_university/fidelity_tool_ssvf_standards*. Housing is not contingent on compliance with mandated therapies or services; instead, participants must comply with a standard lease agreement and are provided with the services and supports that are necessary to help them do so successfully.

Grantees must develop plans that will ensure that Veteran participants have the level of income and economic stability needed to remain in permanent housing after the conclusion of the SSVF intervention. Both employment and benefits assistance from VA and non-VA sources represent a significant underutilized source of income stability for homeless Veterans. Income is not a pre-condition for housing. Case management should include income maximization strategies to ensure households have access to benefits, employment, and financial counseling. The complexity of program rules and the stigma some associate with entitlement programs contributes to their lack of use. For this reason, grantees are encouraged to consider strategies that can lead to prompt and successful access to employment and benefits that are essential to retaining housing.

1. Consistent with 38 CFR 62.30–62.34, grantees are expected to offer the following supportive services: Counseling participants about housing; assisting participants in understanding leases; securing utilities; making moving arrangements; providing representative payee services concerning rent and utilities when needed; and mediation and outreach to property owners related to locating or retaining housing. Grantees may also assist participants by providing rental assistance, security or utility deposits, moving costs, emergency housing, or general housing stability assistance; or using other Federal resources, such as the HUD's Emergency Solutions Grants Program, or supportive services grant funds subject to the limitations described in this NOFA and 38 CFR 62.34.

2. As SSVF is a short-term crisis intervention, grantees must develop plans that will produce sufficient income to sustain Veteran participants in permanent housing after the conclusion of the SSVF intervention. Grantees must ensure the availability of employment and vocational services either through the direct provision of these services or their availability through formal or informal service agreements. Agreements with Homeless Veteran Reintegration Programs funded by the U.S. Department of Labor are strongly encouraged. For participants unable to work due to disability, income must be established through available benefits programs.

3. Per 38 CFR 62.33, grantees must assist participants in obtaining public benefits. Grantees must screen all participants for eligibility for a broad range of entitlements such as TANF, Social Security, the Supplemental Nutrition Assistance Program, the Low-Income Home Energy Assistance Program, the Earned Income Tax Credit, and local General Assistance programs. Grantees are expected to access the Substance Abuse and Mental Health Services Administration's SSI/SSDI Outreach, Access, and Recovery (SOAR) program directly by training staff and providing the service or subcontracting services to an organization to provide SOAR services. In addition, where available, grantees should access information technology tools to support case managers in their efforts to link participants to benefits.

4. Grantees are encouraged to provide, or assist participants in obtaining, legal services relevant to issues that interfere with the participants' ability to obtain or retain permanent housing. (Note: Information regarding legal services provided may be protected from being released to the grantee or VA under attorney-client privilege, although the grantee must provide sufficient information to demonstrate the frequency and type of service delivered.) Support for legal services can include paying for court filing fees to assist a participant with issues that interfere with the participant's ability to obtain or retain permanent housing or supportive services, including issues that affect the participant's employability and financial security. Grantees (in addition to employees and members of grantees) may represent participants before VA with respect to a claim for VA benefits, but only if they are recognized for that purpose pursuant to 38 U.S.C. Chapter 59. Further, the individual providing such representation must be accredited pursuant to 38 U.S.C. Chapter 59.

5. Access to mental health and addiction services are required by SSVF; however, grantees cannot fund these services directly through the SSVF grant. Therefore, applicants must demonstrate, through either formal or informal agreements, their ability to promote rapid access to and engagement with mental health and addiction services for the Veteran and family members.

6. VA recognizes that extremely low-income Veterans with incomes below 30 percent of the area median income face greater barriers to permanent housing placement. Grantees should consider how they can support these participants.

7. When serving participants who are residing in permanent housing, the defining question to ask is: ''Would this individual or family be homeless but for this assistance?'' The grantee must use a VA-approved screening tool with criteria that target those most at-risk of homelessness. To qualify for SSVF services, a participant who is served under 38 CFR 62.11(a) (homeless prevention) must not have sufficient resources or support networks (*e.g.,* family, friends, faith-based, or other social networks) immediately available to prevent them from becoming homeless. To further qualify for services under 38 CFR 62.11(a), the grantee must document that the participant meets at least one of the following conditions:

(a) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(b) Is living in the home of another because of economic hardship;

(c) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance;

(d) Lives in a hotel or motel, and the cost of the hotel or motel stay is not paid by charitable organizations or by Federal, state, or local government programs for low-income individuals;

(e) Is exiting a publicly funded institution or system of care (such as a health care facility, a mental health facility, or correctional institution) without a stable housing plan; or

(f) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved screening tool.

8. SSVF grantees are required to participate in local planning efforts designed to end Veteran homelessness. Grantees may use grant funds to support SSVF involvement in such community planning by sub-contracting with CoCs, when such funding is essential, to create or sustain the development of these data driven plans.

9. When other funds from community resources are not readily available to assist program participants, grantees may choose to utilize supportive services grants, to the extent described in this NOFA and in 38 CFR 62.33 and 62.34, to provide temporary financial assistance. Such assistance may, subject to the limitations in this NOFA and 38 CFR part 62, be paid directly to a third party on behalf of a participant for child care, transportation, family emergency housing assistance, rental assistance, utility-fee payment assistance, security or utility deposits, moving costs, and general housing stability assistance as necessary.

10. SSVF requires grantees to offer Rapid Resolution (also known as diversion) services. These services engage Veterans immediately before or after they become homeless and assist them to avoid continued homelessness. These efforts can reduce the trauma and expense associated with extended periods of homelessness and the strain on the crisis response and affordable housing resources in the community. Through Rapid Resolution, the grantee and the Veteran explore safe, alternative housing options immediately before or quickly after they become homeless. Rapid Resolution can identify an immediate safe place to stay within the Veteran's network of family, friends, or other social networks. All Veterans requesting SSVF services should have a Rapid Resolution screening and if not appropriate for Rapid Resolution grantees should then assess the Veteran for other SSVF services. More information about Rapid Resolution can be found at *www.va.gov/homeless/ssvf.*

II. Award Information

A. *Overview:* This NOFA announces the availability of funds for supportive services grants under the SSVF Program and pertains to proposals for renewal of existing supportive services grant programs.

B. *Funding:* The following funding priorities for this NOFA are as follows.

1. Priority 1. Under Priority 1, VA will provide funding to those grantees with 3-year CARF, 4-year COA accreditations, or 3-year JC accreditations. Proof of accreditation must be submitted with the application no later than the application due date. Grantees previously awarded a 3-year grant that is not scheduled to end by October 1, 2020, cannot apply under this NOFA but are required to submit a letter of intent (LOI) by the NOFA deadline indicating their intention of continuing SSVF services in Fiscal Year (FY) 2021. All grantees submitting a LOI must include a letter of support from the CoC (see Section II.C.8.) and a proposed budget for FY 2021. Priority 1 grantees submitting a LOI must also submit proof of continued accreditation.

2. Priority 2. Priority 2 includes other existing grantees seeking to renew their annual grant awards.

Both Priority 1 and 2 applicants must apply using the renewal application. To be eligible for renewal of a supportive services grant, the Priority 1 and 2 applicants' program concept must be substantially the same as the program concept of the grantees' current grant award. Renewal applications can request funding that is equal to or less than their current annualized award. If sufficient funding is available, VA may provide an increase of up to 2 percent from the previous year's award. Any percentage increase, if provided, will be awarded uniformly to all grant recipients regardless of their grant award.

3. Priority 3. Under Priority 3, VA will provide funding to current grantees previously awarded 2-year grants stemming from the SSVF NOFA published on December 19, 2018. Applicants apply by submitting a LOI by the NOFA deadline indicating their intention of continuing SSVF services with a focus on rental subsidies described in 38 CFR 62.34(a). These Priority 3 awards will be up to 30 percent of previously awarded 2-year grants and are intended to extend the duration of existing awards through September 30, 2022.

C. *Allocation of Funds:* Funding will be awarded under this NOFA to existing grantees for a 1-year to 3-year period beginning October 1, 2020. The following requirements apply to supportive services grants awarded under this NOFA:

1. In response to this NOFA, only existing grantees can apply as Priority 1, 2, or 3 grantees.

2. Priority 1 and 2 renewal grant requests cannot exceed the current award (the current award includes funds that may have been added to the original award through disaster relief support or through the process described in II.C.8.).

3. Priority 3 renewal grant requests cannot exceed 30 percent of the current award and VA may award an amount less than 30 percent of the original award based on available funding.

4. Applicants may request an amount less than their current award (this will not be considered a substantial change to the program concept).

5. If a grantee failed to use all of awarded funds in the previous fiscal year (FY 2019) or had unspent funds returned to VA in FY 2020, VA may elect to limit renewal award to the amount of funds used in the previous fiscal year or in the current fiscal year less the money swept.

6. If, during the course of the grant year, VA determines that Priority 1 and 2 grantee spending is not meeting the

minimum percentage milestones below, VA may elect to recoup projected unused funds and reprogram such funds to provide supportive services in areas with higher need. Should VA elect to recoup unspent funds, reductions in available grant funds would take place the first business day following the end of the quarter. VA may elect to recoup funds under the following circumstances:

(a) By the end of the first quarter (December 31, 2020) of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds is fewer than 15 percent of total supportive services grant award. (During this same period, the grantee's cumulative requests for supportive services grant funds may not exceed 35 percent of the total supportive services grant award.)

(b) By the end of the second quarter (March 31, 2021) of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds is fewer than 40 percent of total supportive services grant award. (During this same period, the grantee's cumulative requests for supportive services grant funds may not exceed 60 percent of the total supportive services grant award.)

(c) By the end of the third quarter (June 30, 2021) of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds is fewer than 65 percent of total supportive services grant award. (During this same period, the grantee's cumulative requests for supportive services grant funds may not exceed 80 percent of the total supportive services grant award.)

7. Applicants should fill out separate applications for each supportive services funding request.

8. Applicants who fail to provide a letter of support from at least one of the CoCs they plan to serve will be eligible for renewal funding at a level no greater than 90 percent of their previous award. Applicants are responsible for determining who in each serviced CoC is authorized to provide such letters of support. This requirement applies to all applicants, including existing multi-year grantees that are only required to submit a LOI in response to this NOFA. In order to meet this requirement and allow the applicant to be eligible for full funding, letters must include:

(a) A detailed description of the applicant's participation in the CoC's Coordinated Entry process or planning activities and overall community planning efforts (for instance, confirmation of applicant's active participation in planning coordinated entry, commitment to participating in coordinated entry, hours spent on CoC-sponsored committee or workgroup assignments, and names of said committees or workgroups).

(b) The applicant's contribution to the CoC's coordinated entry process capacity building efforts, detailing the specific nature of this contribution (for instance, the hours of staff time and/or the amount of funding provided), if such SSVF capacity has been requested by the CoC or otherwise has shown to be of value to the CoC.

9. Should additional funding become available over the course of grant term from funds recouped under the Award Information section of this Notice, funds that are voluntarily returned by grantees, funds that become available due to a grant termination, or other funds still available for grant awards, VA may elect to offer these funds to grantees in areas where demand has exceeded available SSVF resources. Additional funds will be provided first to the highest scoring grantee in the selected area who is in compliance with their grant agreement and has the capacity to utilize the additional funds.

D. *Supportive Services Grant Award Period:* Priority 2 grants are made for a 1-year period, although selected grants may be eligible for a 3-year award (see VI.C.6) as Priority 1 awards. All grants are eligible to be renewed subject to the availability of funding.

III. Eligibility Information

A. *Eligible Applicants:* For Priority 1 and 2, only eligible entities that are existing grantees with grants scheduled to end by September 30, 2020, can apply in response to this NOFA. For Priority 3, only eligible entities that are existing grantees previously awarded 2-year grants stemming from the SSVF NOFA published on December 19, 2018, can apply in response to this NOFA.

B. *Cost Sharing or Matching:* None.

IV. Application and Submission Information

A. *Obtaining an Application Package:* Applications are located at *www.va.gov/homeless/ssvf*. Any questions regarding this process should be referred to the SSVF Program Office by email at *SSVF@va.gov*. For detailed SSVF Program information and requirements, see 38 CFR part 62.

B. *Content and Form of Application:* Applicants must submit applications electronically following instructions found at *www.va.gov/homeless/ssvf*.

C. *Submission Dates and Times:* Applications for supportive services grants under the SSVF Program must be received by the SSVF Program Office by 4:00 p.m. Eastern Time on January 24, 2020. Awards made for supportive services grants will fund operations beginning October 1, 2020. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected. Additionally, in the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, computer service outages, or other delivery-related problems.

D. *Funding Restrictions:* Funding will be awarded for existing supportive services grants under this NOFA depending on funding availability. Priority 1 and 2 applicants should fill out separate applications for each supportive services funding request. Priority 3 applicants must submit a separate LOI for each award. Funding will be awarded under this NOFA to existing grantees beginning October 1, 2020.

1. Funding used for staff education and training cannot exceed 1 percent of the overall program grant award. This limitation does not include the cost to attend VA mandated training. All training costs must be directly related to the provision of services to homeless Veterans and their families.

2. Expenses related to maintaining accreditation are allowable. Priority 1 and 2 grantees are allowed to include expenses for seeking initial accreditation only once in a 5-year period. The expenses to renew full accreditation is allowed and is based on the schedule of the accrediting agency: For instance, every 3 years for CARF and every 4 years for COA. Expenses related to the renewal of less than full accreditation are not allowed.

E. *Other Submission Requirements:*

1. Existing applicants applying for Priority 1 or 2 grants may apply only as renewal applicants using the application designed for renewal grants.

2. At the discretion of VA, multiple grant proposals submitted by the same lead agency may be combined into a single grant award if the proposals provide services to contiguous areas.

3. Additional supportive services grant application requirements are

specified in the application package. Submission of an incorrect or incomplete application package will result in the application being rejected during threshold review. The application packages must contain all required forms and certifications. Selections will be made based on criteria described in 38 CFR part 62 and this NOFA. Applicants and grantees will be notified of any additional information needed to confirm or clarify information provided in the application and the deadline by which to submit such information. Applicants must submit applications electronically. Applications may not be mailed, hand carried, or sent by facsimile.

V. Application Review Information

A. *Criteria:*

1. VA will only score applicants that meet the threshold requirements described in 38 CFR 62.21.

2. VA will use the criteria described in 38 CFR 62.24 to score grantees applying for renewal (Priority 1 and 2) of a supportive services grant.

3. Priority 3 submission requirements are described in II.B.3.

B. *Review and Selection Process:* VA will review all supportive services renewal grant applications in response to this NOFA according to the following steps:

1. Score all applications that meet the threshold requirements described in 38 CFR 62.21.

2. Rank those applications who score at least 75 cumulative points and receive at least one point under each of the categories identified for renewal applicants in 38 CFR 62.24. The applications will be ranked in order from highest to lowest scores in accordance with 38 CFR 62.25 for renewal applicants.

3. VA will utilize the ranked scores of applications as the primary basis for selection. However, VA will also utilize the following considerations in 38 CFR 62.23(d) to select applicants for funding:

(a) Give preference to applications that provide or coordinate the provision of supportive services for very low-income Veteran families transitioning from homelessness to permanent housing. Consistent with this preference, where other funds from community resources are not readily available for temporary financial assistance, applicants are required to spend no less than 60 percent of all budgeted temporary financial assistance on participants occupying permanent housing as defined in 38 CFR 62.11(b). Waivers to this 60 percent requirement may be requested when grantees can demonstrate significant local progress towards eliminating homelessness in the target service area. Waiver requests must include data from authoritative sources such as USICH certification, that a community has ended homelessness as defined by Federal Benchmarks and Criteria or has reached Community Solution's Functional Zero. Waivers for the 60 percent requirement may also be requested for services provided to rural Indian tribal areas and other rural areas where shelter capacity is insufficient to meet local need. Waiver requests must include an endorsement by the impacted CoC explicitly stating that a shift in resources from rapid re-housing to prevention will not result in an increase in homelessness.

(b) To the extent practicable, ensure that supportive services grants are equitably distributed across geographic regions, including rural communities and tribal lands. This equitable distribution criteria will be used to ensure that SSVF resources are provided to those communities with the highest need as identified by VA's assessment of expected demand and available resources to meet that demand.

4. Subject to the considerations noted in paragraph B.3 above, VA will fund the highest-ranked applicants for which funding is available.

VI. Award Administration Information

A. *Award Notices:* Although subject to change, the SSVF Program Office expects to announce grant recipients for all applicants in the fourth quarter of FY 2020 with grants beginning October 1, 2020. Prior to executing a funding agreement, VA will contact the applicants, make known the amount of proposed funding, and verify that the applicant would still like the funding. Once VA verifies that the applicant is still seeking funding, VA will execute an agreement and make payments to the grant recipient in accordance with 38 CFR part 62 and this NOFA.

B. *Administrative and National Policy Requirements:*

As SSVF grants cannot be used to fund treatment for mental health or substance use disorders, applicants must provide evidence that they can provide access to such services to all program participants through formal and informal agreements with community providers.

C. *Reporting:* VA places great emphasis on the responsibility and accountability of grantees. As described in 38 CFR 62.63 and 62.71, VA has procedures in place to monitor supportive services provided to participants and outcomes associated with the supportive services provided under the SSVF Program. Applicants should be aware of the following:

1. Upon execution of a supportive services grant agreement with VA, grantees will have a VA regional coordinator assigned by the SSVF Program Office who will provide oversight and monitor supportive services provided to participants.

2. Grantees will be required to enter data into a Homeless Management Information System (HMIS) Web-based software application. These data will consist of information on the participants served and types of supportive services provided by grantees. Grantees must treat the data for activities funded by the SSVF Program separate from that of activities funded by other programs. Grantees will be required to work with their HMIS Administrators to export client-level data for activities funded by the SSVF Program to VA on at least a monthly basis.

3. VA will complete annual monitoring evaluations of each grantee. Monitoring will also include the submittal of quarterly and annual financial and performance reports by the grantee. The grantee will be expected to demonstrate adherence to the grantee's proposed program concept, as described in the grantee's application. All grantees are subject to audits conducted by the VA or its representative.

4. Grantees will be assessed based on their ability to meet critical performance measures. In addition to meeting program requirements defined by the regulations and applicable NOFA(s), grantees will be assessed on their ability to place participants into housing and the housing retention rates of participants served. Higher placement for homeless participants and higher housing retention rates for at-risk participants are expected for very-low income Veteran families when compared to extremely low-income Veteran families with incomes below 30 percent of the area median income.

5. Grantees' performance will be assessed based on their consumer satisfaction scores. These scores include the participation rates and results of both the standardized survey offered to all participant households and unannounced visits to assess screening and intake procedures (commonly known as a mystery shopper program).

6. Organizations receiving renewal awards and have had ongoing SSVF program operation for at least 1 year (as measured from the start of initial SSVF services until January 24, 2020) may be eligible for a 3-year award. Grantees meeting outcome goals defined by VA

and in substantial compliance with their grant agreements (defined by meeting targets and having no outstanding corrective action plans) and who, in addition, receive 3-year accreditation from CARF in Employment and Community Services: Rapid Rehousing and Homeless Prevention standards, a 4-year accreditation from COA accreditation in Supported Community Living Services standards, or a 3 year accreditation in The Joint Commission's Behavioral Health Care: Housing Support Services Standards are eligible for a 3-year grant renewal subject to funding availability. (NOTE: Multi-year awards are contingent on funding availability). If awarded a multiple year renewal, grantees may be eligible for funding increases as defined in NOFAs that correspond to years 2 and 3 of their renewal funding.

VII. Other Information

A. *VA Goals and Objectives for Funds Awarded Under this NOFA:* In accordance with 38 CFR 62.24(c), VA will evaluate an applicant's compliance with VA goals and requirements for the SSVF Program. VA goals and requirements include the provision of supportive services designed to enhance the housing stability and independent living skills of very low-income Veteran families occupying permanent housing across geographic regions and program administration in accordance with all applicable laws, regulations, and guidelines. For purposes of this NOFA, VA goals and requirements also include the provision of supportive services designed to rapidly re-house or prevent homelessness among people in the following target populations who also meet all requirements for being part of a very low-income Veteran family occupying permanent housing:

1. Veteran families earning less than 30 percent of area median income as most recently published by HUD for programs under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (*http://www.huduser.org*).

2. Veterans with at least one dependent family member.

3. Veterans returning from Operation Enduring Freedom, Operation Iraqi Freedom, or Operation New Dawn.

4. Veteran families located in a community, as defined by HUD's CoC, or a county not currently served by a SSVF grantee.

5. Veteran families located in a community, as defined by HUD's CoC, where current level of SSVF services is not sufficient to meet demand of Category 2 and 3 (currently homeless) Veteran families.

6. Veteran families located in a rural area.

7. Veteran families located on Indian Tribal Property.

B. Payments of Supportive Services Grant Funds: Grantees will receive payments electronically through the U.S. Department of Health and Human Services Payment Management System. Grantees will have the ability to request payments as frequently as they choose subject to the following limitations:

1. During the first quarter of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds may not exceed 35 percent of the total supportive services grant award without written approval by VA.

2. By the end of the second quarter of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds may not exceed 60 percent of the total supportive services grant award without written approval by VA.

3. By the end of the third quarter of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds may not exceed 80 percent of the total supportive services grant award without written approval by VA.

4. By the end of the fourth quarter of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds may not exceed 100 percent of the total supportive services grant award.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on December 2, 2019, for publication.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

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Part II

Federal Communications Commission

47 CFR Parts 1, 9, 12, et al.
Implementing Kari's Law and RAY BAUM'S Act; Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 9, 12, 20, 22, 25, and 64

[PS Docket Nos. 18–261, 17–239; GN Docket No. 11–117; FCC 19–76]

Implementing Kari's Law and RAY BAUM'S Act; Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (the FCC or Commission) adopts rules for 911 calls made from multi-line telephone systems (MLTS), pursuant to Kari's Law, the conveyance of dispatchable location with 911 calls, as directed by RAY BAUM'S Act, and the consolidation of the Commission's 911 rules. The President recently signed into law two statutes designed to improve emergency calling: Kari's Law applies to MLTS, which are telephone systems that serve consumers in environments such as office buildings, campuses, and hotels. Kari's Law requires MLTS systems in the United States to enable users to dial 911 directly, without having to dial a prefix to reach an outside line, and to provide for notification (*e.g.,* to a front desk or security office) when a 911 call is made; RAY BAUM'S Act requires the Commission to conduct a rulemaking proceeding to consider adopting rules to ensure that ''dispatchable location'' is conveyed with 911 calls, regardless of the technological platform used, so that 911 call centers will receive the caller's location automatically and can dispatch responders more quickly. ''Dispatchable location'' is defined as ''the street address of the calling party, and additional information such as room number, floor number, or similar information necessary to adequately identify the location of the calling party.'' The Commission adopts rules to implement Kari's Law and initiates the rulemaking on dispatchable location required by RAY BAUM'S Act. The Commission also consolidates the Commission's existing 911 rules into a single rule part.

DATES:

Effective date: January 6, 2020.

Compliance date: Compliance will not be required for §§ 9.8(a); 9.10(q)(10)(v); 9.11(b)(2)(ii); 9.11(b)(2)(iv); 9.11(b)(4); 9.11(b)(5)(ii); (iii); 9.14(d)(2)(ii); (iii); 9.14(d)(2)(v); 9.14(d)(4); 9.14(e)(2)(ii); 9.14(e)(2)(iv); 9.14(e)(4); and 9.16(b)(3)(i), (ii), and (iii) until the Commission publishes a document in the **Federal Register** announcing the compliance date.

ADDRESSES: The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For further information, contact Brenda Boykin, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–2062 or via email at *Brenda.Boykin@fcc.gov;* William Beckwith, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0134 or via email at *William.Beckwith@fcc.gov;* Thomas Eng, Engineer, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0019 or via email at *Thomas.Eng@fcc.gov;* Dr. Rasoul Safavian, Technologist, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0754 or via email at *Rasoul.Safavian@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 19–76, adopted on August 1, 2019 and released on August 2, 2019. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). The complete text of the order also is available on the Commission's website at *http://www.fcc.gov.*

Synopsis

I. Introduction

1. In this Report and Order, we adopt measures to help ensure that members of the public can successfully dial 911 to request emergency services and that Public Safety Answering Points (PSAPs) can quickly and accurately locate every 911 caller, regardless of the type of service that is used to make the call. We act today pursuant to two federal statutes: Kari's Law Act of 2017, which requires implementation of direct 911 dialing and on-site notification capabilities in multi-line telephone systems (MLTS), and section 506 of RAY BAUM'S Act, which requires the Commission to ''consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call, regardless of the technological platform used and including with calls from [MLTS].''

2. In particular, we adopt rules that implement the direct dialing and notification requirements of Kari's Law and clarify the law's application to both legacy MLTS and Internet Protocol (IP)-based systems, including cloud-based services, that support the communications needs of hotels, businesses, campuses, and other enterprises. And we adopt rules that will facilitate timely emergency response and improved location accuracy across communications platforms. These requirements are measured, technically feasible, and technologically neutral, so that providers can choose the most effective solutions from a range of options. In addition, our requirements allow sufficient time for advance planning and deployment of new location technology. Similar to the approach the Commission has taken in the wireless E911 context, we believe that ''[c]lear and measurable timelines and benchmarks for all stakeholders are essential to drive the improvements that the public reasonably expects to see in 911 location performance.'' We also take this opportunity to consolidate our existing 911 rules, as well as the direct dialing and dispatchable location rules adopted today, into a single rule part.

II. Background

3. Enhanced 911 (E911) was developed to provide PSAPs with the caller's location and a call-back number as part of each 911 call. Since its implementation, most E911 calls have conveyed information regarding the caller's location (with varying degrees of accuracy) and a call-back number to the PSAP. These enhancements have significantly improved PSAPs' ability to effectively deliver critical public safety and emergency response services in a timely manner. In many instances, E911 has proven to be a life-saving, essential emergency response tool for providing critical information when the caller is unable to verbally communicate his or her location, including when the voice call is dropped or discontinued and cannot be reestablished.

4. Under the Commission's rules, consumers generally have access to these capabilities when they make fixed telephony, mobile, and interconnected VoIP calls to 911. However, to date, the Commission's E911 rules have not applied to MLTS. Consequently, consumers in environments such as office buildings, campuses, and hotels may not have the same access to E911 services that is provided by fixed telephony, mobile, and VoIP systems,

namely direct dialing access to 911 and the provision of the MLTS user's location information.

5. MLTS include a widely embedded base of legacy private branch exchange (PBX), Centrex, and Key Telephone systems, IP-based systems, and hybrid systems. MLTS serve millions of employees, residents, and guests of businesses and educational facilities, including corporate parks, hotels, college campuses, and planned community developments. These systems can support anywhere from ten to thousands of telephone station/numbers. Emergency calls from MLTS stations generally only provide PSAPs the telephone or circuit number of the system's outgoing trunk, and not the emergency caller's individual station number. In some cases, the MLTS station that placed the call will not even have its own telephone number. As a result, PSAPs often find they are unable to locate an MLTS emergency call to the station from which it originated. The Commission in 2003 considered E911 requirements for MLTS but deferred to the states to address this issue, while preserving the option of acting should states fail to do so.

6. At least 23 states have enacted legislation that requires organizations over a certain size or purchasing a new PBX/MLTS system to implement E911 on the system. These states have adopted varied requirements for MLTS providers, and only in some instances have state laws specifically addressed prefix dialing requirements. In the absence of federal or consistent state regulation, some MLTS in operation today do not support direct 911 dialing, may not have the capability to route calls to the appropriate PSAP relative to the caller's location, or may not provide accurate information regarding the caller's location. The Commission has observed that these issues have persisted, even as many enterprises are increasingly relying on IP-based systems, including cloud-based services, to support their communications needs.

7. Given that the ongoing evolution of MLTS has not eliminated these shortfalls when serving 911 callers, the Commission has periodically sought to examine MLTS provision of 911, including the capabilities of MLTS to support direct 911 access, routing, callback, and automatic location. In September 2017, the Commission released a Notice of Inquiry (Enterprise Communications NOI) seeking information on the capabilities of enterprise communications systems to support direct 911 access, routing, and automatic location. The Commission noted that such systems may not provide consumers with the same access to E911 services as other wireline, wireless, and interconnected VoIP calls and asked whether it is still the case, as the Commission found in earlier proceedings, that the needs and circumstances of residential and business enterprise communications system users are suited to state-level action rather than federal regulation. The Enterprise Communications NOI also sought information on the state of the enterprise communications system industry; the costs and benefits of supporting E911 for enterprise communications system; the capability of enterprise communications system to provide accessible emergency communications for persons with disabilities; and options for ensuring that enterprise communications system keep pace with technological developments and consumer expectations for access to 911.

8. Kari's Law was enacted on February 16, 2018. Kari's Law establishes a federal multi-tiered approach to MLTS 911 requirements. First, Kari's Law applies to any ''person engaged in the business of manufacturing, importing, selling, or leasing'' MLTS. Such persons ''may not manufacture or import for use in the United States, or sell or lease or offer to sell or lease in the United States, a [MLTS], unless such system is pre-configured such that, when properly installed . . . a user may directly initiate a call to 9–1–1 from any station equipped with dialing facilities, without dialing any additional digit, code, prefix, or post-fix, including any trunk-access code such as the digit '9', regardless of whether the user is required to dial such a digit, code, prefix, or post-fix for other calls.''

9. Second, Kari's Law applies to any ''person engaged in the business of installing, managing, or operating'' MLTS. Such persons ''may not install, manage, or operate for use in the United States such a system, unless such system is configured such that a user may directly initiate a call to 9–1–1 from any station equipped with dialing facilities, without dialing any additional digit, code, prefix, or post-fix, including any trunk-access code such as the digit '9', regardless of whether the user is required to dial such a digit, code, prefix, or post-fix for other calls.''

10. Third, such persons ''shall, in installing, managing, or operating such a system for use in the United States, configure the system to provide a notification to a central location at the facility where the system is installed or to another person or organization regardless of location, if the system is able to be configured to provide the notification without an improvement to the hardware or software of the system.''

11. Fourth, Kari's Law expressly provides that Congress did not intend to ''alter the authority of State commissions or other State or local agencies with jurisdiction over emergency communications, if the exercise of such authority is not inconsistent with this [Act].'' Kari's Law directs the Commission to enforce the provisions under Title V of the Communications Act of 1934, as amended, ''except that section 501 applies only to the extent that such section provides for the punishment of a fine.'' The effective date provision states that Kari's Law ''shall apply with respect to a multi-line telephone system that is manufactured, imported, offered for first sale or lease, first sold or leased, or installed after'' February 16, 2020.

12. On March 23, 2018, shortly after Kari's Law was enacted, the President signed the Consolidated Appropriations Act of 2018, including RAY BAUM'S Act, into law. Section 506 of RAY BAUM'S Act requires the Commission to ''conclude a proceeding to consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call, regardless of the technological platform used and including with calls from multi-line telephone systems'' by September 23, 2019. In conducting this proceeding, ''the Commission may consider information and conclusions from other Commission proceedings regarding the accuracy of the dispatchable location for a 9–1–1 call, but nothing in this section shall be construed to require the Commission to reconsider any information or conclusion from a proceeding regarding the accuracy of the dispatchable location for a 9–1–1 call in which the Commission has adopted rules or issued an order'' before the March 23, 2018 enactment date of section 506.

13. In September 2018, following the enactment of Kari's Law and RAY BAUM'S Act, the Commission proposed rules to implement Kari's Law and to support dispatchable location for 911 calls from MLTS and other communications platforms. Specifically, the NPRM proposed to implement Kari's Law by adopting direct dial and notification rules governing calls to 911 made from MLTS and clarifying the definitions associated with the law. As required by RAY BAUM'S Act, the Commission also initiated this proceeding to consider the feasibility of requiring dispatchable location for 911 calls from MLTS and other technological platforms. The

Commission proposed dispatchable location requirements for MLTS 911 calls, which would apply contemporaneously with the February 16, 2020 compliance date of Kari's Law, and proposed to add dispatchable location requirements to our existing 911 rules for fixed telephony providers, interconnected Voice over IP (VoIP) providers, and internet-based Telecommunications Relay Services (TRS). The NPRM also considered the feasibility of alternative location mechanisms for MLTS and other services that could be used as a complement to dispatchable location or as a substitute when dispatchable location is not available. Additionally, the Commission sought comment on whether dispatchable location requirements should be extended to other communications services that are not covered by existing 911 rules but are capable of making a 911 call. Finally, the NPRM proposed to consolidate the Commission's existing 911 rules into a single rule part.

III. Discussion

A. Direct Dialing and Notification for MLTS

14. Because Congress incorporated Kari's Law into the Communications Act of 1934, as amended (the Act), the Commission has authority to prescribe such rules and regulations as are necessary to carry out Kari's Law. The implementing regulations we adopt in this Report and Order are intended to provide additional clarity and specificity regarding the terms used in the statute and the obligations placed on covered entities.

1. Direct Dialing

15. Kari's Law provides that any person engaged in the business of manufacturing, importing, selling, or leasing an MLTS may not manufacture or import the MLTS for use in the United States, or sell or lease or offer to sell or lease it in the United States, unless it is pre-configured so that when properly installed, a user may directly initiate a call to 911 from any station equipped with dialing facilities. In addition, any person engaged in the business of installing, managing, or operating an MLTS may not do so unless the MLTS is configured so that a user may dial 911 directly. In the NPRM, the Commission proposed rules that track these obligations.

16. We adopt the rules requiring direct dialing from MLTS generally as proposed in the NPRM. There is broad support among all types of commenters (industry and public safety entities) for the proposed direct dialing rules, although some commenters seek clarification of proposed definitions and other terms. The Texas 9–1–1 Entities state that the proposed rules ''should generally be adopted as written.'' Microsoft asserts that proposed direct dialing and notification requirements are consistent with Kari's Law and should be reasonably achievable. No commenter opposes adoption of the direct dialing requirements.

2. Notification

17. Kari's Law provides that any person engaged in the business of installing, managing, or operating an MLTS shall, in installing, managing, or operating such a system for use in the United States, configure the system to provide a notification to a central location at the facility where the system is installed or to another person or organization regardless of location, if the system is able to be configured to provide the notification without an improvement to the hardware or software of the system. Consistent with this obligation, the Commission in the NPRM proposed rules providing that installers, managers, or operators must configure an MLTS to provide for transmission of a 911 notification if the system can be configured to do so without an improvement to the hardware or software of the system. The Commission stated that notification will potentially benefit three parties: (1) The 911 caller by speeding response time; (2) enterprise management and staff by providing needed information and reducing confusion and delay when emergency response teams arrive; and (3) first responders by reducing time spent responding to such calls.

a. Required Information and Purpose

18. Kari's Law requires an MLTS to support notification when an end user makes a 911 call, but it does not specify what information must be provided in the notification. In the NPRM, the Commission proposed to define ''MLTS Notification'' as follows: ''An MLTS feature that can send notice to a central location at the facility where the system is installed or to another person or organization regardless of location. Examples of notification include screen pops with audible alarms for security desk computers using a client application, text messages for smartphones, and email for administrators. Notification shall include, at a minimum, the following information: (1) The fact that a 911 call has been made, (2) a valid callback number, and (3) the information about the caller's location that the MLTS conveys to the public safety answering point (PSAP) with the call to 911.''

19. The Commission tentatively concluded that for notification to be capable of achieving the purpose of Kari's Law, it should include basic information that will assist the enterprise and first responders in coordinating and expediting on-site response to the emergency. The Commission also stated its intention for notification to include only information that is also conveyed to the PSAP with the initial call to 911, including the same dispatchable location information that the PSAP receives. Because notification is intended to help the enterprise assist first responders, the Commission noted, it makes sense for the recipient of the notification to have the same information as the PSAP (and, indirectly, the first responders dispatched to the scene). In addition, requiring the notification to convey only information that already exists for the 911 call would minimize the burden for enterprises to comply.

20. We adopt the proposal from the NPRM with certain changes. As proposed, we find that the notification should include the fact that a 911 call has been made, a valid callback number, and the same location information that is conveyed with the call to 911. However, we provide an exception for callback number and location information in circumstances where including this information in the notification would be technically infeasible. We also clarify that the callback number in the notification does not have to be a Direct Inward Dialing number to the 911 caller's extension if one is not available.

21. Several commenters express support for the Commission's proposed notification requirements. APCO supports the Commission's proposal provided that notification does not delay the call to emergency responders. Verizon states that the Commission's proposed notification rule is straightforward and consistent with the statute's focus and notes that the technical details of how the capability is implemented will vary among enterprise customers based on their size, resources, and the particular network configuration involved.

22. We agree with commenters who contend that certain minimum content is necessary to ensure that notification serves the purpose intended for it, which is to help the enterprise provide assistance to first responders in the event of a 911 call. For example, NASNA states that the Commission ''absolutely'' should establish minimum content for the notification and that it

should ''require that what is sent to PSAPs be sent also to the notification center.'' RedSky asserts that the notification should also include the date and time of the 911 call. Avaya suggests that notification should include ''details that may not be conveyed to the PSAP,'' such as ''location information that clearly establishes the location of the caller'' and alerts with acknowledgement and escalation functions.

23. At the same time, we seek to provide enterprises sufficient flexibility to tailor the notification to best suit their needs. In this respect, we note that some commenters urge the Commission to allow enterprises to determine the content of notifications as they see fit. Panasonic, for example, states that businesses should have the flexibility to customize notifications to meet their needs, given their understanding of the physical nature of their enterprise, the technical capabilities of their system, and the personnel who will be involved in assisting with an emergency response, including on-site private emergency response teams in some cases.

24. In the absence of direction in the statutory language about what the required notification should contain, we are also mindful of Congress's stated intent to ''balance the need for an onsite notification with the goal of not placing an undue burden on MLTS owners or operators.'' Reflecting this flexible approach, we define MLTS Notification as: ''An MLTS feature that can send notice to a central location at the facility where the system is installed or to another person or organization regardless of location. Examples of notification include conspicuous on-screen messages with audible alarms for security desk computers using a client application, text messages for smartphones, and email for administrators. Notification shall include, at a minimum, the following information: (1) The fact that a 911 call has been made, (2) a valid callback number, and (3) the information about the caller's location that the MLTS conveys to the public safety answering point (PSAP) with the call to 911; provided, however, that the notification does not have to include a callback number or location information if it is technically infeasible to provide this information.''

25. Commenters raise concerns regarding the inclusion of a callback number and location information in the notification. Cisco, Panasonic, and TIA note that Kari's Law does not specifically require a callback number or location information in the notification. Cisco states that the callback number and location information conveyed in a notification can vary based on the technology deployed in the enterprise, so the Commission should ensure that this rule provides MLTS managers sufficient flexibility to determine the contents of the notification. Several commenters note that providing a callback number that reaches the 911 caller's specific phone is not possible in some enterprises because there is no Direct Inward Dialing phone number associated with the MLTS endpoints. Some commenters also point out that providing the caller's location in the notification may not be necessary or helpful in the case of enterprises that are small or have an open workspace.

26. We therefore provide an exception for callback number and location information in circumstances where including this information in the notification would not be technically feasible. We agree with commenters who assert that there may be MLTS solutions for which it is not technically feasible to include this information in the notification. For example, commenters point out that providing a callback number that reaches the 911 caller's specific phone is not possible in some enterprises because there is no phone number associated with the MLTS endpoints. Accordingly, we clarify that the callback number, if provided, need not be a Direct Inward Dialing number to the 911 caller's extension if a Direct Inward Dialing number is not available. This means, for example, that if the 911 call comes from a non-Direct Inward Dialing number, the callback number in the notification can be an internal extension that can be directly reached from inside the enterprise but not from outside it. Similarly, a hotel that does not provide a Direct Inward Dialing line to each guest room can provide the number of a central location, such as the front desk, in the notification. Notwithstanding that each of these MLTS notification examples would include callback number information in lieu of a Direct Inward Dialing number to the 911 caller, we reiterate that omission of callback number information in the notification is acceptable if it is technically infeasible to provide such information.[1]

27. We also adopt BRETSA's suggestion to replace the term ''screen pops'' from the NPRM with ''conspicuous on-screen messages,'' which we find to be clearer. And we reject BRETSA's suggestion that the Commission revise the beginning of the definition of MLTS Notification to read, ''[a]n MLTS feature that can send notice that a call has been placed to '9–1–1' from an MLTS station, to a central location at the facility where the system is installed or to another person.'' We decline to add this language because we believe the reference to the required content of the notification later in the definition makes clear that notification includes the fact that a call to 911 has been made.

28. Because our requirements set a minimum, enterprises may add other information to the notification as useful and appropriate. This may include, for example, the occupancy status of a hotel room, or the specific location of an IP device. Enterprises are free to include such information in the notification as they see fit, so long as the notification includes the required elements. Although the additional information Avaya proposes for the content of the notification may be helpful for some enterprises, we do not believe it would be appropriate for all enterprises, particularly smaller businesses. We also do not have a sufficient record to determine whether to adopt date and time of the 911 call as required elements of the notification, as RedSky suggests, although we encourage enterprises to include this information at their discretion. We also encourage the development of voluntary best practices and employee training to prepare enterprises for responding to receipt of notification that a 911 call has been made. For instance, training could include the circumstances under which the notice recipient (or someone else at the enterprise) should dial the callback number included with the notification.

29. Finally, BRETSA asserts that PSAPs and first responders should determine the notification and location information provided by the enterprise, with a process for state and local public safety authorities to waive the Commission's MLTS rules where reasonable and appropriate. We decline to find that state and local public safety agencies have authority to waive the Commission's rules, as BRETSA requests. Requests for such waivers should, as with other Commission requirements, be presented to the Commission.

b. Notification Timing

30. Kari's Law is silent on when the notification must be provided. The Commission proposed to require that MLTS covered by Kari's Law be

[1] Likewise, the omission of the caller's location information in the MLTS notification is acceptable if it is technically infeasible to provide such information.

configured so that notification is contemporaneous with the 911 call and does not delay the placement of the call to 911. Most commenters that address this issue support the Commission's proposal.

31. We adopt the timing requirement as proposed but clarify that initiation of the notification must be contemporaneous with the call to 911. As RedSky points out, notification can occur in many forms, including SMS text messages, email, screen display, and conference calls, and the delivery of text messages and email is not within the control of the MLTS provider or the MLTS user. Accordingly, RedSky asks the Commission to clarify that initiation of the notification must be contemporaneous with connection of the emergency caller to the PSAP. We concur. The record shows the importance of timely notification. According to NENA, ''[n]otification contemporaneous with the 9–1–1 call has significantly greater value to all parties than after-the-fact notification, and the majority of a notification's benefits to response are lost if the notification is not conveyed in real-time.''

32. We also note Ad Hoc's concern that some enterprise owner/operators of MLTS currently report challenges in configuring MLTS equipment to provide contemporaneous notification in addition to placing the call to 911 emergency services. As a result, Ad Hoc states, the Commission should condition its proposal for the timing of notification on what is ''technically feasible.'' We condition this requirement on the technical feasibility of providing contemporaneous notification, as Ad Hoc requests.

c. Notification Destination Points

33. The Commission also sought comment in the NPRM on whether there should be any requirements relating to the location, configuration, or staffing of notification destination points. Kari's Law states that the notification may be provided either to a ''central location at the facility where the system is installed'' or to ''another person or organization regardless of location.'' The Commission noted that this language indicates Congress's recognition that in the enterprise settings where MLTS are typically used, providing someone other than the PSAP with notice of the call can be critical to helping first responders gain timely access. At the same time, the language ''regardless of location,'' as illuminated by legislative history, indicates that Congress sought to provide MLTS installers, managers, and operators with broad flexibility in selecting destination points to achieve this goal. For example, the notification could be directed to an on-site security desk that controls access to the premises, to an enterprise employee who may or may not be located at the facility where the MLTS is installed, or to a third party that provides security or safety services from an off-site location. MLTS notification could also be configured to combine these approaches, *e.g.,* by having notifications during business hours go to a central on-site location and off-hours notifications go to an off-site person or organization.

34. The Commission sought comment on whether it should specify criteria for destination points to ensure that notifications are likely to be received by someone able to take appropriate action to facilitate or assist the 911 response. Where on-site notification to a ''central location'' is provided, the Commission asked whether it should specify that the destination point must be a location that is normally staffed or, alternatively, a location where on-site staff are likely to hear or see the notification. The Commission noted that this approach would afford flexibility to direct the on-site notification to a security guard or facilities manager, to personnel who are otherwise employed and can support monitoring notifications as part of existing duties, or to an on-site location where staff are normally present.

35. We adopt a requirement that notifications be sent to a location on-site or off-site where someone is likely to hear or see the notification. Some commenters urge the Commission to establish criteria for notification destination points, while others urge the Commission to preserve flexibility for the enterprise. In this respect, we note NASNA's assertion that notification ''absolutely'' should be to a location that is normally staffed or where staff are likely to hear or see the notification and that ''[t]o do otherwise would undermine the purpose of the notification requirement.'' We agree with NASNA that the Commission should set some criteria for notification destination points to help ensure that they serve the purpose of Kari's Law.

36. The requirement we adopt preserves flexibility for the enterprise to select an appropriate destination point. For instance, we recognize AHLA's suggestion that ''[h]ow an individual hotel determines to send a notification (via text message, a separate call or email), to whom the notification is sent, and where the recipient is at the time of receipt should be at the discretion of the hotel. For example, a hotel with a single on-duty employee overnight should not be required to send notification to a desk that may not be manned; a text message to the employee's mobile device might be more appropriate.'' Our requirement would allow a hotel such as the one described by AHLA to send a text message to the overnight employee's mobile device.[2]

37. In addition, we do not require that the notification point be continuously staffed or monitored, only that it be a location where someone is likely to see or hear the notification. The legislative history of Kari's Law provides that the statute ''seeks to balance the need for an onsite notification with the goal of not placing an undue burden on MLTS owners or operators.'' Consistent with this, the Commission in the NPRM stated that it did not believe Congress intended to impose staffing or monitoring requirements that would generate unreasonable costs, such as the need to hire additional staff, or limit the flexibility of MLTS installers, managers, and operators to develop cost-effective notification solutions to meet their particular needs. Based on the record before us, we adopt a requirement with which we intend to strike an appropriate balance between the increased benefits from having notifications sent to a location where they are likely to be received (*e.g.,* increased chances of assistance for first responders) and the increased costs that are likely to result if we were to adopt a less flexible approach (*e.g.,* increased staffing costs).

38. In the NPRM, the Commission also asked whether, in the case of off-site notification, it should require that notification be to a person or organization that is authorized to provide first responders with access to the location from which the MLTS 911 call originated. The Commission noted that this would allow notification to be directed to any offsite location, as the statute clearly allows, while furthering the statute's objective of facilitating access to first responders answering a 911 call.

39. We agree with Ad Hoc that requiring such notification may not make sense in all situations, such as where the enterprise does not control access to the premises or where access to the premises is unrestricted. We nonetheless encourage enterprises using the off-site notification option to choose someone who can assist first responders in gaining access to the facility if it is

[2] The definition of MLTS notification we adopt does not specify any particular form for the notification and states that examples of notification include ''conspicuous on-screen messages with audible alarms for security desk computers using a client application, text messages for smartphones, and email for administrators.''

feasible to do. As suggested by NENA's comments, it is a best practice for notification to go to whomever ''has the keys'' if a campus or building has restricted access and to whomever has any specialized knowledge of the facility layout that may assist public safety in locating and responding to a 911 call. And we encourage the development of voluntary best practices and training for enterprise personnel, including designated notice recipients, so that they are prepared to assist first responders in the event of an emergency call.

d. No Exemptions to Notification Requirement

40. In the NPRM, the Commission noted that large enterprises such as hotels, hospitals, and schools frequently have on-site personnel that control access to the premises, and notification of 911 calls to such personnel can improve outcomes by enabling them to assist first responders in accessing the premises and reaching the caller's location. The Commission sought comment on applying the statute's notification requirements to all MLTS operators, including small enterprises, and sought comment on whether the benefits and costs of notification apply differently to small businesses than large enterprises such as hotels, hospitals, and schools. Small businesses are less likely to have personnel controlling access, and first responders may not need the same level of assistance to reach a 911 caller. The Commission also asked whether small enterprises using MLTS may find benefits to notification in addition to access and support, such as the ability for the enterprise to intervene when 911 is dialed in error and avoid sending emergency responders to a location that does not require a response.

41. Commenters are divided on whether the Commission should provide a small business exemption for the notification requirements of Kari's Law. NASNA states that the benefits of notification are the same for a small business as for a large one and that small businesses should know that a 911 call was made from their MLTS so they are not surprised when first responders arrive and can assist if needed, including canceling the response if it turns out that 911 was dialed in error. Other commenters support a small business exemption, although their specific proposals for an exemption differ. RedSky, for example, argues that not every enterprise using an MLTS should be required to have emergency call notification, ''let alone staff to receive a notification,'' and that there are many circumstances where there is no one to consume the data and react. Proposed criteria for defining an exemption generally include limits on square footage or the number of lines used at a single location. In turn, RingCentral and VON urge the Commission to limit the notification requirement to on-site calls and not to require notification for 911 calls from distributed workforces, *i.e.,* those spread out over a large geographic region and relying on MLTS to centralize communications.

42. We decline to adopt a small business exemption because we agree with NASNA that small businesses should receive notice of 911 calls that have been made from their MLTS so that they can prepare for the arrival of first responders and assist if needed. We also decline to provide an exception to the location information requirement for enterprises that are small or have an open workspace, as some commenters suggest. We believe location information will be helpful even at a small business because it will confirm the caller's location for the notice recipient, who may be at an offsite location. In addition, the burden of providing this information should be minimal. We note that Kari's Law does not provide an exemption for small businesses—nor one for MLTS operators that are not always staffed. In addition, the requirements we adopt for notification are highly flexible and give small businesses significant latitude to configure suitable notification mechanisms without unreasonable burden or cost.

43. We also disagree with RingCentral and VON that notification as a rule is unlikely to be helpful at remote or satellite locations served by an MLTS. Rather, we agree with BRETSA that limiting application of the rules to only specific types of MLTS would distort the market by favoring newer technologies, notwithstanding that callers to 911 are no less impacted by failures of MLTS using those technologies to provide notification (and interior location information) than MLTS using other technologies. Indeed, we disagree with arguments that whenever an MLTS is used off-site, notification is not useful. Although RingCentral states that it has many customers that provide centralized phone numbers and extensions for a workforce that is working from home, the road, remote offices, or a mix of these locations, the fact that a ''centralized location may be miles or states away from the emergency and have no special knowledge of the location where the emergency arose'' is irrelevant—Congress recognized that notifications have value ''regardless of location,'' and it is not hard to recognize that having a centralized notification system could aid these multi-homed workers in reaching emergency services. Similarly, we disagree with VON that ''a 911 call placed by a person working from a satellite office would trigger a notification to someone at the central office, who would not be able to aid first responders when they arrive at the satellite office or otherwise speed first responder response time,'' because someone at a staffed central office may nonetheless aid remote first responders by, for example, alerting other personnel at the location of the emergency. Although there may be corner cases in which notification is not in fact helpful, we decline on this record to exempt any particular category of MLTS facilities from the notification requirements as a matter of policy (not to mention that Kari's Law itself draws no such lines).

3. Definitions

a. Definition of Multi-Line Telephone System

44. Kari's Law and RAY BAUM'S Act define the term ''multi-line telephone system'' by cross-referencing the definition in the Middle Class Tax Relief and Job Creation Act of 2012. That Act, in turn, defines an MLTS as:

> A system comprised of common control units, telephone sets, control hardware and software and adjunct systems, including network and premises based systems, such as Centrex and VoIP, as well as PBX, Hybrid, and Key Telephone Systems (as classified by the Commission under part 68 of title 47, Code of Federal Regulations), and includes systems owned or leased by governmental agencies and non-profit entities, as well as for profit businesses.

45. In the NPRM, the Commission proposed to interpret this definition to include ''the full range of networked communications systems that serve enterprises, including circuit-switched and IP-based enterprise systems, as well as cloud-based IP technology and over-the-top applications.''

46. The Commission also proposed in the NPRM to interpret the definition of MLTS to include enterprise-based systems that allow outbound calls to 911 without providing a way for the PSAP to place a return call (outbound-only calling service). The Commission stated that it believed requiring direct dialing for any MLTS that allows the user to call 911, regardless of whether the system also allows the PSAP to make a return call, would advance the purpose of Kari's Law. In addition, the Commission stated, there is nothing in the language of the definition of MLTS

from the Middle Class Tax Relief and Job Creation Act of 2012 that excludes systems allowing only outbound calls to 911.

47. The record is divided over the Commission's proposed definition of MLTS. Some commenters support the proposal, while others oppose the Commission's proposed interpretation. Commenters, however, generally support the Commission's proposed interpretation of the definition of MLTS to include outbound-only calling services, citing consumer expectations and the need for regulatory parity among services.

48. As proposed in the NPRM, and consistent with the statutory definition, we interpret the definition of MLTS to include the full range of networked communications systems that serve enterprises, including circuit-switched and IP-based enterprise systems, as well as cloud-based IP technology and over-the-top applications. West Safety endorses this approach and states that the statutory definition of MLTS is sufficiently broad to encompass the full range of enterprise communications systems, including ''legacy TDM MLTS, hybrid MLTS and IP MLTS systems and software,'' as well as ''any and all endpoints supported by MLTS including mobile and smart devices, softphone clients, over-the-top (OTT) applications and outbound-only calling services.'' RedSky similarly states that the term MLTS ''should not be limited to any specific type of end point device'' because the technology is constantly evolving. We agree.

49. TIA and VON, however, oppose the Commission's proposed interpretation. TIA asserts that if Congress had intended its definition to capture ''the full range'' of all technologies in the enterprise communications marketplace, including over-the-top applications, it could have done so in the definition. Instead, TIA asserts, ''the definition refers by name to numerous traditional MLTS technologies and points to Part 68 of the FCC's rules—regulations established decades ago to govern interconnection with the PSTN [public switched telephone network] for traditional telephony services.'' TIA adds that ''[t]he Commission is right to think about the modern enterprise communications market which has certainly expanded beyond traditional locally-hosted PBX systems, but it should not expand the scope of Kari's Law as intended by Congress.'' VON states that as proposed, the term could cover any business with more than one line using a cloud PBX and could therefore essentially turn any interconnected VoIP service into MLTS (or vice versa), contrary to the plain intent of Kari's Law. VON adds that this point becomes clearer when compared with RAY BAUM'S Act, which directs the Commission to ''consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call, regardless of the technological platform used and including with calls from [MLTS].'' In contrast, VON states, Kari's Law does not discuss other technological platforms, and as a result, ''the NPRM's proposed interpretation of MLTS goes farther than the law allows, and should be limited to those systems provided for in 47 U.S.C. 1471.'' Cisco and Panasonic note that the statutory definition of MLTS does not refer to the terms ''cloud-based IP technology'' and ''over-the-top applications'' and state that it is not clear Congress envisioned such a broad interpretation of the term.

50. We disagree with these commenters. In particular, we note that the statutory definition also refers to VoIP, which is a newer technology, and introduces the reference to VoIP with the term ''such as.'' The statute thus cites VoIP (and other technologies) as examples but not as limitations on the definition. If Congress had intended a more constrained view of the technologies that fall within the definition of MLTS, it would have stated that MLTS ''consists of'' or is ''limited to'' certain technologies. In addition, the statutory language refers broadly to a ''system comprised of common control units, . . . control hardware and software and adjunct systems, including network and premises-based systems.'' We find that this language broadly includes cloud-based IP technology and over-the-top applications. Further, there is no language in the statute specifically excluding cloud-based IP technology and over-the-top applications from the definition of MLTS.

51. We also believe interpreting the definition of MLTS broadly is consistent with the intent of Kari's Law. The enterprise market has already seen significant migration away from traditional MLTS and toward IP-based and cloud-based systems, and Kari's Law applies only to systems that are manufactured or brought into use after February 16, 2020. It is unlikely that Congress would seek to address the problems of direct dialing and notification for MLTS only with respect to traditional, non-IP-based MLTS technologies, which represent a declining share of the MLTS market. With respect to VON's assertion that the reference to other ''technological platform[s]'' in RAY BAUM'S Act shows that the definition of MLTS should be interpreted narrowly under Kari's Law, we disagree. We interpret the reference to technological platforms in RAY BAUM'S Act as a direction for the Commission to include other services, such as interconnected VoIP, TRS, and fixed telephony, in its consideration of dispatchable location rules. We do not interpret it as a limitation, explicit or implied, on the meaning of MLTS under Kari's Law.

52. We also interpret the definition of MLTS to include outbound-only calling systems.[3] The statutory definition of MLTS is broad enough to cover outbound-only calling services and does not expressly exclude such services. Commenters generally support interpreting the definition to include outbound-only services, and no commenter expressly opposes this interpretation. Avaya, for example, states that MLTS at a minimum should include any system capable of making an outbound call. BRETSA asserts that 911 calls are outbound calls, and it is counterintuitive that they cannot be made over outbound-only calling systems. AT&T urges the Commission to ensure that the MLTS rules maintain regulatory parity between new implementations of business VoIP services and traditional MLTS business solutions and states that one-way VoIP solutions should be required to support 911, as end users will expect their calling solutions to have this functionality and may rely on it in an emergency. Verizon states that applying Kari's Law requirements to MLTS that allow outbound-only 911 dialing is likely feasible, but that the scope of such requirements should focus on user expectations. Verizon suggests that the rules should protect users of outbound-only calling systems who are not employed by the enterprise or who are otherwise unfamiliar with the system and use it for outbound-only dialing. On the other hand, Verizon states, if the outbound-only system has a defined and restricted user group that is uniformly familiar with and trained in the enterprise's calling practices, and 911 is the only outbound number that users can dial, the direct dialing capability may be less critical. Verizon also states that requiring direct dialing capability for outbound-only MLTS services ''may give enterprises incentive to not enable any 911 dialing at all (which has its own public safety implications).''

[3] We clarify that our rules are not intended to prohibit configuring MLTS to allow outbound-only calling. Rather, we interpret the definition of MLTS to include outbound-only calling systems.

53. We find that Congress's intent in enacting Kari's Law was to require direct dialing for any MLTS phone that allows the user to call 911, regardless of whether the system also allows the PSAP to connect a return call directly to the 911 caller. We agree with the Texas 9–1–1 Entities that Kari's Law and the ''utterly tragic circumstances'' behind its enactment demonstrate that ''it is simply unreasonable to expect 9–1–1 callers to know or remember when they are required to do something differently during a 9–1–1 call based on their particular device or location.'' Moreover, as BRETSA states, calling 911 is inherently an outbound service. As a result, it is counter-intuitive to expect consumers to assume that they cannot reach 911 from such services.

54. We decline to adopt Verizon's suggestion that we narrow the requirements for outbound-only MLTS service to apply solely on the basis of user expectations. Rather, we believe Congress intended for direct 911 dialing and notification to be available for all outbound-only MLTS services. Similarly, public safety commenters such as the Texas 9–1–1 Entities and BRETSA point out that 911 callers in an emergency should not have to slow down and analyze whether 911 is available from a particular device, especially when they may not know the particular technology involved and may not have chosen it for themselves. Finally, although Verizon suggests that requiring direct dialing capability for outbound-only MLTS services may give enterprises incentive to not enable any 911 dialing at all, we do not believe this possibility, which is speculative, outweighs the benefits of ensuring that direct dialing is available with any MLTS phone that allows the caller to reach 911.

55. Internal systems. Cisco asks the Commission to clarify that the definition of MLTS excludes systems that are ''used only for internal employee communications and . . . are not designed to interconnect with the PSTN,'' such as internal messaging and data and video conference capabilities that are ''increasingly displacing voice communications for employee collaboration.'' Cisco states that ''[w]here a technology is specifically deployed by an enterprise to support internal communications (*i.e.,* it cannot support a call outside the enterprise), or where a tool is designed and used for conferencing services or other non-point-to-point communications, there can be no reasonable expectation on the part of employees that such internal or conferencing tools would be used to summon emergency services.'' BRETSA responds that limiting application of the rules to specific types of MLTS would distort the market and that Kari's Law and RAY BAUM'S Act do not support such a narrow reading of the definition of MLTS. Further, BRETSA states that exempting internal communications systems from the rules ''would appear to create a loophole such as to negate the statutes and rules'' because an MLTS in which a user must dial a number to access an outside line prior to placing a call to 911 would appear to be an internal communications system.

56. We agree with Cisco that Kari's Law and the rules arising out of RAY BAUM'S Act were not intended to apply to purely internal communications systems that do not rely on telephone numbers under the North American Numbering Plan. We clarify that a technology that is specifically deployed by an enterprise to support only internal communications and that does not connect to the public switched telephone network would not fall within the definition of MLTS. In response to BRETSA's concerns, we conclude that this will not distort the market or negate the statute and rules because the clarification applies only to systems that do not connect to the public switched telephone network. If an internal communications system or conferencing service connects to the public switched telephone network either on its own or through a third party and can establish calls to the public switched telephone network, including by dialing a prefix such as ''9,'' then it is within the definition of MLTS under our interpretation.

57. System components. Panasonic, Cisco, and TIA also urge the Commission to clarify that individual system components such as telephone sets and control software do not qualify as an MLTS. Panasonic states that Congress's use of the language ''system comprised of'' various parts, ''*e.g.,* common control units, telephone sets, control software and hardware and adjunct systems,'' dictates as a matter of logic that such individual parts are, in isolation, not MLTS themselves. To hold otherwise, Panasonic states, would be to ignore the plain meaning of the word ''comprised,'' effectively reading it out of the statute. Panasonic adds that it may be uniquely situated in that while the company offers a ''full-blown MLTS'' and is in that case an MLTS manufacturer, it also sells IP phones to other parties, who bundle Panasonic phones with other components that make up a full MLTS. To address this situation, Panasonic states, the Commission should clarify that sellers of individual MLTS components are not subject to the Commission's rules for MLTS. Cisco asserts that ''[a]s a matter of common sense, individual system components are not even capable of dialing 911 or reaching the PSTN unless and until they are assembled by an installer.''

58. We agree that the definition of MLTS refers to a system and that individual components of such a system, including telephone sets, control software and hardware, and adjunct systems, do not by themselves constitute an MLTS. Consistent with this, we clarify that manufacturers, importers, sellers, or lessors of individual MLTS components are not subject to the Commission's MLTS rules to the extent that they manufacture, import, sell, or lease such components without the other components necessary for the system to function as an MLTS. In the scenario described by Panasonic, the entity that bundles the individual components into an MLTS would be the manufacturer and presumably also the seller or lessor of the MLTS and would have the obligations that fall on those parties under the statute and our rules.[4] However, we do not agree with Cisco that the test for whether one or more components constitute an MLTS is whether they can be used to dial 911 or reach the PSTN, as that would exclude all systems that have been manufactured but not yet installed. Such a result would clearly be at odds with Kari's Law, which places obligations on ''persons engaged in the business of manufacturing, importing, selling, or leasing'' an MLTS that apply before installation, operation, or management of the system.[5]

b. Definition of Pre-Configured

59. The Commission proposed in the NPRM to define the statutory term ''pre-configured'' to mean:

> An MLTS that comes equipped with a default configuration or setting that enables users to dial 911 directly as required under the statute and rules, so long as the MLTS is installed and operated properly. This does not preclude the inclusion of additional dialing patterns to reach 911. However, if the system is configured with these additional dialing patterns, they must be in addition to the default direct dialing pattern.

[4] To the extent individual components need certain functionality or pre-configuration to comply with Kari's Law, the bundler should require that in its contract with the manufacturer. The obligation to comply with the statute and our rules, however, would lie with the bundler.

[5] Specifically, such persons may not manufacture, import, sell, lease, or offer to sell or lease an MLTS unless the system is ''pre-configured'' so that when properly installed, a user may directly initiate a call to 911 from any station equipped with dialing facilities.

60. The Commission stated that this would mean an MLTS may support additional dialing patterns but that manufacturers (and importers, sellers, or lessors) must ensure that the default, ''out-of-the-box'' configuration allows users to reach 911 directly.

61. Although some commenters agree with the Commission's proposed definition of pre-configured, others ask the Commission to clarify the proposed definition to acknowledge the role of the enterprise customer and MLTS installer in providing the MLTS with connectivity to the PSTN.

62. We find that the revisions proposed by Cisco and Microsoft are consistent with the statutory language and with the definition of ''pre-configured'' that the Commission proposed in the NPRM, and that they assist in providing clarity. In particular, Cisco states that MLTS manufacturers today can design systems that are capable of supporting direct 911 dialing patterns and that are shipped with software that, upon installation and configuration of the MLTS with PSTN connectivity, can enable direct 911 dialing. However, MLTS solutions of this type have no capability ''out of the box'' to make or complete a PSTN call, including an emergency call.

63. Cisco adds that in today's market, ''MLTS manufacturers predominantly offer enterprise solutions over distributed systems, where the actual call control component of the solution need not be, and often is not, resident in each enterprise location where MLTS-to-PSTN calling takes place. PSTN connectivity, including the 911 dialing pattern, is therefore established by the installer at the direction of the enterprise, based on the unique attributes of its MLTS system, at the time PSTN connectivity is configured.'' Cisco urges the Commission to clarify that the pre-configuration requirement in the context of distributed systems can be satisfied when a vendor includes software to support a direct 911 dialing pattern, which is available to the installer at the time the MLTS is configured for PSTN calling. Specifically, Cisco proposes that the Commission ''slightly'' modify the definition of pre-configured to read, ''An MLTS that comes equipped with hardware and/or software capable of establishing a setting that enables users to directly dial 911 as soon as the system is able to initiate calls to the public switched telephone network, so long as the MLTS is installed and operated properly.'' Microsoft similarly states that many, if not most, MLTS capabilities in today's marketplace are not available in a ''plug and play'' version and that the Commission should revise the definition of pre-configured so that it ''recognizes the responsibilities of the customer with respect to implementation and provision of the service.'' Microsoft recommends that the Commission revise the definition to read, '' 'Pre-configured' means that the MLTS comes equipped with a default configuration or setting that enables users to dial 911 directly as required under the statute and rules, so long as the system is installed and operated properly or, where no default exists, such as when customer provisioning of the system is required, enables the customer to configure the system to dial 911 directly as required under the statute and rules.''

64. We agree with these commenters that not all MLTS are ''out of the box,'' plug-and-play solutions and that the definition of pre-configured should recognize the role of the enterprise and installer with respect to implementation and provision of service. We believe that the proposed revisions suggested by Cisco and Microsoft are fundamentally consistent with each other, and we note that no commenter opposes these suggested revisions. In addition, Microsoft states that it supports either version of the definition. Accordingly, we revise the definition as requested by Cisco as follows:

> 'Pre-configured' means an MLTS that comes equipped with hardware and/or software capable of establishing a setting that enables users to directly dial 911 as soon as the system is able to initiate calls to the public switched telephone network, so long as the MLTS is installed and operated properly. This does not preclude the inclusion of additional dialing patterns to reach 911. However, if the system is configured with these additional dialing patterns, they must be in addition to the default direct dialing pattern.

c. Definition of Configured

65. The Commission proposed in the NPRM to define the statutory term ''configured'' to mean:

> The settings or configurations for a particular MLTS installation have been implemented so that the MLTS is fully capable when installed of dialing 911 directly and providing notification as required under the statute and rules. This does not preclude the inclusion of additional dialing patterns to reach 911. However, if the system is configured with these additional dialing patterns, they must be in addition to the default direct dialing pattern.

The Commission also asked whether the difference between its proposed definitions of ''pre-configured'' and ''configured'' was sufficiently clear.

66. NASNA, Panasonic, and West Safety support the Commission's proposed definition of configured. BRETSA notes that the reference to ''notification'' in the definition should be to ''MLTS notification,'' because that is the term as defined in the rules. BRETSA also proposes line edits to specify that configuring an MLTS for direct dialing means configuring it for ''direct dialing of 911 without a requirement of first dialing or entering an additional digit, code, prefix, or post-fix, including any trunk-access code such as the digit 9.''

67. We adopt the definition largely as proposed. We also agree with BRETSA that the reference to notification should be corrected to ''MLTS notification.'' [6] But we decline to adopt BRETSA's other proposed line edits as unnecessary. The definition already requires configuration so that the MLTS is fully capable when installed of dialing 911 directly ''as required under the statute and rules,'' which includes dialing without a requirement of first dialing or entering an additional digit, code, prefix, or post-fix, including any trunk-access code such as the digit 9.[7]

68. The revised definition of ''configured'' reads as follows:

> The settings or configurations for a particular MLTS installation have been implemented so that the MLTS is fully capable when installed of dialing 911 directly and providing MLTS notification, as required under the statute and rules. This does not preclude the inclusion of additional dialing patterns to reach 911. However, if the system is configured with these additional dialing patterns, they must be in addition to the default direct dialing pattern.

d. Definition of Improvement to the Hardware or Software of the System

69. Under Kari's Law, the notification requirements of the statute apply only if the MLTS can be configured to provide notification ''without an improvement to the hardware or software of the system.'' The Commission proposed in the NPRM to define the statutory term ''improvement to the hardware or software of the system'' to mean:

> An improvement to the hardware or software of the MLTS, including upgrades to the core systems of the MLTS, as well as

[6] Consistent with this, we also change a reference in section 9.16(b)(2) of the rules from configuring an MLTS to provide ''a notification'' to configuring it to provide ''MLTS notification.''

[7] RedSky states that the titles of the definitions of pre-configure and configure are too broad and suggests changing them to ''Pre-configured MLTS'' and ''MLTS Configurations,'' respectively. We decline to make these changes because we do not believe the existing titles will cause confusion. In addition, our definitions are intended to track the language used in Kari's Law as closely as possible, and the statute and our implementing rules do not use the terms ''pre-configured MLTS'' or ''configured MLTS.''

substantial upgrades to the software and any software upgrades requiring a significant purchase.

70. The Commission also noted that the proposed definition is consistent with the legislative history of Kari's Law, which provides that an improvement to the hardware or software of a system is intended to include upgrades to the core systems of an MLTS and substantial upgrades to the software, particularly those requiring a significant purchase. The Commission asked whether there are types of routine hardware or software changes that should be included in or excluded from the definition and whether it should clarify that (1) improvements to the hardware of the system do not include the provision of additional extensions or lines, and (2) improvements to the software of the system do not include minor software upgrades that are easily achieved or made to improve the security of the system. In addition, the Commission asked whether upgrades requiring a significant purchase should be determined based on total cost alone, or whether it should interpret significant to be a relative determination based on the size of the entity making the purchase.

71. We adopt the definition of improvement to the hardware or software of the system as proposed. Under this definition, enterprises are not required to undertake ''upgrades to the core systems of an MLTS,'' ''substantial upgrades to the software,'' or ''any software upgrades that require a significant purchase'' in order to comply with the notification obligation.

72. We find that this definition is necessary to implement Kari's Law, which makes clear that the notification requirements of the statute apply only if the MLTS can be configured to provide notification ''without an improvement to the hardware or software of the system.'' The definition we adopt also is consistent with the legislative history of Kari's Law, which states Congress's intention to balance the need for notification with the goal of ''not placing an undue burden on MLTS owners or operators.''

73. While NCTA supports the Commission's approach to this definition, others express concerns. Although RedSky objects to the definition on the ground that the vast majority of deployed MLTS systems can meet the notification requirements without any modification of the core systems, NCTA points out that line-based MLTS cannot be upgraded to offer notification without upgrades to core systems that would present a ''daunting technological and financial challenge.'' In this respect, NCTA states that MLTS are provided to commercial customers in a variety of configurations involving both line-based and trunk-based products and that it is not aware of any line-based systems that currently have a notification capability.

74. We also disagree with NASNA that any improvements to an existing MLTS, no matter how minor, should trigger the obligation to comply with Kari's Law and the implementing regulations. We conclude that such a policy would be inconsistent with the language of Kari's Law, which limits application of the statute to MLTS manufactured or brought into use after February 16, 2020. In addition, we clarify that (1) improvements to the hardware of the system do not include the provision of additional extensions or lines, and (2) improvements to the software of the system do not include minor software upgrades that are easily achieved or made to improve the security of the system.

75. With respect to upgrades, Panasonic requests that we further clarify that substantial improvements to the software of the system do not include software updates for addressing bug fixes, security vulnerabilities, or the addition of ancillary features; that maintenance or reconfiguration of the system to support new users or extensions should not be considered a substantial upgrade; and that the cost of the upgrade or update or the size of the enterprise should not be a factor. RedSky asserts that the terms ''substantial'' and ''significant'' are subjective and ''should be quantified to ease in both requirement and enforcement abilities.''

76. We believe the factors cited by Panasonic may be relevant to determining whether a specific upgrade is substantial, but that such factors, if applicable, should be evaluated in light of the total facts and circumstances presented in the specific case. We also decline to quantify the terms ''substantial'' and ''significant'' as requested by RedSky, as the record does not provide sufficient basis for such quantification at this time. We expect that as Kari's Law is implemented, cases will arise that will enable us to provide further guidance on these issues. For now, we conclude that the guidance provided above is sufficient and consistent with the statutory language and legislative history of Kari's Law.

e. Definition of Person Engaged in the Business of Manufacturing, Importing, Selling, or Leasing an MLTS

77. Kari's Law applies to any ''person engaged in the business of manufacturing, importing, selling, or leasing'' an MLTS and provides that such persons may not manufacture or import an MLTS for use in the United States, or sell or lease or offer to sell or lease an MLTS in the United States, unless the system is pre-configured so that, when properly installed, a user may directly initiate a call to 911 from any station equipped with dialing facilities. In the NPRM, the Commission tentatively concluded that the meaning of the term ''person engaged in the business of manufacturing, importing, selling, or leasing'' an MLTS is self-evident and did not propose to modify this definition or add it to the rules. The Commission sought comment whether any additional clarification of this term is necessary for implementation or enforcement of Kari's Law.

78. As proposed in the NPRM, we conclude that the meaning of the term ''person engaged in the business of manufacturing, importing, selling, or leasing an MLTS'' is self-evident and that there is no need to adopt a definition for it. Cisco and Panasonic agree that the meaning of this term is self-evident, and no commenter opposes that view.

f. Definition of Person Engaged in the Business of Installing an MLTS

79. Kari's Law also places obligations on any ''person engaged in the business of installing, managing, or operating'' an MLTS. Such persons may not install, manage, or operate the MLTS for use in the United States unless it is configured for direct dialing of 911. In addition, such persons shall, in installing, managing, or operating the MLTS, configure it to provide notification if the system is able to be configured to provide notification without an improvement to the hardware or software of the system. In the NPRM, the Commission proposed to define a person engaged in the business of installing an MLTS as:

> A person that configures the MLTS or performs other tasks involved in getting the system ready to operate. These tasks may include, but are not limited to, establishing the dialing pattern for emergency calls, determining how calls will route to the Public Switched Telephone Network (PSTN), and determining where the MLTS will interface with the PSTN. These tasks are performed when the system is initially installed, but they may also be performed on a more or less regular basis by the MLTS operator as the communications needs of the

enterprise change. The MLTS installer may be the MLTS manager or a third party acting on behalf of the manager.

80. The Commission sought comment on this proposed definition. While some commenters support the proposed definition, others ask the Commission to clarify it.

81. We adopt the definition of ''person engaged in the business of installing an MLTS'' as proposed. We decline to revise the language of this definition as requested by some commenters because we conclude that such revisions are not warranted; however, we supply guidance on how to apply this definition given points raised by some commenters.

82. In this regard, RingCentral notes that although the NPRM defines a ''person engaged in the business of installing an MLTS'' to include a person who ''configures the MLTS or performs other tasks involved in getting the system ready to operate,'' these functions are often part of providing cloud-based MLTS. Accordingly, RingCentral states, an over-broad definition of installation risks imposing duties (such as configuring notification) that should rest with the MLTS owner/operator as the entity best positioned to make deployment decisions for the enterprise. According to RingCentral, the Commission should address this by making clear that manufacturers and sellers are not installers simply by virtue of providing systems; ''rather, manufacturers and sellers become installers only when their customers specifically retain them for installation by, for example, purchasing installation or other professional services.'' In addition, RingCentral states that the Commission should recognize that installers are acting at the direction of owners and operators and should adjust the responsibility for implementation of those directions accordingly.

83. We disagree with RingCentral that responsibility for configuring or other tasks that fall within the definition of installation should automatically rest with the owner/operator in some circumstances, and we believe that a manufacturer of a hosted MLTS that configures the system is serving in that respect as an installer. Similarly, we note that some manufacturers provide systems with self-installing software. In that event, the manufacturer is also performing some of the functions of an installer. We agree, however, with RingCentral that if an entity performs the functions of an installer at the direction of the enterprise operator or manager, then the operator or manager in that scenario is also serving as the installer. Consistent with this approach, there may be multiple parties performing installation functions for a single MLTS. An enterprise manager or operator that directs aspects of the installation may, depending on the degree of its involvement, be responsible for complying with the installer's obligations. Evidence that the manufacturer has been retained specifically to install the system could be relevant in showing that the manufacturer is at least partly responsible for the obligations of an installer under Kari's Law and our rules, but the absence of such an agreement would not necessarily mean that the manufacturer has not performed any installation functions.

84. Panasonic states that the definition of a ''person engaged in the business of installing an MLTS'' should be limited to initial installation and configuration of the system or substantial improvement, ''lest over-long potential liability risk the exit of skilled installers from the market.'' We decline to limit the definition to initial installation and configuration of the system, as Panasonic requests. Panasonic presents no data to support its conclusion that this would lead to the exit of skilled installers from the market.[8]

g. Definition of Person Engaged in the Business of Managing an MLTS; Person Engaged in the Business of Operating an MLTS; Role of the Enterprise Owner

85. The Commission proposed to define a person engaged in the business of managing an MLTS as:

> The entity that is responsible for controlling and overseeing implementation of the MLTS after installation. These responsibilities include determining how lines should be distributed (including the adding or moving of lines), assigning and reassigning telephone numbers, and ongoing network configuration.

The Commission proposed to interpret this definition to mean that a user of MLTS services that does not own or lease the MLTS or exercise any control over it would not be deemed to be engaged in the business of managing the MLTS. Under this interpretation, an enterprise that contracts with a third party to provide a total solution for MLTS, including acquiring the MLTS equipment, configuring the system, completing calls, and providing services such as maintenance and end user support, would not be deemed to be engaged in the business of managing the MLTS unless it exercised actual control over the system. The Commission also proposed to define a person engaged in the business of operating an MLTS as ''[a] person responsible for the day-to-day operations of the MLTS.'' The Commission sought comment on these proposed definitions.

86. In addition, the Commission sought comment on whether there are circumstances in which the proposed definitions of MLTS ''manager'' or ''operator'' should extend to enterprise owners. The Commission noted that commenters on the Enterprise Communications NOI emphasized that some enterprise owners purchase, operate, and maintain their own on-premises telephone systems with PBX equipment, while other enterprise owners enter contractual arrangements with third-party providers of network and hosted services. The Commission stated that it did not believe Kari's Law was intended to extend liability to enterprise owners that purchase MLTS services but do not exercise control over the manner in which such services are configured or provided. Nevertheless, the Commission stated, there may be instances where enterprise owners purchase, operate, and maintain their own MLTS systems, or where they exercise active control over the configuration and provision of MLTS by third parties. The Commission sought comment on whether in such instances enterprise owners should be deemed to be MLTS managers or operators and what indicia of active control should be considered in making this determination.

87. Commenters raise a number of issues with respect to the proposed definitions of MLTS operator and manager. NASNA and West Safety generally agree with the proposed definitions, while other commenters seek changes to the definitions or ask the Commission to clarify the role of the manager, operator, and enterprise owner.

88. We clarify the allocation of responsibility among the installer, operator, manager, and enterprise owner in certain respects. With these clarifications, we do not believe any changes are needed in the wording of the definitions of person engaged in the business of managing an MLTS and

[8] Comcast asks the Commission to make clear that in instances where an MLTS provider installs a system that has been pre-configured to be capable of transmitting direct-dialed 911 calls to the appropriate PSAP, the installer has fulfilled its responsibilities under Kari's Law and the implementing rules. We decline to make this clarification because we believe the definition of a person engaged in the business of installing an MLTS is sufficiently clear with respect to the obligations of an installer. In addition, we note that the installer's obligations may extend beyond installing a system that has been ''pre-configured'' for direct dialing of 911 and may include, for example, installing a system capable of providing MLTS notification.

person engaged in the business of operating an MLTS. Accordingly, we adopt these definitions as proposed.

89. We are persuaded by the arguments of BRETSA, NASNA, and RedSky that even a ''passive'' enterprise owner may perform some of the functions of an MLTS installer, manager, or operator under our rules and that the owner in that event should be responsible to the extent a violation of the statute or rules results from that conduct. NASNA states that an MLTS owner ''still has an obligation to hold its third-party service provider(s) responsible for ensuring compliance.'' RedSky similarly asserts that the Commission should not exclude passive owners from the definition, stating that ''no MLTS user can be successful in a vacuum. They have to provide their operational requirements to the MLTS provider. These requirements can and must include direction to meet appropriate regulatory requirements. It is incumbent on the MLTS provider to ensure that the provided system or service is capable of meeting these requirements.'' [9] BRETSA states that the rules should hold MLTS customers responsible for compliance to the extent the customer installs, maintains, operates and/or configures the MLTS.[10]

90. We agree with these commenters that an enterprise owner has an obligation to hold third-party service providers responsible for complying with Kari's Law and our rules. We clarify, however, that a passive owner generally should not face liability if the owner contracts with a responsible third party and includes compliance requirements in its agreement with the service provider. We decline to find that a hotel is not an installer, manager, or operator of MLTS under the rules absent ''compelling evidence to the contrary,'' as AHLA requests. AHLA states that hotels typically do not perform the functions of an installer, manager, or operator. In that event, and provided that the hotel contracts with responsible third parties and includes compliance requirements in the agreements, the hotel should not face potential liability under the statute or our rules.

91. Commenters also ask the Commission to clarify the allocation of responsibility for complying with Kari's Law and the regulations in the context of hosted, cloud-based MLTS service. AT&T asserts that any new MLTS rules should clearly delineate the roles and responsibilities of the various players in the MLTS ecosystem and that any single stakeholder may play multiple roles in the MLTS ecosystem depending on how an MLTS system is configured. ''For example, when AT&T offers a hosted MLTS solution to a business, AT&T should be responsible for compliance with the requirements applicable to those engaged in the installing, managing, or operating MLTS. However, where AT&T offers a Session Initiation Protocol . . . trunking solution to provide Public Switched Telephone Network . . . access for call delivery and the customer operates and manages the PBX, the customer should have responsibility for compliance. In both cases, the manufacturer should bear responsibility for ensuring its products are compliant.''

92. We conclude that whether a party is a manager, operator, or installer should be based on the party's conduct and whether it has performed activities that fall within the definition in our rules. Consistent with this, we agree with AT&T that when it offers a hosted MLTS solution to a business, it is responsible for compliance with the requirements applicable to those engaged in installing, managing, or operating an MLTS to the extent that its hosting service includes those functions. On other hand, if AT&T offers a trunking solution that provides public switched telephone network access with the customer operating and managing the PBX, we agree that the customer should have responsibility for compliance as an operator and/or manager.

93. RingCentral disagrees with AT&T's suggestion that hosted PBX providers would be installers and managers and urges the Commission to clarify that manufacturers and sellers are not installers or managers simply by virtue of providing systems. RingCentral asserts that ''[p]roviders of hosted cloud-based PBX may simply provide the MLTS, without installation or implementation of the system after installation. . . . The definition of 'manager' could . . . inadvertently include a cloud-based MLTS provider, as the definition includes a person who is involved in 'implementation of the MLTS after installation.'' We note that a manufacturer or seller would be deemed an installer or manager only to the extent that it provides installation or management services with respect to the system. We offer these as illustrative examples for guidance on how the Commission would apply the rule. Any determination of a particular party's liability will necessarily require a fact-specific, case-by-case inquiry. The parties' contractual arrangements may be relevant in this determination, but they are not determinative, and an entity that performs the functions of a manager in violation of a contractual obligation not to do so could still be deemed a ''person engaged in the business of managing an MLTS.''

94. Finally, we agree with commenters on the importance of the enterprise owner/MLTS customer's involvement in some situations. Commenters assert that the MLTS customer's involvement may be necessary for compliance, including updating end user location information and selecting an appropriate destination point for the 911 notification. As INCOMPAS and NCTA point out, the owner/customer in such situations is performing some of the functions of an MLTS operator or manager. Specifically, INCOMPAS states that in most circumstances, the customer or owner serves as the true operator of the system and exercises considerable control over MLTS service provided by INCOMPAS members. Once the system is installed and configured, the enterprise customer controls the amount of information that flows to managers and operators of these systems, including location information, and decides the responsibilities for the parties involved. Where enterprise customers have assumed primary operational roles with respect to the MLTS, INCOMPAS urges the Commission to ''be careful not to attach liability for violations of the rules to

[9] RedSky also states that the term ''operator'' is not as pertinent as the term and concept of provider and that the Commission should introduce the terms ''MLTS provider'' and ''MLTS user'' to capture the actual business environment. In addition, RedSky suggests that the Commission replace the term ''person'' throughout the rules with the term ''person or entity.'' We decline to use ''MLTS provider'' and ''MLTS user'' because those terms are not used in Kari's Law, and our intent is for the rules to track the language of the statute whenever possible. We decline to substitute the term ''person or entity'' for the same reason; ''person'' is the term used in Kari's Law. We also note that Kari's Law was codified as part of Chapter 5 of the Act, and that Chapter 5 defines ''person'' to include ''an individual, partnership, association, joint-stock company, trust, or corporation.''

[10] BRETSA also states that MLTS providers with superior knowledge of the rules will invariably include in their sales and service agreements indemnification provisions that will undermine the deterrent effect of penalties under the rules. To address this, BRETSA urges the Commission to prohibit MLTS providers from requiring customers to indemnify them against liability for rule violations. We decline to prohibit providers from requiring customers to indemnify them because we find that any conclusions about the effect of such agreements on compliance with Kari's Law and the implementing rules would be highly speculative at this time. BRETSA also interprets the ''person engaged in the business of'' language to exclude a person that is engaged in a business unrelated to the provision of configuration or operation of an MLTS but that purchases or leases an MLTS for its use, and BRETSA proposed revisions to bring such persons under the rules. We decline to adopt these proposed revisions because we believe it is clear that Kari's Law and the implementing rules apply to a person engaged in a business unrelated to the operation of an MLTS that purchases or leases an MLTS for its own use.

providers that are only engaged in technical support or network oversight.'' NCTA asserts that some MLTS networks—typically those that use a customer-managed PBX—enable a customer to program or alter the calling pattern of a MLTS. In those instances, NCTA urges the Commission to assign sole responsibility for ensuring compliance with Kari's Law to the customer, who would be ''engaged in the business of managing an MLTS,'' rather than the voice service provider or equipment installer. Comcast also points out that an enterprise owner may choose to take on additional responsibilities with respect to the MLTS.

95. To the extent a violation of the statute or rules results from failure of the enterprise owner/customer to perform these tasks properly, the owner/customer will be responsible for that violation. Consistent with this approach, we agree with NCTA and Comcast that if the enterprise customer controls the routing of calls, the enterprise's voice service provider has fulfilled its responsibilities under the statute and regulations if it ensures that its service will not interfere with the customer's ability to configure the MLTS to be capable of transmitting direct-dialed calls to 911.

96. AT&T, RedSky, and USTelecom urge the Commission to clarify that the MLTS installer, manager, or operator need only offer the central notification capability to the customer to be in compliance with the law. AT&T states that some customers may not wish to have central notification if, for example, they have a small facility or they do not have staff to support monitoring notifications at all hours, and ''the MLTS provider should not be responsible for compelling the customer to utilize a capability that the customer has judged unnecessary.'' USTelecom states that an enterprise customer may choose not to designate or maintain a central notification point. We agree with these commenters that a manager, operator, or installer should not be liable if it performs its obligations in compliance with the statute and rules, but the enterprise customer declines to use the services offered.

4. Compliance Date and Transition Provisions

97. The effective date provision of Kari's Law states that the statute ''shall apply with respect to a multi-line telephone system that is manufactured, imported, offered for first sale or lease, first sold or leased, or installed after'' February 16, 2020. In the NPRM, the Commission proposed that the compliance date for regulations implementing Kari's Law would be consistent with this date. Accordingly, the proposed direct dialing and notification requirements would apply to MLTS manufactured, imported, offered for first sale or lease, first sold or leased, or installed after February 16, 2020. The Commission sought comment on this proposed compliance date as well as on alternatives, and stated that commenters offering alternatives should explain how any date other than February 16, 2020, would be consistent with the statutory language.

98. The Commission also sought comment on whether to adopt transitional rules to inform consumers of the 911 capabilities of legacy MLTS that are not subject to the direct dialing and notification requirements of Kari's Law. The Commission noted, for example, that the direct 911 dialing and notification statute enacted in Texas requires enterprises to place a sticker adjacent to or on non-compliant MLTS devices providing instructions on how to call 911, and that the Commission's interconnected VoIP E911 rules require service providers to distribute stickers or labels warning subscribers that E911 service may be limited. The Commission sought comment on whether to require MLTS installers, operators, and managers to notify callers how to dial 911 from legacy systems, as well as options for doing so, associated costs, and potential sources of statutory authority for such requirements.

99. Some commenters support the proposed compliance date of February 16, 2020. Other commenters support an earlier compliance date. The record also is divided on whether the Commission should adopt transition rules, such as disclosure requirements, for legacy MLTS.

100. We adopt a compliance date of February 16, 2020, for the regulations implementing Kari's Law. This is supported by commenters such as West Safety, which asserts that the February 16, 2020, compliance date will afford market participants ''sufficient advanced notice to make informed manufacturing, planning, and purchasing decisions and will give enterprises the proper level of financial and operational flexibility to retain their existing, grandfathered MLTS until end-of-life.''

101. We decline to adopt an earlier date because we find that the February 16, 2020, date is consistent with the plain language of Kari's Law, as well as with the intent of the statute. The statute applies prospectively as new MLTS are brought into use after February 16, 2020, or as existing systems are installed or first sold or leased after that date. This indicates that Congress intended to balance the benefits of requiring direct dialing before that date against the cost to enterprises of having to implement these requirements with respect to existing, legacy equipment currently in use. Commenters who urge the Commission to adopt an earlier date do not address how that would be consistent with the statutory language of Kari's Law.

102. With respect to transition obligations, Ad Hoc asserts that the Commission has no statutory authorization to adopt transitional rules for grandfathered MLTS equipment. Further, Ad Hoc urges the Commission to refrain from ''impractical mandates'' for notification to end users, such as stickers on equipment, also deeming them ''ineffective.'' AT&T similarly states that the Commission should not require warning labels for grandfathered MLTS because many of these systems have been in place for years, and requiring warning labels on each of them would be ''incredibly disruptive to customers.'' Panasonic states that the Commission should not impose specific employee notification requirements on MLTS installers, operators, and managers but should instead encourage ''voluntary, industry-led initiatives'' to do so. TIA urges the Commission to launch a public education campaign aimed at educating the public on the capabilities of legacy MLTS equipment and, as part of this program, to take steps to ensure that potential MLTS users are aware of their system's capabilities. NENA and NASNA, on the other hand, urge the Commission to adopt disclosure requirements for legacy MLTS. NENA asserts that it strongly supports some form of conspicuous notification on any MLTS handset not in compliance with the end-state Kari's Law implementation rules and that it has enumerated model requirements for such notification in its Model MLTS Legislation. NASNA states that the Commission should require MLTS owners to place a sticker near or on non-compliant MLTS devices ''to avoid situations such as the one that gave rise to Kari's Law in the first place.''

103. We decline to require enterprises to notify end users of the 911 capabilities and limitations of MLTS that are not subject to the statute and our rules. Such a requirement falls outside the scope of Kari's Law and this proceeding to implement it. And even if we were consider adopting such a requirement under other statutory authority, neither the NPRM nor the record comment has addressed how the

benefits weigh against the costs of imposing such a requirement. Instead, as Panasonic suggests, we encourage enterprises to disclose the limitations on dialing 911 from such MLTS as part of voluntary best practices.

104. AT&T and NASNA also raise the issue of what level of upgrades to an existing MLTS would be significant enough to constitute manufacture, importation, sale, lease, or installation triggering compliance with Kari's Law when upgrades are made after February 16, 2020. AT&T states that upgrades unrelated to core MLTS functions in legacy systems should not trigger the obligation to comply with Kari's Law and the implementing rules. NASNA urges the Commission to ensure that any improvements to MLTS hardware or software that an enterprise makes in the future provide direct dialing and notification capabilities, as well as the same dispatchable location information that would be received by a PSAP.

105. On the basis of the record here, we decline to specify the level of improvements to an existing MLTS that would trigger compliance with the statute and regulations. We disagree with NASNA that any improvements to an existing MLTS, no matter how minor, should trigger the obligation to comply with Kari's Law and the implementing regulations. We conclude that such a policy would be inconsistent with the plain language of Kari's Law, which limits application of the statute to MLTS manufactured or brought into use after February 16, 2020, and with our decisions about upgrades in the context of the discussion above regarding the definition of ''improvement to the hardware of software of the system.'' It is also unclear what would constitute core MLTS functions in this context and exploring this issue further and more broadly could add to the resources that will be required to comply with the requirements of Kari's Law and our implementing regulations. Thus, we believe it would be difficult to answer this question in the abstract and more appropriate for the Commission to address it in response to a specific fact pattern, should one arise. Parties may file a request for a declaratory ruling to eliminate uncertainty, and the Commission can resolve any uncertainty in the marketplace as warranted.

5. Enforcement

106. Kari's Law empowers the Commission to enforce the statute under Title V of the Act, ''except that section 501 applies only to the extent that such section provides for the punishment of a fine.'' The Commission sought comment in the NPRM on how it should enforce and provide oversight of the requirements of Kari's Law. The Commission also noted that there can be great variation in the business relationships between MLTS installers, operators, and managers and sought comment on who, or which entities, should bear responsibility for violations of the proposed rules. In addition, the Commission proposed to apply a presumption that the MLTS manager bears ultimate responsibility for compliance with the rules implementing Kari's Law. As an example, the Commission stated that if an MLTS fails to comply with the rules, the MLTS manager would be presumed to be responsible for that failure, at least in part, unless the manager can rebut that presumption by demonstrating compliance with its obligations under the statute and rules. The Commission sought comment on this proposal. The Commission also asked how it should apportion liability in situations where multiple parties may be responsible for compliance with the statute and proposed rules, including whether there are situations in which parties should be held jointly responsible.

107. As proposed, we adopt a rule that if an MLTS fails to comply with the rules, the MLTS manager is presumed to be responsible for that failure, at least in part, unless the manager can rebut the presumption by demonstrating compliance with its obligations under the statute and rules. Most commenters that address the issue support the proposal for a presumption that the MLTS manager bears ultimate responsibility for compliance with the rules implementing Kari's Law. INCOMPAS, for instance, states that it supports the presumption because where enterprise customers have assumed primary operational roles with respect to the MLTS, ''the Commission needs to be careful not to attach liability for violations of the rules to providers that are only engaged in technical support or network oversight.''

108. Verizon, on the other hand, asserts that the Commission should not adopt the presumption because it would not reflect the variety of contractual arrangements that can allocate implementation and system maintenance duties among installers, operators, managers, and enterprise customers. Instead, Verizon asserts, the Commission should assess compliance ''based on how the contractual arrangements allocate the respective responsibilities.'' We disagree that the presumption would be inconsistent with such multi-party contractual arrangements. We intend to have a case-by-case determination of who is ''engaged in the business of managing'' the MLTS (including by looking at the parties' contracts) before imposing liability. The party or parties that managed the MLTS would then have the burden of going forward with evidence to show that they met their obligations under the statute and rules.

109. We decline to adopt the proposals of RedSky and Avaya for apportioning liability in situations where multiple parties may be responsible for compliance. RedSky states that if the MLTS manufacturer does not provide a system that can meet the requirements, it should bear 100% of the responsibility; if the MLTS manufacturer provides a system that can meet the requirements and the operator chooses not to offer the required services, the operator should bear 100% of the responsibility; and if the manufacturer and the operator offer to meet the required services, then the MLTS end user should bear 100% of the responsibility. Avaya asserts that the MLTS operator ultimately should be responsible for compliance and that if services are subcontracted, the operator must ensure that the subcontractor implements compliant technologies and should remain primarily responsible for compliance. Ad Hoc responds that the proposals of RedSky and Avaya would amount to a presumption that the operator is liable in certain circumstances and that the Commission should ''reject this premature, overzealous and ineffective approach to enforcement of any rules it may adopt in this proceeding.'' Instead, we believe a case-by-case assessment of liability based on the facts specific to the particular investigation is the most appropriate way to enforce Kari's Law and our rules.[11]

110. We also decline to establish the safe harbor suggested by INCOMPAS. INCOMPAS asserts that if a manufacturer furnishes an MLTS with appropriate functionality, and an installer configures a system capable of direct dialing, alert notification, and sending dispatchable location information, then the Commission should provide a ''safe harbor for these parties in the service chain from liability if and when properly installed MLTS are not ultimately used properly.'' Panasonic and TIA state that

[11] The Florida Bureau of Public Safety urges the Commission to adopt a tiered approach to the enforcement of violations of Kari's law under which first time offenders would receive a warning ''with a strict but reasonable time frame to correct any deficiencies and with an appropriate penalty if the violation is not corrected.'' We decline to adopt this proposal because we believe it would be inappropriate to limit the Commission's enforcement discretion in this manner.

equipment manufacturers should not be liable for noncompliance of an MLTS manager with Commission rules unless the reason for the noncompliance is the design of the MLTS equipment. A manager, an operator, or an installer would not be liable if it performs its obligations in compliance with the statute and rules, but the enterprise customer declines to use the services offered. The same principle would apply to MLTS manufacturers, importers, sellers, and lessors; if the manufacturer, importer, seller, or lessor satisfies its obligations under the statute and rules, but the enterprise declines to use the system properly, then the manufacturer, importer, seller, or lessor should not be liable for the resulting noncompliance. Determinations of responsibility among multiple parties will necessarily be fact-specific, and we do not believe a safe harbor is appropriate or needed.

111. We also decline to exclude equipment manufacturers from liability for the noncompliance of an MLTS manager unless the noncompliance results from the equipment's design, as Panasonic and TIA request. We find that the manufacturer's obligations and potential liability under Kari's Law and our rules are sufficiently clear and that the enforcement approach Panasonic and TIA propose is not needed. Further, Kari's Law and our rules do not reference the ''design'' of an MLTS, and we believe doing so would introduce ambiguity into the enforcement process.

6. Complaint Mechanisms

112. In the NPRM, the Commission stated that it envisioned relying on existing Commission complaint mechanisms to facilitate the filing of complaints for potential violations of Kari's Law. For example, the Commission stated, PSAPs and the public could report problems via the Public Safety and Homeland Security Bureau's Public Safety Support Center or the Commission's Consumer Complaint Center.

113. We conclude that our existing complaint mechanisms should be sufficient for addressing potential violations of Kari's Law. Several commenters assert that the Commission's existing mechanisms are sufficient for the filing of complaints for potential violations of Kari's Law. We also provide that persons alleging a violation of the rules implementing Kari's Law may file a complaint under the procedures set forth in part 1, subpart E of our rules.

114. We also decline to establish procedures similar to those used for accessibility complaints under the Twenty-First Century Communications and Video Accessibility Act (CVAA) and section 255 of the Act. Panasonic and TIA urge the Commission to consider establishing a mechanism similar to that used for accessibility complaints under the CVAA or section 255 of the Act, including a mechanism for giving MLTS manufacturers, installers, operators, and managers an opportunity to resolve complaints informally before the Commission undertakes any enforcement action. Although the CVAA includes a provision directing the Commission to establish procedures for complaints and enforcement actions arising out of violation of certain accessibility requirements, Kari's Law does not include a corresponding provision. In addition, the Public Safety Support Center and Consumer Complaint Center procedures are flexible enough to provide an opportunity for informal resolution of complaints prior to enforcement should the Commission determine that such an opportunity would be appropriate.

115. BRETSA urges the Commission to establish a separate mechanism for PSAPs to report MLTS noncompliance. We decline to do so, given that the Public Safety Support Center process will be sufficient for this purpose.

7. Preemption of State Law

116. The preemption provision of Kari's Law states that ''[n]othing in this section is intended to alter the authority of State commissions or other State or local agencies with jurisdiction over emergency communications, if the exercise of such authority is not inconsistent with this chapter.'' Commenters sought guidance, however, regarding the general effects of this provision on state and local law.

117. Specifically, AT&T and BRETSA ask the Commission to clarify the effect of Kari's Law on state laws affecting 911 service for MLTS. AT&T urges the Commission to clarify how any new federal MLTS requirements will operate ''vis-à-vis additional, and sometimes conflicting, state MLTS requirements.'' AT&T, however, does not provide specific examples of any state requirements that appear to have the potential for conflicting with federal regulations implementing Kari's Law. BRETSA asks the Commission to find that state laws requiring existing MLTS systems to provide direct dialing, on-site notification, and interior location information are not inconsistent with Kari's Law, RAY BAUM'S Act, or the Commission's proposed rules. BRETSA, however, does not cite any such state laws, or even assert that any such laws exist. In addition, BRETSA asserts that federal rules implementing Kari's Law may establish grounds for civil claims and liability under state common law and statutes and urges the Commission not to limit a state's authority to ''determine civil liability or presumptions thereof, and any immunities therefrom, and any penalties for violation arising from violation of state MLTS 9–1–1 obligations.'' NARUC notes that it has adopted a resolution suggesting that any federal rules on MLTS direct dialing and notification ''should be written to permit States to impose additional requirements 'presuming that such additional requirements do not contradict or conflict with federal requirements.' '' NARUC's resolution does not supply specific examples, however.

118. As mentioned above, our objectives in the context of this broader rulemaking are to prescribe rules and regulations that we find are necessary to carry out Kari's Law, and to provide additional clarity and specificity regarding some of the terms used in the statute and the obligations placed on covered entities. We chose, in our discretion, to proceed incrementally, and thus did not propose to offer interpretations or rules going to the preemption provision of Kari's Law. Thus, at this time, and based on the record in this proceeding, we decline to provide guidance on the general effect of Kari's Law and our implementing regulations on individual state and local laws or on the ''exercise of . . . authority'' of a state's or locality's ''jurisdiction'' over ''emergency communications'' under a hypothetical set of facts. The record does not reflect specific examples (or even sufficient indication of a widespread problem) of state or local exercise of jurisdiction that may be inconsistent with the federal regulatory regime.

119. In addition, BRETSA asserts that waiver is an essential element of a regulatory scheme and asks the Commission to clarify that state or local public safety agencies and officials have authority to grant waivers of the federal MLTS 911 rules ''upon finding that alternative deadlines and arrangements better serve the public safety or will avoid undue financial hardship.'' BRETSA also asserts that state and local public safety officials and agencies should have the opportunity to impose conditions on waivers, such as training requirements for enterprise personnel or contractors. We decline to find that state and local public safety authorities have authority to waive the Commission's MLTS rules, as BRETSA requests, or to

impose conditions on such waivers. Requests for such waivers should, as with other Commission requirements, be presented to the Commission, while requests for waivers of state and local requirements should be presented to the appropriate state or local governmental entity.

8. Equipment Authorization Rules

120. The Commission also sought comment in the NPRM on whether to modify the equipment authorization rules as they apply to MLTS equipment manufactured after February 16, 2020. In addition, the Commission asked whether MLTS applications for equipment authorization under parts 2, 15, or 68 should constitute a representation that such equipment complies with MLTS 911 requirements.

121. Commenters largely support using existing equipment authorization rules. While NPSTC recommends that the Commission implement a formal process for compliance with the provisions of Kari's Law as part of an equipment authorization process, other commenters state that a formal process would be unworkable because many MLTS products are software-based solutions that need to be configured and installed on premises. Panasonic and TIA also assert that any modified equipment authorization rules would apply only to hardware-based solutions and that this would constitute an unequal burden on such solutions.

122. We decline to amend our equipment authorization procedures because we conclude that the existing equipment authorization procedures are sufficient. The MLTS marketplace represents a broad range of technologies that are continuing to evolve from more traditional, circuit-based solutions to wireless, cloud-based, and VoIP solutions, and we seek to ensure that our rules preserve flexibility and maintain technological neutrality.

9. Voluntary Best Practices

123. The Commission in the NPRM asked commenters to identify voluntary best practices that can improve the effectiveness of direct dialing and notification for MLTS. The Commission noted, for example, that the Michigan State 911 Committee encourages MLTS operators to work directly with local public safety entities to ensure compliance and ''strongly recommend[s] that every MLTS operator work with their local 911 system manager/director to test the ability to dial 911 from the station lines associated with MLTS systems any time an MLTS has been installed or upgraded.'' The Commission sought comment on this and other recommended or potential best practices that would help enterprises ensure the effectiveness of direct dialing and notification, including best practices for training on-site emergency personnel and others responsible for the implementation of direct dialing and notification. Commenters that address this issue generally encourage the development of voluntary best practices for direct dialing and notification under Kari's Law.

124. We encourage industry and the public safety community to work together to develop voluntary best practices that will help enterprises facilitate first responder access and minimize delays to response. NENA states that ''[r]ecognizing the diversity in enterprise IT staffing . . . means all players in the MLTS 9–1–1 space—including manufacturers, sellers, and 9–1–1—should contribute to education and development of best practices for MLTS operation.'' Cisco and BRETSA note the need for development of a standard testing protocol that would be employed when installers configure MLTS for 911, which we believe may be helpful. TIA states that efforts are underway to create a working group with members from industry and public safety to develop best practices and standards regarding Kari's Law requirements and the dispatchable location mandate under RAY BAUM'S Act. Several commenters also emphasize the need for a public awareness or education campaign for entities affected by the new rules. As noted above, we also believe it may be helpful for this effort to include guidance on disclosing the limitations of 911 dialing from legacy MLTS equipment.

125. Some commenters make suggestions we believe are more appropriate for inclusion in voluntary best practices. BRETSA suggests that the Commission require MLTS providers to supply a copy of the rules to each customer. NENA asserts that although MLTS operators and managers are generally in the best position to maintain the unique registered locations of their MLTS, vendors and manufacturers ''must bear some responsibility to (1) encourage accurate and regular update of location information, and (2) provide means to alert operators and managers when registered location information has become out-of-date or hardware has been moved.'' We decline to require these practices, but we encourage industry and public safety entities to consider them in the development of best practices.

126. We also agree with commenters about the importance of public outreach, and we intend to quickly develop and disseminate informational materials and to collaborate on outreach with our federal, state, and local partners, the public safety community, and industry.

10. Comparison of Benefits and Costs

127. The Commission sought comment on the costs and benefits of satisfying its proposed direct dialing and notification rules for MLTS coming into service after February 16, 2020. The Commission asked whether there are alternative methods of meeting the requirements of Kari's Law that would reduce costs and/or increase benefits and whether there are any barriers for those wishing to replace their MLTS after this date that would be costly to overcome. The Commission also requested comment on the expected lifespan of existing MLTS that are not currently able to meet the requirements of the proposed rules, the prevalence of such systems today, and the expected prevalence of such systems in 2020. In addition, the Commission sought comment on the cost of upgrading to an MLTS that supports the requirements of the proposed rules. The Commission noted that ''[b]ecause most of the currently deployed MLTS are capable of being configured to meet the requirements of our rules today, without improvement to the hardware or software of the system, we tentatively conclude that our rules will impose no incremental costs to those who replace their MLTS as they come to the end of their useful life.'' Accordingly, the Commission sought comment on this tentative conclusion.

128. Regarding notification, the Commission sought comment on its tentative conclusion that the costs of implementing its proposed requirements will not exceed the value of their benefits. The Commission also sought comment on any particular costs involved in imposing the notification requirement and alternative methods consistent with Kari's Law that may reduce costs and/or improve benefits. Further, the Commission sought comment on the costs and benefits associated with its proposed definitions. The Commission also asked for comment on the benefits and costs associated with any additional notification requirements the Commission might adopt, such as requiring operators of legacy MLTS to inform consumers of the 911 capabilities of those systems.

129. Some commenters support the Commission's tentative conclusions.

West Safety states that the proposed rules also appropriately balance the benefits and costs of implementation of direct dialing and notification by setting a compliance date of February 16, 2020, consistent with Kari's Law. West Safety asserts that ''direct access to 9–1–1 without a dialing prefix can typically be implemented by appropriate configurations to MLTS of all types at little or no cost to the enterprise.'' West Safety also states that notification functionality is available natively in most MLTS equipment or can be supported via a third-party application. Accordingly, West Safety asserts, ''the cost of implementation is minimal, whereas the benefits of closing this regulatory gap are significant.'' Moreover, by adopting a prospective compliance date that applies only to MLTS offered for first sale after February 16, 2020, West Safety submits that ''market participants will be afforded sufficient advanced notice to make informed manufacturing, planning and purchasing decisions, and enterprises will have the proper level of financial and operational flexibility to retain their existing, grandfathered MLTS until end-of-life.'' Regarding alternative methods of meeting the requirements of Kari's Law that would reduce costs and/or increase benefits, RedSky states that it offers a no-cost notification service when its call routing service is used. RedSky also states that for those wishing to replace their MLTS after February 16, 2020, ''[t]he cost with or without support to meet the requirements of the Rule should be equivalent.'' RedSky believes that the vast majority of existing MLTS can meet the requirements of the rule without significant modification.

130. Other commenters generally agree with the Commission's proposals, but advocate that the Commission take a more measured approach towards adopting rules implementing Kari's Law than that suggested in the NPRM. To illustrate, Ad Hoc advises that as the Commission ''considers how best to implement the statutory mandates of Kari's Law and section 506 of RAY BAUM's Act, the Commission should strictly adhere to its 'light touch' regulatory philosophy.'' Regarding notification, for example, Ad Hoc urges the Commission to avoid imposing detailed requirements beyond the proposed rule and to refrain from imposing transitional requirements on legacy MLTS.

131. The rules we adopt today to implement the direct dialing and notification requirements of Kari's Law balance the needs of stakeholders and maximize many public safety benefits. These benefits include potentially preventing fatalities, injuries, or property damage, improving emergency response time and access to emergency services, reducing delays in locating 911 callers, narrowing the gap between MLTS 911 service capabilities relative to other communications services subject to 911 requirements, driving further technology development, and lowering the cost of 911 solutions for MLTS. The record developed in response to the NPRM confirms that many existing, installed MLTS support direct dialing to 911 and notification. Further, the record developed in response to the 2017 Enterprise Communications NOI suggests that direct dialing and notification rules will impose no incremental costs to those replacing their MLTS at the end of its useful life. Because Congress mandated compliance with its direct dialing and notification requirements after February 16, 2020, and expressly grandfathered MLTS systems in service before that date, Congress has already crafted a balance of costs and benefits with respect to compliance to which the Commission is bound. Further, when Congress adopted Kari's Law, it contemplated that the requirements would evolve with advancements in MLTS technology. The record in this proceeding reflects that the modern enterprise communications ecosystem is complex and that legacy TDM-based technology is evolving towards an IP-based MLTS environment.

132. As Congress has specifically legislated to create this framework and identified areas in which the Commission shall enforce the statute, Congress has already assessed the benefits of its requirements. In the NPRM, the Commission observed that a Congressional Budget Office analysis concluded that most MLTS systems already are configured to meet the direct dialing and notification requirements of Kari's Law. In evaluating the Senate and House versions of Kari's Law, Cisco stated that it was not aware of any technological barriers to the implementation of Kari's Law as applied to MLTS. In the NPRM, the Commission cited eight states and some local governments that already have laws requiring direct dialing for 911 from MLTS. For these state and local jurisdictions, the Commission noted that its proposed rules would generally not affect the status quo and so would likely have little to no impact from a cost perspective. Moreover, the Commission observed that the existence of state-level requirements has already driven the manufacture of MLTS equipment that supports 911 direct dialing, much of which may have been marketed and sold in jurisdictions that do not have state or local requirements.

133. In this analysis, we address whether our rules achieve the benefits of Kari's Law in a cost-effective manner. The record supports adopting implementing regulations of Kari's Law and the Commission's conclusion in the NPRM that these rules are necessary to provide additional clarity and specificity regarding the terms used in the statute and the obligations placed on covered entities. As demonstrated by commenters, implementing regulations can provide important guidance to covered entities on complying with the law and the mechanism the Commission will use to enforce the statute. Accordingly, our rules include definitions of some of the terms in Kari's Law, as well as other provisions to clarify the obligations of entities regulated under the statute. The rules we adopt today generally track the statutory requirements of Kari's Law, are technologically neutral, and leverage advances in technology to improve access to emergency services as envisioned by Congress. The flexibility and minimum criteria we establish for direct dialing and notification should offset any potential burdens associated with compliance with our rules. Therefore, we conclude that there will be no immediate costs associated with meeting the requirements of our rules and that the amount of flexibility and lead time for compliance will help to minimize future potential costs.

134. The Commission also sought comment on the cost and expected benefit of the options proposed in the NPRM for implementing the notification requirement of Kari's Law, including whether to specify staffing requirements for the notification point. The Commission noted that while some state MLTS statutes include notification requirements, these statutes either expressly provide that the enterprise does not have to make a person available to receive a notification, or they are silent on whether the destination point must be staffed. The Commission stated that it did ''not believe Congress intended to impose staffing or monitoring requirements that would impose unreasonable costs or limit the flexibility of MLTS installers, managers, and operators to develop efficient and cost-effective notification solutions that are appropriate for the technology they use, such as visual alerts on monitors, audible alarms, text messages, and/or email.'' Rather than requiring staffing or monitoring, the Commission believed ''that allowing

notifications to be directed to the points where they are likely to be seen or heard by existing staff achieves these goals at a negligible cost above what an MLTS manager would already spend when purchasing an MLTS.''

135. The record supports the Commission's view that Congress did not intend to impose burdensome staffing or monitoring requirements that would impose unreasonable costs or limit the flexibility of MLTS installers, managers, and operators to develop efficient and cost-effective notification solutions. The record supports setting minimum criteria for the notification to maximize benefits but also providing enterprises significant flexibility to tailor notifications to meet their specific needs. Similarly, the record supports adopting a requirement that notifications be sent to a location on-site or off-site where someone is likely to hear or see the notification, but not requiring that enterprise staff or monitor the notification point at all times. Additionally, the record suggests that the Commission's definition of ''improvements to the hardware or software of the system'' strikes the right balance to ensure that enterprises will not incur significant costs or core system upgrades in connection with providing notification, as provided under Kari's Law.

136. Taken together, the notification requirements we adopt today establish the necessary conditions that will make it more likely than not that 911 callers using an MLTS upgraded or placed into service after February 16, 2020, will benefit from the notification provisions of Kari's Law at a negligible cost above what an MLTS manager or owner would already spend when purchasing or upgrading an MLTS. In sum, the record suggests that establishing some minimum criteria represents a cost-effective means to reasonably ensure that notification will be timely received by a person with authority to act on it while balancing the needs of stakeholders, maintaining technological neutrality, preserving flexibility for enterprises, and minimizing burdens associated with implementing the notification requirement of Kari's Law.

B. Dispatchable Location for MLTS and Other 911-Capable Communications Services

137. RAY BAUM'S Act directs us to consider rules requiring the conveyance of dispatchable location with 911 calls ''regardless of the technological platform used.'' Based on this directive, we adopt dispatchable location requirements for MLTS and other 911-capable services that do not have such requirements, including fixed telephony, interconnected VoIP service, Telecommunications Relay Services (TRS), and mobile text.

1. MLTS

138. In the NPRM, the Commission observed that when a 911 call is placed in an MLTS environment, the system may provide the PSAP with the location of a main entrance or administrative office rather than the location of the caller, which can lead to delays in locating the caller and result in injury or loss of life. By directing the Commission ''to consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call . . . including with calls from multi-line telephone systems,'' Congress in RAY BAUM'S Act signaled its intent that the Commission focus on ensuring highly precise location information whenever feasible in connection with MLTS 911 calls.

139. In the NPRM, the Commission proposed to proscribe the manufacture, import, sale, or leasing of MLTS in the United States unless the system is pre-configured such that, when properly installed, the dispatchable location of the caller will be conveyed to the PSAP with 911 calls. The Commission further proposed to proscribe the installation, management, or operation of MLTS in the United States unless the system is configured such that the dispatchable location of the caller will be conveyed to the PSAP with 911 calls. The NPRM proposed to apply these requirements to the same entities subject to Kari's Law. We adopt these proposals with certain modifications.

a. Definition of Dispatchable Location

140. Section 506 of RAY BAUM'S Act defines ''dispatchable location'' as ''the street address of the calling party, and additional information such as room number, floor number, or similar information necessary to adequately identify the location of the calling party.'' In the NPRM, the Commission noted the substantial similarity of this statutory definition to the definition of ''dispatchable location'' in the Commission's wireless E911 location accuracy rules. The Commission proposed to construe the definitions as functionally identical, aside from the specification of the technological platform to which each definition applies. The Commission also sought comment on whether to further define ''additional information'' that may be necessary to ''adequately identify the location of the calling party.'' Finally, the Commission noted that the wireless E911 definition of dispatchable location requires street address information to be validated, and asked whether validation should similarly be required for dispatchable location information associated with MLTS 911 calls.

141. We adopt the definition of dispatchable location proposed in the NPRM, without further specifying the types of location information that may be required to locate callers in specific instances. We also require that to meet the definition of dispatchable location for MLTS 911 calls (and for calls from other platforms discussed in succeeding sections below), street address information must be validated. We agree with commenters that the definition of dispatchable location needs to be both functional and flexible. As APCO states, ''[d]ispatchable location is well understood by public safety communications professionals to mean information sufficient for guiding first responders to the right door to kick down.'' However, what constitutes ''sufficient'' information will vary significantly depending on the environment from which a 911 call originates. For calls placed from multi-story buildings or campus environments, first responders will typically require specific floor and room information, in addition to the street address of the building. For calls placed from many small businesses, on the other hand, a street address alone may provide first responders all the information they need to quickly locate the caller.

142. Accordingly, the definition of dispatchable location that we adopt today gives participants in the MLTS marketplace flexibility in deciding what level of detail should be included in the location information provided to PSAPs for particular environments, so long as the level of detail is functionally sufficient to enable first responders to identify the location of a 911 caller in that environment. Given the diverse and evolving nature of the MLTS market and the breadth of enterprise environments at issue in this proceeding, we decline to expand upon the statutory definition in specifying instances in which ''additional information'' beyond street address must be made available, or in identifying specific categories of additional location information beyond floor level or room number.

143. We also conclude that the definition of dispatchable location for MLTS 911 calls should include a requirement that street addresses be validated. The majority of commenters who addressed this issue indicate that such validation is essential to ensure that a location is sufficiently reliable for dispatch of first responders.

Commenters also state that street address validation is feasible and can be implemented by MLTS managers and operators without incurring significant costs. NENA states that MLTS managers or operators have ''numerous methods'' for validating addresses against databases like the Master Street Address Guide or databases that support the Location Validation Function in the NG911 environment. Finally, including street address validation in our dispatchable location definition for MLTS and other services covered by this order establishes parity with the dispatchable location definition in our wireless E911 rules and renders the two definitions functionally identical.

144. Cisco and ATIS express concern about the cost and feasibility of validation requirements imposed on large enterprises if validation beyond street address or building level is required. We emphasize that our adopted definition of dispatchable location—as in the case of our wireless rules—only references validation of street address information. While we encourage the development of solutions that will support validation of more granular location information than street address, including floor and room number, we agree with commenters who caution against imposing overly prescriptive requirements at this time that could inhibit the development of innovative solutions.

b. MLTS Provision of Dispatchable Location or Alternative Location Information

145. In the NPRM, the Commission ''tentatively conclude[d] that it is feasible for 911 calls that originate from a MLTS to convey dispatchable location to the appropriate PSAP.'' The Commission based this tentative conclusion on the record in the Enterprise Communications NOI proceeding, in which several commenters stated that they already offered methods for dynamically determining and conveying an MLTS end user's location. The Commission also noted the potential availability of dispatchable location solutions that require the customer to identify their own location and solutions that calculate a location by leveraging data available from the 911 caller's device and the network. The Commission sought comment on this tentative conclusion and on the range of potential approaches to providing dispatchable location. The Commission also sought comment on whether a MLTS that handles calls initiated by remote users, *e.g.,* off-site workers, should be required to convey location information about remote users.

146. The Commission noted that there may be instances where location information that does not meet the definition of dispatchable location could still be useful to PSAPs and first responders, either as supplemental information to validate the dispatchable location or as an alternative in instances where dispatchable location information is not available. The Commission stated its belief that ''our rules and policies should not preclude—and in fact should allow and encourage—potential alternatives to dispatchable location.'' The Commission asked whether other types of location information (for example, x/y/z coordinates) could be conveyed with a 911 call originating from an MLTS. Finally, the Commission proposed to require implementation of dispatchable location requirements for MLTS systems by February 16, 2020, the same as the implementation date for the requirements of Kari's Law.

147. Numerous commenters address the issue of MLTS dispatchable location, expressing a variety of viewpoints. Some commenters agree with the Commission's tentative conclusion that it is feasible to provide dispatchable location with MLTS 911 calls, and state that they are already capable of providing highly specific real-time location information for MLTS users. Other commenters, however, contend that while dispatchable location may be feasible for some MLTS 911 calls, it is not feasible in all cases, and that attempting to impose ''one-size-fits-all'' dispatchable location requirements on all MLTS would be unworkable.

148. Because the MLTS marketplace serves an enormous range of enterprise environments and includes systems that vary greatly in size, scope, and technological capability, we agree with commenters that our approach must take this variety into account.[12] In this regard, the comments suggest that the feasibility of providing dispatchable location for an MLTS 911 call, and the means available to provide it, vary significantly depending on whether the call is from a fixed or non-fixed device [13] and, in the case of non-fixed devices, whether the device is being used on or off the enterprise premises. Cisco points out that ''dispatchable location is more supportable from on-premises fixed or 'hardwired' MLTS stations (such as desk phones), more challenging for on-premises mobile clients (such as softphones), and even more difficult, if not impossible, for off-premises softphones using public internet or Virtual Private Network connections.'' We find this assessment to provide a useful framework for addressing MLTS location issues. Therefore, in the discussion below, we separately address dispatchable location requirements for MLTS 911 calls from fixed devices, non-fixed devices being used on-premises, and non-fixed devices being used off-premises.

(i) Fixed MLTS Calls

149. Commenters generally agree that providing dispatchable location of fixed devices presents the easiest use case for MLTS providers. Where MLTS calls originate from fixed devices such as hotel phones or fixed desk phones that each connect to a single access point, providing location information for each endpoint is not technically difficult or costly. In addition, our definition of dispatchable location gives providers substantial flexibility to determine what amount of information is needed to identify the dispatchable location of each fixed endpoint, and for many small businesses, provision of street address alone will be sufficient. We therefore conclude that providing dispatchable location for 911 calls from fixed MLTS devices used on-premises is readily achievable.[14] We also conclude that dispatchable location from fixed MLTS devices should be provided automatically [15] and that the street address associated with the fixed end-point should be validated.

150. This requirement will take effect one year from the effective date of the rules adopted in this order. Although

[12] We agree with Avaya that service providers may use any technology that delivers dispatchable location, including any technology that complies with NENA i3 specifications.

[13] For purposes of this proceeding, we define ''fixed'' MLTS devices as devices that connect to a single end point (*e.g.,* a desk or office phone) and are not capable of being moved to another endpoint by the end user, although they may be capable of being moved to a different endpoint by a professional installer or network manager. ''Non-fixed'' MLTS devices are devices that the end user can move from one endpoint to another without assistance.

[14] We infer that fixed MLTS use occurs solely through connection of fixed devices with on-premises endpoints. Commenters did not cite any instances of MLTS supporting fixed devices off-premises. In the unlikely event that an MLTS were to support a fixed off-premises device, however, we see no reason why providing dispatchable location for such a device would be any less feasible than in the case of an on-premises device.

[15] In other words, the dispatchable location information associated with a fixed MLTS device must be conveyed to the PSAP when a user places a 911 call, without further intervention by the user at the time it places the call. As noted below, an MLTS operator or manager may rely on an enterprise customer to acquire, maintain, and keep up-to-date the location information associated with a fixed MLTS device.

the Commission proposed in the NPRM to implement dispatchable location requirements for MLTS on February 16, 2020, contemporaneous with the compliance date for the requirements of Kari's Law, most industry commenters oppose this proposal, arguing that it would give them only a few months to implement requirements and noting that RAY BAUM'S Act, unlike Kari's Law, does not specify an implementation date for requirements the Commission may adopt. We conclude that a one-year timeframe is more reasonable to ensure timely implementation while affording affected parties reasonable time to take the necessary steps to come into compliance.

(ii) Non-Fixed MLTS Calls

151. Commenters express divergent views as to the feasibility of providing dispatchable location for on-premises MLTS 911 calls from non-fixed devices, *e.g.,* softphones or mobile handsets that that are capable of connecting to multiple Wi-Fi access points and can move from one location to another within a building.[16] Some MLTS service providers (*e.g.,* RedSky, Avaya, BluIP) state that they currently offer enterprise services that use access point location information to dynamically determine and convey an MLTS end user's precise location within a building. Such services typically rely on storing location information for each access point in a database (maintained by the enterprise customer or the MLTS provider) that can be referenced when a 911 call is placed from a particular access point.

152. However, other commenters point out that the effectiveness of enterprise database approaches is dependent on a number of variables and could be prohibitively costly. Relying on an enterprise database to provide location information requires the enterprise customer to either develop and maintain the database or to pay a third-party vendor to provide database services. It also requires procedures and safeguards to ensure that access point location data are entered accurately and kept up-to-date. In addition, depending on the density and distribution of in-building access points, access point location information may provide the caller's approximate location but may not be precise enough to provide dispatchable location, *e.g.,* the caller's specific room or office number. Commenters anticipate that over time, database location solutions for MLTS will become more widely available and capable of providing more precise location information, but they caution against adopting requirements that assume the near-term availability of database solutions to support dispatchable location across the full array of enterprise environments.

153. To address these concerns, we adopt a more flexible approach to providing dispatchable location for MLTS 911 calls from non-fixed devices. MLTS providers must convey automated dispatchable location for such devices when technically feasible but may rely on the MLTS end user to provide or confirm dispatchable location information manually, *e.g.,* by responding to a system prompt. Commenters generally agree that enabling such manual confirmation of location information by MLTS end users is both feasible and potentially beneficial.

154. We recognize that relying solely on end users to provide manual location updates can lead to user fatigue, and that manually provided information may not be accurate or up-to-date. As an additional fallback, commenters strongly agree with the Commission's statement in the NPRM that our rules and policies should ''allow and encourage'' alternatives to dispatchable location. Microsoft states that commercially available location services already in use around the globe can be leveraged ''relatively quickly and effectively'' to enhance the 911 capabilities of IP-based and cloud-MLTS and interconnected VoIP services in ways ''far more accurate and reliable than a 'registered location' manually entered by the end-user.'' According to Microsoft, location technologies that could be leveraged include GPS/GNSS location, device-based sensing of Wi-Fi hotspots, and use of commercially available crowd-sourced location data. Comtech states that newer MLTS hardware can incorporate GNSS signals, which could be used to automatically corroborate any human-provisioned dispatchable location information. INCOMPAS contends that ''relying on a 'superset of location information' such as a wireless carrier's cell site, GPS, the Wi-Fi hotspots, and commercial location information gives regulated voice providers several opportunities to provide accurate dispatchable location data rather than relying on a static address.''

155. We agree with these commenters that our rules should harness the potential for commercially available device-based technologies and coordinate-based location methods to support the provision of MLTS 911 location information. Therefore, as proposed in the NPRM, we afford MLTS providers flexibility to provide alternative location information, including coordinate-based information, when providing dispatchable location is not feasible or cost-effective.[17] We also adopt a technology-neutral approach, as uniformly advocated by commenters, so that providers have the widest latitude to choose among available solutions.

156. We recognize that where alternative location information is provided with an MLTS 911 call, the rules we adopt today allow the location fix to be less precise than a dispatchable location that pinpoints the caller's location down to the room, office, or apartment level. While we agree with APCO that a more precise location is the preferred outcome, we find that the record strongly supports allowing the provision of less precise—but still actionable—alternative location information as a fallback when providing more precise information is not technically feasible. Identifying a caller's street address and floor level is likely to reduce response time, even if it does not identify ''the door to kick down.'' Commenters also confirm that this level of accuracy is significantly easier and less costly to achieve than more precise location information in many instances. Cisco states that ''MLTS today typically provides the building's street address, and . . . systems increasingly provide floor level.'' In addition, while identifying a caller's room or apartment may be significantly more costly, as Cisco asserts, it is not difficult for an MLTS serving large buildings to identify the building wing or quadrant where the call originates. Therefore, we define ''alternative location information'' as location information (which may be coordinate-based) sufficient to identify the caller's civic address and approximate in-building location. In large multi-story buildings, this should normally include floor level and approximate location on the floor (*e.g.,* building quadrant). We note that this approach is similar to the approach the Commission took in its wireless E911

[16] While such devices are capable of being moved from one access point to another, we note that they may be only be capable of conducting a communications session with one access point at a time, *i.e.,* the system may not support seamless handoff of the device from one access point to another without interrupting the session.

[17] APCO cautions that providers should not be allowed to ''self-declare'' that dispatchable location is not technically feasible or cost-effective. We agree. If we receive a complaint or petition that a provider is not providing dispatchable location and the provider asserts that doing so is not technically feasible or cost-effective, the provider must show that its assertion has an objective and reasonable basis in light of the state of technology at the time the assertion is made.

rules, which allow wireless carriers to provide either dispatchable location or x/y/z coordinate-based location information for indoor wireless 911 calls.

157. These requirements will take effect two years from the effective date of rules adopted in this order. Although the Commission proposed to make dispatchable location requirements effective on February 16, 2020, we agree with commenters that a longer transition period is needed for MLTS providers to implement ''granular'' location requirements, particularly for non-fixed services. Cisco states that for ''on-premises MLTS stations,'' the Commission should consider a phased approach whereby the Commission would require MLTS managers to provide the street address of the caller's location while having the flexibility to provide additional information that they determine is sufficient for the enterprise ''following a minimum transition period of two years.'' Panasonic states that the Commission ''should extend the compliance date for 3–5 years if [validation] capability is deemed necessary for all MLTS systems.'' RingCentral states that the Commission should allow at least 18 to 24 months to develop solutions to meet the complex challenges posed by any new location requirements. VON states that the compliance date for nomadic VoIP providers should be at least 24 months after the effective date of our implementing order.

158. We conclude that a two-year transition period is appropriate for implementation of these requirements. It is consistent with implementation timeframes recommended by many commenters. We also agree with Microsoft, Cisco, and other commenters that within the next two years, MLTS will likely be able to leverage improvements in technology that can refine the location process, including improvements to location databases and commercially available device-based technologies that can provide a ''superset'' of location information on a standalone basis or in combination with network-based tools. Finally, we note that the two-year deadline adopted in this order will likely fall in late 2021, which will roughly coincide with implementation of milestones intended to improve in-building location of wireless 911 calls under the Commission's wireless location accuracy rules. This provides an opportunity for MLTS, as well as other services covered by this order, to explore opportunities with wireless carriers for developing common location solutions that can support in-building location regardless of the platform used to make the 911 call.

159. In contrast, we conclude that MLTS providers should not be subject to the same location requirements for off-premises MLTS calls to the extent compliance is not technically feasible. When an MLTS end user is off-premises, the MLTS does not typically control or have access to location information. Remote access instead may involve connecting via a third-party access point that is outside the control of the enterprise or the MLTS operator, and for which location information may not be available. We agree with commenters that this lack of access or control makes it considerably more challenging and costly for an MLTS to provide location information for off-premises users than on-premises users. TIA states that for an end-user connected remotely to an enterprise via a VPN, ''ensuring accurate location data is difficult, if not impossible'' because a VPN user's location is reported as an IP address of the enterprise at end of the IP tunnel. Panasonic states that where an employee uses an IP-capable client off-premises, ''there is no way to locate such callers today without requiring the purchase of expensive third-party services that require manual location entry.'' RingCentral states that ''when a user goes off-site and leaves the enterprise network, it may not be possible to locate that user or even detect that the user has moved.''

160. In light of these factors, we conclude it is premature to prescribe specific standards for location of off-premises MLTS calls when compliance with our on-site requirements would not be technically feasible, and we therefore adopt a flexible approach that avoids imposing impossible requirements. For off-premises 911 calls, the MLTS operator or manager must provide (1) dispatchable location, if technically feasible, or, otherwise, either (2) manually-updated dispatchable location, or (3) enhanced location information, which may be coordinate-based, consisting of the best available location that can be obtained from any available technology or combination of technologies at reasonable cost. This requirement will take effect two years from the effective date of rules adopted by this order. The flexibility inherent in this requirement should lessen the burden and the amount of time it will take to comply. We recognize that as a practical matter, MLTS providers are unlikely to be capable of providing dispatchable location for most off-premises calls, and that ''best-available'' location information may be limited in the near term. Nevertheless, over time this requirement will encourage development of improved location capabilities for off-premises MLTS 911 calls.

c. Roles and Responsibilities of MLTS Participants

161. The Commission proposed to apply MLTS dispatchable location requirements to ''the participants in the MLTS marketplace we believe are best positioned to ensure that all installed MLTS are capable of conveying an accurate location to the appropriate PSAP.'' As in the case of Kari's Law, the Commission proposed distinct requirements for MLTS manufacturers, importers, sellers, and lessors, on the one hand, and MLTS installers, operators, and managers on the other: The former group would be required to ensure that MLTS systems are ''pre-configured'' to convey dispatchable location with 911 calls, while the latter group would be required to ensure that MLTS systems are ''configured'' to convey dispatchable location with 911 calls. The Commission sought comment on whether more granular requirements should be placed on any of the MLTS market participants to which the proposed rules would apply and whether rules are needed to ensure that MLTS manufacturers and importers incorporate capabilities in their products to enable them to convey dispatchable location information.

162. Commenters are generally supportive of the Commission clarifying the roles and responsibilities of MLTS market participants with respect to providing location information with 911 calls. Commenters also agree with the Commission's proposal that responsibility for dispatchable location be apportioned in the same manner as responsibility for the direct dialing and notification requirements of Kari's Law. Therefore, as proposed in the NPRM, we impose pre-configuration requirements on MLTS manufacturers, importers, sellers and lessors, and configuration requirements on MLTS installers, operators, and managers. In light of our adoption of flexible location requirements, these pre-configuration and configuration requirements now reference the conveyance of dispatchable location and alternative location information.

163. Some commenters propose additional clarification of the respective roles and responsibilities of MLTS installers, operators, and managers in ensuring that accurate location information is provided with MLTS 911 calls. NTCA states that a service provider should be required ''to configure proper location information

upon installation and initiation of service only to the extent they are involved in configuration of handsets and systems in the first instance.'' RedSky states that ''the level closest to the end user has the most accurate device . . . location data and should be held responsible for the provisioning of data.'' Several commenters also note that MLTS operators and managers will need the assistance of enterprise customers to acquire, maintain, and update location information. Accordingly, Comcast contends, MLTS operators and managers should not be held responsible when a customer moves MLTS stations to new locations without their knowledge.

164. We agree with commenters that additional clarification of the role of MLTS installers, operators, and managers is warranted. We therefore adopt a proposal submitted by USTelecom to add specific rules that delineate the respective responsibilities of MLTS installers, managers, and operators relative to the provision of location information. We also clarify that in developing and implementing location solutions, MLTS managers and operators are entitled to rely on enterprise customers to acquire, maintain, and update location information.

d. Location Requirements for Small Businesses

165. The Commission sought comment on whether certain small business categories (*e.g.,* of a specific size, or with a specific number of consumers) should be exempted from MLTS dispatchable location requirements. Commenters offered varying proposals for small businesses exemptions ranging from criteria based on square footage of enterprise; to allowing states and local jurisdictions to grant waivers; to applying requirements based on a minimum number of lines.

166. The rules we adopt today obviate the need for small business exemptions or waivers of MLTS location requirements based on square footage or number of lines. The rules afford all MLTS a broad menu of options for providing location information, and the requirements are also scalable to the needs of small businesses: In most instances, provision of street address information alone will be sufficient to identify the dispatchable location of MLTS 911 calls originating from small businesses. We believe this approach minimizes burdens and unnecessary complexity for small businesses while also preserving flexibility to advance the 911 location accuracy objectives of RAY BAUM'S Act.

e. Legacy MLTS

167. In the NPRM, the Commission proposed to apply location requirements to the same entities subject to the direct dialing and notification requirements of Kari's Law, which would exclude legacy MLTS. APCO argues that even though legacy MLTS is not subject to Kari's Law, legacy systems should be subject to location requirements because RAY BAUM'S Act does not prohibit applying such requirements to legacy systems, and some MLTS is capable of delivering dispatchable location today. Other parties support the NPRM proposal, arguing that requiring legacy MLTS to retrofit their systems to support dispatchable location would be disruptive and costly. On balance, we adopt the NPRM proposal. We decline to adopt APCO's request because doing so would require costly retrofitting of legacy MLTS—costs that would be more burdensome than for mass market services because legacy MLTS are specially configured for the particular enterprises they serve. In addition, applying Kari's Law and RAY BAUM'S Act to different classes of MLTS would create confusion and technical inconsistency, whereas applying the two statutes uniformly will encourage integrated 911 solutions for MLTS.[18] We also disagree with APCO's suggestion that applying new location obligations to the existing MLTS ecosystem would be comparable to the Commission's approach to phased-in location accuracy for wireless services. In the wireless context, the increasingly precise location obligations adopted by the Commission were imposed on an industry already subject to extensive 911 obligations. In contrast, before Kari's Law and RAY BAUM'S Act were enacted, MLTS was not subject to any 911 obligations at the federal level. Adopting complex obligations from scratch for a legacy industry is vastly more complex and costly than an incremental change to an already-regulated service. We also believe our decision is consistent with Congressional intent to address MLTS 911 on a prospective basis and not to require retrofitting of existing MLTS.

f. Liability Protection

168. Microsoft requests that the Commission clarify that MLTS providers are entitled to the same liability protections afforded wireless carriers, iVoIP services and text-to-911 services. Microsoft observes that Congress has granted immunity from liability to certain emergency communications providers as follows:

> A wireless carrier, IP-enabled voice service provider, or other emergency communications provider, and their officers, directors, employees, vendors, and agents, shall have immunity or other protection from liability in a State of a scope and extent that is not less than the scope and extent of immunity or other protection from liability that any local exchange company, and its officers, directors, employees, vendors, or agents, have under Federal and State law (whether through statute, judicial decision, tariffs filed by such local exchange company, or otherwise) applicable in such State, including in connection with an act or omission involving the release to a PSAP, emergency medical service provider or emergency dispatch provider, public safety, fire service or law enforcement official, or hospital emergency or trauma care facility of subscriber information related to emergency calls, emergency services, or other emergency communications services.

169. We find that this statutory liability shield extends to MLTS manufacturers, importers, sellers, lessors, installers, operators and managers. The statutory text applies its liability protections to ''other emergency communications service providers,'' which is defined to include ''an entity other than a local exchange carrier, wireless carrier, or an IP-enabled voice service provider that is required by the Federal Communications Commission consistent with the Commission's authority under the Communications Act of 1934 [47 U.S.C. 151 *et seq.*] to provide other emergency communications services.'' In this Report and Order, we find that MLTS manufacturers, importers, sellers, lessors, installers, operators and managers are subject to our jurisdiction and, consistent with the requirements of Kari's Law and RAY BAUM'S Act, we require them to configure MLTS systems to ensure delivery of 911 emergency information to PSAPs. Thus, we agree with Microsoft that MLTS plays a ''significant role . . . in the provision of 911 services in the United States,'' and that ''MLTS apps will be engaged in the transmission of 911 information to PSAPs.'' Accordingly, we find that because these entities are required to provide ''emergency communications service,'' MLTS manufacturers, importers, sellers, lessors, installers, operators and managers fall within the statutory definition of ''other emergency communications provider.''

[18] In this respect, we find that requiring retrofitting existing systems solely to address dispatchable location may result in a failure to promote more integrated technological solutions that could address both the direct dialing and notification provisions of Kari's Law and the dispatchable locations provisions of RAY BAUM'S Act on a holistic basis.

2. Fixed Telephony

170. In the NPRM, the Commission proposed to require fixed telephony providers to furnish dispatchable location with 911 calls. The Commission noted that these providers already provide validated street address information with 911 calls, which should meet the dispatchable location requirement for single-family dwellings, and asked about the feasibility of also providing floor level and room number for calls from multi-story buildings.

171. No commenter disagrees with our conclusion that by providing validated street address information with 911 calls, fixed telephony providers are already providing dispatchable location for single-family dwellings.[19] With respect to fixed telephony calls from multi-story buildings, the limited comments we received on the issue support our view that fixed telephony providers are either already providing floor and room information or can readily do so at minimal cost. Panasonic states that ''it is feasible for 911 calls from an endpoint assigned a [Direct Inward Dialing] number to convey a dispatchable location; each [Direct Inward Dialing] number can be assigned with a dispatchable location in the telephony carrier's database. West Safety states that it is ''not aware of any technical limitations to fixed telephony providers conveying dispatchable location with a 9–1–1 call.'' As a practical matter, for apartment building residents that are fixed telephony customers, dispatchable location can be readily provided because the apartment number (which often identifies floor level as well) is part of the customer's billing address. To the extent that fixed telephony providers need to provide more than street address and are not already doing so, the means to add this capability are readily available.

172. Based on these findings, we adopt our proposal requiring fixed telephony providers to deliver automated dispatchable location with 911 calls. This requirement will take effect one year from the effective date of the rules adopted in this order. Although the Commission proposed to implement this requirement on February 16, 2020, we conclude that a one-year timeframe is more reasonable to ensure timely implementation while affording affected parties a reasonable amount of time to take the necessary steps to come into compliance.

173. In an ex parte filing, IT&E requests that we exempt fixed telephone providers in U.S. territories from dispatchable location requirements, noting that one of the territories it serves has no street address database available and that territorial PSAPs do not have the capability to receive automated location information. To the extent that fixed telephony providers face limitations in providing automated dispatchable location due to factors beyond the provider's control, such providers may request relief under the Commission's waiver process.

3. Interconnected VoIP

174. In the NPRM, the Commission proposed to revise the E911 rules for interconnected VoIP to require the provision of dispatchable location for 911 calls. The Commission stated that with respect to fixed VoIP, it regards the current Registered Location approach as sufficient to support dispatchable location. With respect to nomadic VoIP, the Commission sought comment on the feasibility of providing automatic real-time dispatchable location but also proposed to allow VoIP providers to fall back to using Registered Location and manual updates if providing automated dispatchable location is not feasible or cost-effective. As discussed below, we adopt dispatchable location requirements that distinguish between fixed and non-fixed interconnected VoIP services.[20] Also, we extend this requirement to ''outbound only'' interconnected VoIP providers as well as two-way interconnected VoIP providers covered by the current VoIP E911 rules.

a. Fixed VoIP

175. With regard to fixed interconnected VoIP, commenters generally agree with the Commission's tentative conclusion that Registered Location is already providing dispatchable location for single-family dwellings, and that using Registered Location to provide additional information for fixed VoIP serving multi-story dwellings is readily achievable in the near term. For example, VON states that it ''generally agrees with the Commission's tentative assessment that current Registered Location obligations are sufficient to meet the definition of dispatchable location, and that such location information is already being conveyed.'' VON further suggests that fixed VoIP providers have incentives to provide additional location information, noting that ''customers now demand the ability to provide additional location information, including room and floor information where applicable, and VON members respond to these customer requirements.''

176. We adopt our proposal to require that fixed VoIP services providers transmit dispatchable location with each 911 call. While dispatchable location may be determined by means of a customer-generated Registered Location in the fixed VoIP context (to the extent a physical location conveys a street address that is validated), it must be provided automatically to the PSAP by the VoIP service provider, without additional action by the caller, at the time the 911 call is made. As in the case of our requirements for fixed MLTS and fixed telephony, and for the same reasons, this requirement will take effect one year from the effective date of the rules adopted in this order.[21]

177. VON, however, also argues that the existing Registered Location rules are sufficient to ensure the provision of dispatchable location, and therefore no additional requirements for fixed VoIP providers are necessary. We reject VON's argument that there is no need to apply the new dispatchable location rules to fixed VoIP providers. Although the rules preserve the existing option of relying on Registered Location to provide the caller's location, they also establish a new requirement for providing dispatchable location automatically. Our inclusion of fixed VoIP in the new rules furthers the RAY BAUM'S Act objective of ensuring that dispatchable location is provided for all 911 calls regardless of the technological platform used.

[19] RedSky notes that fixed telephone providers typically have no control over inside wiring in single family homes, and therefore are unlikely to be able to identify floor level for a fixed telephone call originating from a single family home that is more than one story. However, we see no practical benefit to requiring floor level identification as a component of dispatchable location for calls from single family dwellings, nor has any public safety commenter suggested this is necessary.

[20] Fixed VoIP services are services that provide the functional equivalent of fixed telephony by means of a device that connects to a single access point and is not capable of being moved by the end user. Non-fixed VoIP services are VoIP services that enable the end user to connect a handset or other IP-enabled device to multiple access points. Such services are variously described as ''nomadic'' or ''mobile'' VoIP, depending on the degree of functional mobility that the service allows the end user. We use the term ''non-fixed VoIP'' to refer to the full range of such services, except where referring to comments that specifically discuss nomadic or mobile VoIP. We also note that the term ''non-fixed VoIP'' does not extend or apply to Commercial Mobile Radio Services that are subject to our wireless E911 rules.

[21] INCOMPAS requests that the Commission ''extend the compliance deadline for fixed services and give all providers two years to comply with these new obligations.'' However, the record confirms that providing dispatchable location within a year is technically feasible for fixed services.

b. Non-Fixed VoIP

178. The Commission sought comment in the NPRM on the feasibility of nomadic VoIP services providing automatic real-time dispatchable location, noting that ''automatic provision of location is preferable because end users under stress in emergency situations may have difficulty providing manual updates and the updating process may delay the 911 call or subsequent location and dispatch.'' The Commission sought comment on the capability of interconnected VoIP providers to dynamically determine the location of end users (1) when they are at home or their usual place of work, (2) when they move frequently between multiple locations, and (3) when they are at locations they do not regularly visit. The Commission also proposed to allow VoIP providers to fall back to using Registered Location if providing automated dispatchable location is not feasible or cost-effective. As a safeguard against sending incorrect location information, the Commission proposed that the VoIP provider ''identify whether the service is being used from a different location than the Registered Location, and if so, either: (1) Prompt the customer to provide a new Registered Location; or (2) update the Registered Location without requiring additional action by the customer.''

179. As with non-fixed MLTS, we find that in the non-fixed VoIP environment, flexible rules and a longer time frame for providing accurate 911 location information are appropriate. In this respect, commenters generally agree on the desirability of automated validation of dispatchable location in the nomadic VoIP environment, but stress that there are challenges to providing such validation in many cases. RingCentral states that interconnected VoIP users ''increasingly use browser-based applications for calling, but browser-based applications—by design—do not have the capability of detecting a user's location unless that user opts-in to location detection.'' RingCentral states that similar challenges exist for users logging in with VPN, ''as it may not be possible to detect . . . the user's true location.'' Other commenters agree that the technology that would allow for automatic real-time dispatchable location for non-fixed VoIP users needs additional time to fully develop, and therefore agree with the Commission's proposal to allow providers to fall back to Registered Location options when dispatchable location is not feasible.

180. The record further indicates that non-fixed VoIP providers continue to rely heavily on Registered Location, but that alternative approaches are increasingly available that could support automatic location in some instances. For example, NENA states that the emergence of software-based VoIP applications on mobile phones has made automatic location updates more technically and economically feasible. RedSky states that ''the technology exists'' to provide dispatchable location for nomadic users through device-based location methods. Microsoft states that commercially available location services can improve interconnected VoIP location in ways ''far more accurate and reliable than a 'registered location' manually entered by the end-user[.]'' The ability of non-fixed VoIP providers to provide automated real-time dispatchable location is highly dependent on whether granular location information is available for the access point from which the 911 call is placed, and whether the VoIP provider has access to that information. In some environments, particularly when end users are away from their home or regular workplace, this information is either unavailable or the development of information sources that could be leveraged by VoIP providers to provide dispatchable location (*e.g.,* databases with access point location information) is in early stages. Therefore, we adopt rules that require automatic provision of dispatchable location when technically feasible, but also allow non-fixed VoIP providers to fall back on manual updating of Registered Location information by end users as a backstop approach.[22]

181. We also conclude that it is important to encourage development of alternative approaches, based on the full range of device-based and other available location technologies, that place less burden on the end user than manual updates, and that can often provide more accurate, timely, and reliable location information for VoIP users that move frequently between multiple locations or are at locations they do not regularly visit. Such information may not always be precise enough to identify the caller's dispatchable location, but it can significantly reduce the potential for error or delay that otherwise occurs when a VoIP provider relies solely on Registered Location and uncertainty arises about whether the VoIP user is actually calling from that location. Commenters generally support giving interconnected VoIP providers the flexibility to provide alternative location information, including x/y/z coordinates, as a supplement or alternative to dispatchable location. Therefore, we give non-fixed VoIP providers flexibility to provide alternative location information, including coordinate-based information, from all available sources when providing dispatchable location is not technically feasible. This will provide flexibility for non-fixed VoIP providers to convey an accurate location to the PSAP while minimizing the burdens on the interconnected VoIP service provider and the end user.

182. We recognize that where a non-fixed VoIP provider provides alternative location information, the location fix may be less precise than a location that pinpoints the caller's location down to the room, office, or apartment level. We find that the record strongly supports allowing less precise—but still actionable—alternative location information as a fallback approach when providing dispatchable location is not technically feasible. Therefore, as an alternative to automated dispatchable location or end users' manual updating of Registered Location information, we allow non-fixed VoIP providers to provide alternative location information, which may be coordinate-based, sufficient to identify the caller's civic address and approximate in-building location, including floor level, in large buildings.[23] We also clarify that as a last resort, a VoIP provider may route a 911 call to a national emergency call center for the operator to ask the caller about his or her location, so long as the provider has made a good-faith effort to obtain location data from all available alternative location sources. We also conclude that the two-year transition period established by this order is appropriate for implementation of these requirements, as it is consistent

[22] We note that AT&T points out that automatic location solutions could raise network security concerns because some proposed solutions, which would have limited applicability, would involve scanning of the Data Link Layer (Layer 2) of IP networks, which would violate cybersecurity protocols and expose cyber vulnerabilities. AT&T states that solutions based on scanning networks may require customer disclosure of sensitive data, which they may be unwilling to give vendors because doing so would present a cybersecurity risk. In light of AT&T's concerns, providers may fall back on manual registered location if automatic solutions raise security concerns.

[23] We agree that the MLTS and interconnected VoIP location rules do not overlap, and that providers should be subject to only one set of requirements for any particular service they provide. If a service meets the definition of interconnected VoIP service in section 9.3 of our newly adopted rules, it will be subject to the interconnected VoIP location rules and not the MLTS location rules.

with implementation timeframes recommended by a number of industry commenters, provides time for development and deployment of improvements in technology that can refine the nomadic VoIP location process, including improvements to location databases and commercially available device-based technologies, and coincides with implementation of milestones intended to improve in-building location of wireless 911 calls under the Commission's wireless location accuracy rules.

c. Outbound-Only Interconnected VoIP

183. Consistent with Congress's approach of establishing regulatory parity across technological platforms and enabling the completion of outgoing 911 calls and messages from people in emergency situations, we adopt 911 location requirements for outbound-only interconnected VoIP providers. The requirements we adopt today are flexible and technologically neutral from a compliance standpoint and serve a vital public safety interest. We amend the definition of ''Interconnected VoIP Service'' used for 911 purposes to include outbound-only interconnected VoIP services that generally permit users to initiate calls that terminate to the PSTN. We thus require outbound-only interconnected VoIP providers to comply with our 911 obligations, including the requirement to notify subscribers of any limitations to E911 service. However, we modify the notification requirement to clarify that it may be satisfied through stickers or warning labels, or other conspicuous means, provided that the notification is prominently displayed or highlighted in a manner that makes it likely to be seen by the customer.[24] Similar to our discussion of nomadic VoIP service above, we require outbound-only interconnected VoIP service providers, which are now encompassed by our amended language in the § 9.3 definition of ''Interconnected VoIP Service,'' to provide (1) dispatchable location if feasible, or, otherwise, either (2) manual updating of Registered Location information; or (3) alternative location information sufficient to identify the caller's civic address, floor level, and approximate floor location in large buildings. We require outbound-only interconnected VoIP providers to comply with the 911 requirements we adopt today two years after the effective date of the rules.

184. RAY BAUM'S Act directs the Commission to ''conclude a proceeding to consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call, regardless of the technological platform used.'' RAY BAUM'S Act also states that, ''[i]n conducting the proceeding . . . the Commission may consider information and conclusions from other Commission proceedings regarding the accuracy of the dispatchable location for a 9–1–1 call . . . .'' RAY BAUM'S Act defines a ''9–1–1 call'' as a voice call that is placed, or a message that is sent by other means of communication, to a PSAP for the purpose of requesting emergency services.

185. Consistent with RAY BAUM'S expansive approach, which recognized the Commission's existing 911 authority, the Commission broadly sought comment on what communications services not covered by existing 911 rules but that are capable of making 911 calls may fall within this definition. In the NPRM, the Commission asked whether (1) outcomes for 911 callers would be improved if it adopted 911 rules for these communications services that parallel existing rules, including any requirements for conveying dispatchable location and (2) new rules that are specifically tailored for those communications services would be more effective at improving outcomes. Specifically, the Commission observed that some outbound-only VoIP services partner with businesses that offer 911 smartphone applications that allow consumers to make calls to 911 and that 911 stakeholders have expressed concerns that calls received from these services may route to the incorrect PSAP, result in fraudulent calls, lack critical location information capabilities, and place the 911 caller at risk. The Commission noted that the current rules do not require outbound-only VoIP services to support 911 or convey dispatchable location with 911 calls, but it recounted that in 2011 the Commission sought comment on expanding 911 obligations to providers of outbound-only interconnected VoIP services.

186. The Commission has broad authority over interconnected VoIP services and 911. The RAY BAUM'S Act provided the Commission the flexibility to consider whether and how to apply dispatchable location requirements to services that provide the capability for users to make a 911 call, which includes outbound-only interconnected VoIP. We believe that the expansive scope of the legislative directive provides legal authority for the Commission to adopt regulations that will ensure dispatchable location data are conveyed with 911 calls with any voice service that satisfies the definition of ''9–1–1 call,'' including outbound-only interconnected VoIP service. It also leaves room to amend the definition of ''Interconnected VoIP Service'' at § 9.3 pursuant to the NET 911 Improvement Act and the CVAA.

187. We find that, from a 911 perspective, outbound-only interconnected VoIP services are functionally equivalent to landlines and other interconnected devices that connect to the PSTN and are 911-capable, and thus, we should require outbound-only interconnected VoIP service providers to comply with 911 obligations. As noted by West Safety, ''[f]rom a caller's perspective, interconnected outbound-only VoIP service is, for the most part, similar to traditional telephone service, and its users reasonably expect it to function the same.'' To illustrate further, Microsoft's Skype voice application facilitates internet-based calls yet also provides users the ability to call any landline or mobile device. Failing to require support for 911 services by outbound-only calling services that are able to place PSTN calls to any other North American Numbering Plan telephone number treats similarly-situated services differently and enables and rewards regulatory arbitrage. Moreover, treating these services inconsistently or 911 purposes is likely to breed consumer confusion, particularly when a caller is seeking help in a time of crisis.

188. Some commenters submit that the essential basis of Commission regulation of outbound-only VoIP services is whether those services would substitute for traditional telephone service. However, as discussed above, our 911 rules already apply to interconnected VoIP (as currently defined to refer to both inbound and outbound interconnection), and the Commission proposed extending those obligations to outbound-only interconnected VoIP more than eight years ago. To use Skype to call regular phones, consumers pay by purchasing credits, subscribe to Skype for unlimited calls, or buy a Skype phone number. Additionally, Skype emergency calling is enabled in certain countries, platforms, and versions of Skype software. Moreover, our current approach enables providers to avoid basic public interest obligations by offering purportedly separate ''outbound-only'' and ''inbound-only'' calling services, even though these services combined are functionally

[24] In this regard, inclusion of the notification in the fine print of an online customer agreement would not be sufficient.

equivalent to traditional calling services and, in a regulatory sleight of hand, avoid basic public interest obligations. We decline to maintain this regulatory loophole to the benefit of one segment or market participants over another, and to the detriment of consumers.

189. Some commenters support expanding 911 obligations to outbound-only VoIP services on the grounds that consumers increasingly rely on a variety of interchangeable communications services to place 911 calls and expect those services to connect them to first responders. Others, however, argue that consumer expectations regarding outbound-only VoIP do not warrant imposing any obligations.

190. As an initial matter, we decline to make consumer expectations the touchstone for determining what types of services should be subject to 911 obligations. In this context, the relevant RAY BAUM'S Act provisions do not refer to consumer expectations; rather, they define ''9–1–1- call'' broadly, in relevant part, as ''a voice call that is placed, or a message that is sent by other means of communication, to a public safety answering point . . . for the purpose of requesting emergency services.'' The statutory focus, therefore, is on enabling the user to reach emergency services to request assistance, ''regardless of the technological platform,'' not on whether the service bears similarity to a traditional two-way phone call or whether consumers perceive it as such. Our decision to subject outbound-only VoIP service to 911 obligations is most consistent with Congress's focus on ensuring that all messages from a person to emergency services are received, regardless of the technology employed. A focus on consumer expectations, by contrast, would frustrate the statute by disadvantaging those people who were unaware that a particular device or technology was incapable of dialing 911—precisely the tragic circumstance that led to the adoption of Kari's Law.

191. In any event, we find that consumer expectations generally support our decision today. We find that consumer expectations on this issue have significantly changed since 2011. In this respect, we give significant weight to the fact that the increasing variety of interchangeable voice services on the market has changed the public's expectations about access to 911, and our rules today reflect those expectations. We are persuaded by BRETSA's comments that the fact that Microsoft has enabled emergency calling with Skype in some European countries and Australia demonstrates that 911 calling can be provided in the United States. BRETSA also asserts that it is more important for callers to be able to reach 911 in an emergency than that a PSAP can reconnect a dropped call, and we agree.

192. The commenters who assert that consumers do not expect to reach 911 from outbound-only systems present little data that support their position. In particular, Microsoft, VON, and INCOMPAS oppose the Commission's proposed expansion of 911 obligations to outbound-only VoIP calling applications, arguing that users of one-way calling capabilities do not expect to reach emergency services on these tools and do not use them for emergency calling. Microsoft adds that it voluntarily deployed emergency calling on its one-way, outbound-only calling feature Skype to Phone (formerly SkypeOut) in four foreign countries (Australia, Denmark, Finland, and the United Kingdom) and that only 1,788 emergency calls were made in those four countries in the most recent 23-month period. According to Microsoft, ''[t]he low emergency call volumes are evidence that consumers do not expect to have the capability to make emergency calls through Skype desktop and tablet applications and, when this capability is provided to them, they tend not to use it.'' Microsoft also states that many emergency calls placed from this calling feature lasted less than one minute, ''strongly suggesting accidental or nefarious calls to emergency services since valid emergency calls tend to last longer than a minute.'' Commenters argue that consumers do not expect to use outbound-only VoIP services to place emergency calls, in part because some expected features of 911 calling, specifically PSAP callback, are not readily available. Thus, according to Microsoft and INCOMPAS, the Commission would be creating consumer expectations for 911 services where certain features that customers have come to expect with emergency calling are technically not feasible. Microsoft and INCOMPAS also contend that expanding 911 rules to outbound-only VoIP will increase nuisance or accidental calls to emergency services, which is not in the public interest.[25]

193. We find these arguments unpersuasive. First, it is unsurprising that some consumers may not presently expect outbound-only calling services to support 911 dialing and location services, as they have not been obligated to do so. In this respect, though, we disagree with the view that the Commission should refrain from acting for fear of ''creating'' expectations regarding the availability of 911 services; to the contrary, the Commission should act where it finds a need to support public safety. Second, the data presented prompt us to draw the opposite inference on calls to emergency services from SkypeOut in four foreign countries than that asserted by Microsoft. Rather than indicating that 911 connectivity was not expected in these instances, we find the existence of these calls is instead evidence that at least some users expected—and needed—to call for help via SkypeOut. We may further infer that as use of these services becomes more widespread, the expectations carried with these services will align with traditional voice services. That domestic expectations have also evolved with the technology is reflected in the congressional emphasis that the Commission should consider whether dispatchable location obligations apply ''regardless of the technological platform.'' Furthermore, concerns about overly broad regulation are misplaced because we apply the change in a limited way—solely to 911 obligations on outbound-only interconnected VoIP service providers. Finally, the possibility that there may be nuisance or inadvertent calls to 911 from outbound-only services is not a sufficient reason to exclude such services from the 911 obligations applicable to interconnected VoIP service providers, thereby providing no access to 911 for callers with legitimate emergency needs to use these services. While we recognize that accidental or nuisance calls can strain already limited PSAP resources, there has been no demonstration that these calls would overwhelm PSAP capabilities.[26]

[25] Microsoft analogizes its argument to the Commission's 1996 decision to extend emergency calling requirements to non-service-initialized (NSI) phones, which similarly lacked callback capabilities, by requiring carriers to forward to PSAPs automatically all 911 calls from wireless mobile handsets which transmit a code identification, without requiring user validation or any similar procedure. Although the Commission has acknowledged that fraudulent 911 calls from NSI devices impose a substantial burden on PSAPs, we disagree with Microsoft that this is a result of the lack of the callback feature.

[26] Microsoft speculates that relying on end users to manually update their location information could create an additional risk that applications like Skype could be downloaded easily by a nefarious actor who could then ''input a false location, and then a make a 911 call for the purpose of dispatching public safety resources to a particular location under false pretenses.'' We find this argument implausible. For one, interconnected VoIP providers are already required to require their end users to register a location for 911 calls, and yet the record presents no evidence that this is a problem today. Given that distinguishing feature between such services and outbound-only interconnected VoIP services is solely the lack of a callback feature—which is unrelated to the problem

Continued

194. Several commenters support expanding 911 dispatchable location requirements to outbound-only VoIP services, and state that technically feasible solutions exist for such service providers to provide that data. Comtech states ''it is imperative that any location requirements adopted for 911-capable services take into consideration the current state of technology and its rapid rate of change.'' Verizon indicates that, like nomadic VoIP, the Commission should clarify that nomadic outbound services could use either dispatchable locations or registered locations because the same concerns raised in the context of nomadic VoIP services apply.

195. We find that it is technically feasible to require outbound-only interconnected VoIP service providers to convey the dispatchable or alternate location requirements we adopt today. The location requirements for outbound-only interconnected VoIP service providers allow for flexible, technologically neutral compliance. Although the NPRM sought comment on such communications services that are not covered by existing 911 rules yet are capable of making a 911 call and their ability to convey location information to the PSAP, no commenters submit that it is not possible for outbound-only interconnected VoIP providers to convey such location information. With the additional compliance time provided below, we anticipate that such a capability can be readily applied within the United States.

196. 911 VoIP Service. The Commission sought comment on expanding the scope of those IP-based services subject to our 911 rules to include not only interconnected VoIP but to also include ''911 VoIP Services,'' which was proposed to include those services that enable real-time, two-way voice communications that require IP-compatible customer premises equipment and permit users generally to initiate a 911 call, even if the service does not permit users generally to receive calls that originate on the PSTN, thus encompassing those services that are considered ''outbound only VoIP.'' The Commission further stated its intent to retain the existing definition of ''Interconnected VoIP Service'' to avoid inadvertent impact on the term as used by various non-911 statutory provisions. By proposing a new ''911 VoIP Service'' category for use in the Commission's 911 rules, the Commission sought to avert unintended consequences.

197. We conclude that the best approach to achieve what the public interest demands is to amend the definition of ''Interconnected VoIP Service'' to expand those services subject to our 911 rules, rather than to adopt a separate ''911 VoIP Service'' definition. In this respect, we find that the definition of ''911 VoIP Service'' proposed in the NPRM mirrors the existing definition of ''Interconnected VoIP Service,'' with the exception that the fourth element of the proposed definition does not reference calling numbers or interconnection to the PSTN and is limited to 911 calls. Amending the definition of ''Interconnected VoIP Service'' to include outbound-only VoIP services solely for purposes of extending our 911 obligations is consistent with our intent to apply only this set of obligations to such services, but in a manner that responds to record comments and avoids the unintended consequences to other uses of the term. For example, some commenters express concerns with the proposed definition of ''911 VoIP Service'' and the applicability of our 911 requirements, including dispatchable location, to those services. Verizon states that the Commission's proposal to apply the interconnected VoIP 911 rules, including the registered location choice, to newly defined outbound-only ''911 VoIP Services'' may be overbroad. Verizon asserts that it is unclear that outbound-only VoIP meets the New and Emerging Technologies (NET) 911 Improvement Act standard of ''widely accepted and fungible substitutes for telephony'' if there are no other connections to the public switched telephone network. According to Verizon, the proposed rule also is unclear because it would require that calling party number information be provided on all 911 VoIP services, which could enable callback for a service that supports both outbound and inbound calling, but ''would not help for outbound-only services.''

198. Accordingly, we decline to adopt the defined term ''911 VoIP Service'' and instead add an additional category of services that constitute interconnected VoIP for the purposes of 911 obligations to expand the scope of services to those that are generally capable of allowing users to initiate calls that terminate to the public switched telephone network, including calls to 911.[27] We expand the definition of ''Interconnected VoIP Service'' in § 9.3 of the Commission's rules to mean a service that permits users generally to terminate calls to the public switched telephone network.[28]

199. We concur with BRETSA's concerns that outbound-calling voice applications or service providers could configure their services for the specific purpose of avoiding 911 compliance. As a result, the definition of ''Interconnected VoIP Service'' extends 911 calling requirements to interconnected, outbound-only VoIP services that generally permit users to terminate calls to the public switched telephone network. We further clarify that the revisions we adopt today preserve the application of the original definition of ''Interconnected VoIP Service'' to other parts of the Commission's rules while expanding those services to which the Commission's 911 rules apply. Thus, the non-911 statutory provisions and rules that reference the current definition of ''Interconnected VoIP Service'' in § 9.3 of the Commission's rules are not disturbed.[29] Consistent with the directive of RAY BAUM'S Act, and as supported by the record, we find that expansion of the location requirements to interconnected VoIP service, which includes outbound-only interconnected VoIP service, enacts 911 rules that are flexible and technologically neutral from a

Microsoft alleges—we see no reason to think improper location information will suddenly become a problem should Microsoft be required to allow its SkypeOut users call emergency services effectively. More broadly, nefarious actors can give false information to a PSAP via any technological platform—and there is nothing distinctive about outbound-only interconnected VoIP services that would lead us to believe including them would have a material impact. What is more, we do not mandate registered locations to be collected but instead empower providers to use other technologies to facilitate dispatchable location or alternative location information for such 911 calls—and of course we expect providers like Microsoft to take into account the risks to public safety it has flagged when choosing how to comply with our rules. Finally, to the extent that Registered Location still presents any ''additional risk,'' as Microsoft posits, that risk is outweighed by the need for people to be able call 911 and for emergency responders to find them.

[27] We acknowledge that some voice applications may provide users with both interconnected and non-interconnected VoIP services and emphasize that applicability of our 911 requirements to interconnected VoIP service providers hinges on whether the service satisfies all prongs of the definition, including interconnection to the PSTN.

[28] We note that the definition we adopt today tracks more closely to the existing definition of ''Interconnected VoIP Service'' as it is currently defined to refer to both inbound and outbound interconnection than the definition proposed in the 2011 *NPRM,* which permitted users to terminate calls to all or substantially all United States E.164 telephone numbers. As we describe above, this is in-line with our intended approach to minimize disruption to the current definition of ''Interconnected VoIP Service'' in section 9.3 of the Commission's rules.

[29] We further clarify that outbound-only interconnected VoIP services, which are now encompassed within the section 9.3 definition of ''Interconnected VoIP Service,'' are still considered non-interconnected VoIP services for the purposes of section 716 of the Communications Act of 1934, and therefore remain subject to part 14 of the Commission's rules.

compliance standpoint while limiting regulatory disruption.

200. Some commenters also argue that expanding 911 requirements to ''911 VoIP Services'' exceeds the scope of the Commission's statutory authority under the NET 911 Improvement Act. Microsoft states that the Commission has not proposed a sufficient basis of statutory authority to impose emergency calling obligations on outbound-only voice applications, and contends that the NET 911 Improvement Act provided the Commission authority to establish emergency calling requirements for IP-enabled voice services, which were defined to be synonymous with ''Interconnected VoIP Service.'' However, Microsoft asserts that the NPRM ''does not propose to expand or modify the definition of 'interconnected VoIP service' to include outbound-only calling apps. Nor does it propose an independent basis for imposing these requirements on applications that currently satisfy the statutory definition of 'non-interconnected VoIP.' '' As a result, Microsoft claims that the Commission's proposal would ''involve an extraordinary expansion of the scope of the FCC's regulatory authority and would exceed the limits of reasonable statutory interpretation.''

201. We disagree that expanding 911 requirements to the underlying services that would have met our proposed definition of ''911 VoIP Services'' exceeds the scope of the Commission's authority under the NET 911 Improvement Act, particularly when coupled with the directive of RAY BAUM'S Act.[30] In this respect, by amending the definition of interconnected VoIP we meet both the letter and spirit of both laws, which provides the Commission discretion and flexibility to address new technologies. We find that Congress, in directing the Commission to consider all technological platforms, intended the Commission to consider 911 obligations for these technologies. Moreover, the NET 911 Improvement Act provides that ''[i]t shall be the duty of each IP-enabled voice service provider to provide 9–1–1 and enhanced 9–1–1 service to its subscribers in accordance with the requirements of the Federal Communications Commission, as in effect on the date of enactment of the [NET 911 Improvement Act] . . . and as such requirements may be modified by the Commission from time to time.'' Pursuant to subsequent legislation, the Commission also retains ample authority to amend the definition of interconnected VoIP. As a result, we find that the Commission has direct statutory authority to modify the definition of ''Interconnected VoIP Service'' to include outbound-only interconnected VoIP, and today we modify that definition.

202. Although in the NPRM the Commission stated its intention to avoid disturbing the existing definition of interconnected VoIP since it is referenced by various non-911 statutory provisions and rules, we find that our approach to amending the definition of ''Interconnected VoIP Service'' in § 9.3 of the Commission's rules satisfies our proposed intent and responds to concerns raised by commenters. Specifically, to implement RAY BAUM'S Act, the Commission led with a proposal to adopt the definition of ''911 VoIP Services'' and also sought comment on extending 911 requirements, including location obligations, to outbound-only VoIP services under the definition of ''911 VoIP Services.'' We note that entities which provide one-way, interconnected VoIP service have been on notice since 2011, and even as early as 2005, that the Commission was considering expanding the scope of its 911 rules to include their communications services. The NPRM was informed by, and cited to, these earlier rulemaking efforts, including the outstanding proposals from 2011, and RAY BAUM'S Act left the Commission discretion to consider these earlier efforts. The rule we adopt today reflects consideration of proposals raised in earlier Notices of Proposed Rulemaking and in the NPRM to extend dispatchable location obligations to one-way VoIP calls, the purpose of the NPRM to dispatch our RAY BAUM'S Act mandate to consider all technological platforms, and record comment received in response. In light of the comments received, we have not amended our definition of interconnected VoIP, except as it affects 911 service obligations for outbound-only interconnected VoIP service.

203. Furthermore, as stated above, commenters express concern about our statutory authority to expand our 911 rules to services beyond interconnected VoIP services, and in response we act upon their suggestion that an amendment of the definition of ''Interconnected VoIP Service'' would accomplish the Commission's intended objective, particularly where we limit the definition change solely to impose 911 obligations. Moreover, the similarities in the proposed language of the definition of ''911 VoIP Services'' largely tracks the language of ''Interconnected VoIP Service,'' and as such, regardless of the label used, the service to which our rules were to be applied is sufficiently apparent.

204. We amend the definition of ''Interconnected VoIP Service'' to include outbound-only interconnected VoIP services. The expansive scope of the legislative directive coupled with our discretion to amend the definition of ''Interconnected VoIP Service'' provides sufficient legal authority for the Commission to extend 911 regulations, including rules to convey dispatchable location with 911 calls, to outbound-only interconnected VoIP services. Doing so in this fashion also avoids loopholes for evading regulatory obligations that protect the health and safety of the American people, which commenters have pointed out to be a risk of attaching such obligations only to those who choose to provide ''911 VoIP Services.'' We believe that this approach is consistent with our objective to promote safety of life and property through communications.

205. Compliance Deadline. In the NPRM, the Commission proposed to require compliance for dispatchable location requirements on the same date as the proposed implementation for Kari's Law, *i.e.,* February 16, 2020. The Commission further tentatively concluded that applying the same compliance date across all platforms will promote efficiency and encourage development of common dispatchable location solutions. No commenters addressed compliance deadlines for outbound-only interconnected VoIP service providers, but some commenters objected to the proposed February 16, 2020 date as premature for imposition of dispatchable location requirements for any service.

206. We adopt a two-year period for compliance for outbound-only interconnected VoIP service. Due to the similar nomadic or mobile functionality of the services, we find that similar implementation considerations for nomadic VoIP providers are applicable to outbound-only interconnected VoIP providers and warrant additional time for compliance. Furthermore, adopting a two-year compliance period for outbound-only interconnected VoIP service providers will result in a compliance date in the same time frame as the implementation deadline for wireless E911 location requirements, which will promote regulatory parity and encourage the development of common location solutions across all platforms.

[30] To the extent commenters argued that the Commission lacks statutory authority to create a ''911 VoIP Services'' definition that includes non-interconnected VoIP, we conclude that the issue is moot as we are not addressing those services at this time.

4. Telecommunications Relay Services (TRS)

207. In the NPRM, the Commission observed that TRS providers are required to deliver emergency calls to an appropriate PSAP and to provide the location of the emergency. For some of these services, the service provider is required to ask callers for their location information at the beginning of the emergency call. For emergency calls made through a Video Relay Service (VRS) or IP Relay (collectively, ''internet-based TRS''), the service provider must transmit location information to the PSAP in the form of a Registered Location under rules modelled on the Commission's interconnected VoIP 911 rules. In the NPRM, the Commission observed that ''internet-based TRS and interconnected VoIP face similar concerns regarding the ability to accurately locate end users that use a mobile or portable device.'' The Commission therefore proposed dispatchable location requirements for internet-based TRS paralleling the requirements it proposed for VoIP, *i.e.,* allowing internet-based TRS providers flexibility to implement automated dispatchable location and to fall back to Registered Location options when real-time dispatchable location is not feasible. The Commission asked whether there are differences between internet-based TRS and interconnected VoIP that might require taking a different approach to TRS dispatchable location, and sought comment on alternative approaches.

208. We adopt flexible rules for internet-based TRS that largely parallel our rules for fixed and nomadic VoIP. In this respect, TRS commenters express many of the same views as VoIP commenters on the feasibility of providing automatic real-time dispatchable location. Sorenson and CaptionCall state that ''the technology for automatically locating mobile users is advancing rapidly and the technology for locating nomadic VoIP subscribers is improving, though it is still not reliable in every instance.'' Nevertheless, ''[i]f solutions are not technically feasible for over-the-top VoIP services, whether mobile or nomadic, they will not be technically feasible for internet-based TRS providers involved in call routing.'' Sorenson also states that in certain situations, internet-based TRS providers lack the capability to automatically detect whether a videophone or device has changed location, in which case the only remaining option is to prompt users to confirm or update their locations. Sorenson and other commenters therefore support the Commission's proposal that internet-based TRS providers should have the option to fall back to Registered Location when dispatchable location is not feasible.

209. TRS commenters also support being given flexibility to provide alternative location information when more precise location information is not available. Sorenson and CaptionCall state that ''x,y,z needs to be a permissible alternative to dispatchable location, and may be necessary as location solutions evolve technologically.'' Sorenson states that when its ability to use device-based location is fully implemented and operational ''the customer's device will automatically determine an x, y (and, where available, z) location estimate,'' provided the consumer has consented to allowing the VRS application to access location information from the device. In an ex parte filing, Sorenson and CaptionCall propose to require internet-based TRS providers to provide dispatchable location when it is available but to permit automatic geolocation when the dispatchable location is unavailable. If neither a dispatchable location nor geolocation information is available, their proposal would allow the provider to provide the Registered Location. Sorenson and CaptionCall also propose to specify in the rules that an internet-based TRS provider can use a back-up call center when the provider is not confident that it can otherwise reliably identify the caller's location.

210. We find that in the internet-based TRS environment, flexible rules and a longer time frame for providing accurate 911 location information are appropriate. The record indicates that internet-based TRS providers continue to rely heavily on Registered Location, but that alternative approaches are increasingly available that could support automated dispatchable location in some instances.

211. For 911 calls from fixed internet-based TRS,[31] beginning one year from the effective date of the rules, we require internet-based TRS providers to provide automated, validated dispatchable location for each call. For 911 calls from non-fixed internet-based TRS,[32] beginning two years from the effective date of the rules, we require internet-based TRS providers to provide with each 911 call (1) automated dispatchable location, if technically feasible, or, otherwise, either (2) manual updating of Registered Location, or (3) alternative location information, which may be coordinate-based, sufficient to identify the caller's civic address and approximate in-building location, including floor level, in large buildings when the first two are not technically feasible.

212. TRS commenters also identify a distinction between IP captioned telephone services (IP CTS), and relay services such as VRS and IP Relay. Commenters state that call set-up and routing for most IP CTS calls are handled by the user's underlying voice provider rather than the TRS provider. In case of a 911 call, the IP CTS Communications Assistant provides captioning but is not able to speak directly with the parties or generate location information, much less provide it to the PSAP. Sorenson and CaptionCall jointly suggest that the Commission should separate the dispatchable location requirements for VRS from the requirements for IP CTS, ''allow[ing] each service to be treated in an appropriate manner.'' Further, with respect to IP CTS, Sorenson and CaptionCall state that the ability of web/wireless IP CTS applications to provide information other than Registered Location is dependent upon the capabilities of underlying nomadic or mobile VoIP providers. To afford IP CTS providers time to implement these capabilities, they propose that the Commission set the implementation date for IP CTS one year after the implementation date for nomadic or mobile VoIP.

213. We clarify that these requirements do not apply to TTY-based TRS providers, or to internet-based TRS providers who completely rely on their customers' underlying voice service providers to handle emergency call set-up, routing, and provision of location information. In such cases, it is not necessary to impose requirements on the TRS provider because the underlying service provider is subject to the relevant 911 requirements, including location requirements, in connection with the call. Next, we are dismissing Sorenson and Caption Call's request to set the implementation date for IP CTS one year after the implementation date for non-fixed VoIP because the location rules we adopt herein provide sufficient flexibility including fall back to Registered Location, and they only apply to IP CTS providers that handle call set-up and routing.

[31] We define TRS fixed services to include hardware-based TRS and videophone equipment that are professionally installed and cannot be moved by the customer without professional assistance.

[32] We define TRS nomadic and mobile services to include TRS facilities that use software-based endpoints.

214. We also clarify that the rules do not require TRS providers to automatically detect when a device is being used at a different location from the Registered Location to the extent doing so is not technically feasible. The record indicates that such detection is not technically feasible for some internet-based TRS providers. In such cases, the requirement can be met by a manual prompt to the user asking for confirmation whether the user is at the Registered Location or a different location.

215. We agree with commenters regarding routing of calls to Emergency Calling Relay Centers as a last resort in the occasional case where neither a prompt for a manual update nor any alternative technology confirms the validity of the caller's location or otherwise provides actionable dispatchable location information. In those isolated cases, we will allow internet-based TRS providers to route the call to an Emergency Calling Relay Center, so long as the provider has made a good-faith effort to obtain location data from all available alternative location sources.

216. Finally, we find that our TRS location rule amendments herein do not conflict with the IP CTS emergency calling requirement rule proposals in, or prejudge the outcome of, the IP CTS Reform Further Notice. The Commission did not propose any changes to location requirements in the IP CTS emergency call handling rules. We crafted our new TRS location rules so that they will harmonize with the proposed IP CTS emergency call handling rules in the event the latter are adopted, as well as with the existing TRS rules in the event that the proposed IP CTS emergency call handling rule amendments are not adopted. Further, the Commission noted that ''issues regarding location determination by IP CTS providers, as well as other TRS providers, will be addressed in that docket,'' which refers to the instant docket.

5. Mobile Text

217. In the NPRM, the Commission noted that our current Text-to-911 rules require mobile carriers and other covered text providers to obtain location information sufficient to route text messages to the appropriate PSAP, but text providers are not required to convey additional location information to the PSAP. The Commission stated that this approach has always been viewed as an interim solution, and noted the prior pending proposal in the Text-to-911 docket to require covered text providers to deliver enhanced location information (consisting of the best available location information that covered text providers can obtain from any available location technology or combination of technologies, including device-based location). In the NPRM, the Commission sought to refresh the record on text-to-911 location and asked whether to apply dispatchable location requirements to text-to-911, if it is technically feasible, consistent with requirements applied to other platforms.

218. The record indicates that the location technology options available to covered text providers have significantly expanded since the Commission adopted its text-to-911 rules five years ago. For example, commenters point to recent improvements in technology that have the potential to provide location information for an increasing percentage of 911 texts. First, wireless carriers note that they are starting to transition mobile wireless text services from SMS to more robust IP-enabled platforms, such as real-time text, which can support provision of location information with 911 texts using some of the same location methodologies that are used to support IP-based voice services. Second, Comtech and West Safety note the potential to use the device-based location capabilities of mobile handsets (*e.g.,* Google's Emergency Location Service in Android devices) to generate location information, which can then be sent via text to the PSAP.

219. However, the transition away from SMS texting is far from complete, and the technologies being used to support text-to-911 location, while promising, have not yet been demonstrated to be capable of consistently supporting either dispatchable location or enhanced location accuracy comparable to the level of accuracy required for wireless voice services. In this respect, wireless carriers commenting on this issue caution against requiring them to implement dispatchable location capabilities in SMS-based text-to-911, which would require major retrofitting of legacy SMS networks that were not designed to support the provision of location information. Commenters express uncertainty about (1) when text-to-911 will fully migrate from SMS-based texting to newer technologies, and (2) how soon device-based location for 911 texts will be universally available. Comtech states that ''some of the technological challenges that must be overcome to improve location information for text-to-911, when compared to wireless voice 911 location information, include: (1) The current configuration of mobile handsets, (2) the types of location technologies and protocols supported by mobile handsets, and (3) the availability of real-time location platforms across each individual carrier.'' Consequently, while some commenters support establishing enhanced location requirements for text-to-911, others argue that such requirements are premature.

220. We therefore conclude that it would be premature to adopt dispatchable location requirements for text-to-911 comparable to the requirements applicable to other services covered by this order. Instead, we adopt a flexible approach to text-to-911 location requirements. We require covered text providers, within two years of the effective date of these rules, to provide (1) dispatchable location, if technically feasible, or, otherwise, either (2) end-user manual provision of dispatchable location, or (3) enhanced location information, which may be coordinate-based, consisting of the best available location that can be obtained from any available existing technology or combination of technologies at reasonable cost. We clarify that the latter requirement does not require covered text providers to retrofit SMS-based text networks or to upgrade legacy mobile handsets that are only SMS-capable. We recognize that as a practical matter, covered text providers are unlikely to be capable of providing dispatchable location for most 911 texts, and that the quality of ''best-available'' location information provided with 911 texts may vary. Nevertheless, we believe that over time this requirement will encourage development of improved location capabilities for text-to-911, while accounting for technical feasibility issues raised in the current record.

6. Comparison of Benefits and Costs

221. In order to quantify the magnitude of the benefits to the public when dispatchable location is conveyed with a 911 call from MLTS and other communications services identified in the NPRM, the Commission anticipated that the increase in location accuracy that results from the use of dispatchable location will reduce the arrival time of ambulances for some 911 callers at least as much as was accomplished by the mobile location rules adopted in the Indoor Location Fourth Report and Order. In that Report and Order, the Commission found that the location accuracy improvements adopted for mobile 911 calls had the potential to save approximately 10,120 lives annually for an annual benefit of approximately $92 billion. Based on available 911 call volume data in the

Commission's Ninth Annual Report and 911 Fees, the Commission estimated that approximately 75% of 911 calls come from mobile phones, which already are required to convey a dispatchable location. However, the Commission believed the remaining 25% of calls to which its proposed rules would apply will realize benefits. Because three times as many calls come from mobile phones as from non-mobile sources, the Commission estimated that the proposed rules have the potential to save a maximum of one third of the 10,120 lives that were projected to be saved annually by the mobile location rules adopted in the Indoor Location Fourth Report and Order, or 3,373 lives annually. However, because some providers already convey location information that is equivalent to dispatchable location, the Commission expected that the dispatchable location rules will save considerably fewer lives.

222. In the NPRM, the Commission assumed that the proposed rules would save 506 lives annually, or only one twentieth of the lives that it projected would be saved by the mobile location rules. The Commission relied on the U.S. Department of Transportation's estimate that the ''Value of a Statistical Life'' (VSL), defined as ''the additional cost that individuals would be willing to bear for improvements in safety (that is, reductions in risks) that, in the aggregate, reduce the expected number of fatalities by one,'' is $9.6 million. In doing so, the Commission estimated that the 506 lives saved by the proposed rules multiplied by the VSL establishes a benefit floor of $4.9 billion. The Commission sought comment on the reasonableness of its estimate, what other benefits can be expected to accrue, such as (but not limited to) reduced complications from medical issues, reduced damage to property, increased likelihood of forestalling crime and apprehending suspects, and increased confidence in the 911 system and emergency responders.

223. No commenter disagreed with the Commission's analysis of the benefits that the public should expect from the implementation of improved location accuracy requirements for MLTS and other services. Additionally, public safety commenters support improvements to location accuracy for calls to 911 from MLTS and other services, provided that dispatchable location information is validated. The Texas 9–1–1 Entities submit that ''as legacy TDM landline continues to transition to IP as the dominant market solution, 9–1–1 calls are becoming increasingly less distinguishable based solely on technological platform.'' ''While consistency alone warrants that the definition of 'dispatchable location' be the same across the Commission's 9–1–1 rules regardless of technological platform (*e.g.,* CMRS, fixed telephone/legacy landline, MLTS),'' the Texas 9–1–1 Entities argue, ''this is particularly important as technological platforms morph and evolve (*e.g.,* fixed wireless, mobile VoIP, Wi-Fi calling) and no longer fit neatly into traditionally defined and differentiated categories.'' The Texas 9–1–1 Entities and MESB illustrate that validation is particularly necessary in an evolving IP environment, which appears vulnerable to 911 calls being misrouted across state lines and placing increased burdens on resource-limited PSAPs to re-route 911 calls to the appropriate jurisdiction.

224. Additionally, of the total reported calls to 911 in 2017, 155,231,318 calls came from wireless phones, representing approximately 70% of the total reported call volume. In addition, the ratio of wireless calls to total reported call volume remained steady even though there was a 135% increase in VoIP calls from 2016 and a 378% increase in the number of calls reported as ''Other'' from 2016 (VoIP calls reported in 2017 increased to 7,666,958 from 5,661,055 in 2016 and the number of calls reported as ''Other'' increased to 8,907,760 from 2,353,291 in 2016). While the Bureau believes that the 70% figure likely understated the percentage of wireless 911 calls because a number of states reported total 911 calls but did not break out all service categories separately, it is also likely that the Tenth Annual Fee Report underestimated the increase in VoIP and ''Other'' calls given that half of reporting jurisdictions did not report call volume for those categories. Thus, the record suggests that the problem of inaccurate location information or no location information being conveyed with a 911 call from MLTS and other 911 services is common and will continue to grow and potentially undermine public confidence in location accuracy of such calls absent a requirement for validated location information.

225. In the NPRM, the Commission proposed a dispatchable location implementation schedule across all technological platforms that tracked the February 16, 2020, compliance date for Kari's Law. The Commission sought comment on the costs of the proposed rules in the NPRM. The Commission observed that ''911 location solutions that are capable of conveying dispatchable location to PSAPs are already offered by several MLTS market participants.'' Further, the Commission noted that ''several states already place requirements on MLTS providers to obtain and convey location information that is more detailed than street address alone, [footnote omitted] and we therefore conclude that MLTS manufacturers are producing and widely selling equipment that is capable of complying with our proposed rules.'' The Commission asked commenters to address whether there are any cases ''in which currently-available equipment will not be suitable.'' In addition, the Commission observed that ''to comply with current rules, interconnected VoIP service providers and internet-based TRS providers today obtain customers' Registered Location, which we believe would likely be sufficient to satisfy our proposed dispatchable location requirements in many circumstances.'' Because these dispatchable location-capable solutions and equipment are already being widely offered by MLTS manufacturers, installers, and operators, the Commission stated its belief ''that the implementation costs of our proposed dispatchable location rules to these entities would be negligible in most respects.'' The Commission also expressed its belief ''that our approach of granting flexibility in satisfying our proposed rules minimizes the potential cost of compliance.'' Accordingly, the Commission sought comment on these observations and tentative conclusions.

226. As the Commission emphasized in the NPRM, we do not mandate any particular technology or model for implementing the 911 location rules we adopt today and apply these requirements on a technologically neutral basis. Moreover, service providers can leverage existing location technology solutions to mitigate costs. Further, we adopt a phased-in approach that allows service providers additional time beyond the February 16, 2020, proposal in the NPRM to come into compliance with our rules. Additionally, we have tailored the compliance deadlines to each particular service. Further, we apply our rules on a prospective basis, thus minimizing cost on legacy systems and small businesses. We find that applying our rules to these legacy systems would be too costly because there is such a great variety of systems that location technology solutions would have to be tailored for each enterprise. That said, the record demonstrates that delivering dispatchable location is technically feasible today for many services at a cost that is less than the $4.9 billion minimum benefit floor. Consistent with our approach in the Wireless Indoor Accuracy Fourth Report and Order, this means that MLTS and other service

providers subject to our 911 location rules need only choose the methods necessary to close the gap between already-deployed capabilities and the Commission's requirements, ''rather than starting from scratch.'' So, although the cost of meeting our 911 location rules has not yet been determined to a dollar amount, the rules we adopt today provide MLTS and service providers a clear reference point from which to factor in compliance costs incrementally. We provide the following analysis of comments addressing compliance costs.

227. Compliance Costs. In the NPRM, the Commission estimated that the annual cost to MLTS operators to provide location information as proposed would be less than $49.6 million, and that such costs are likely to decline within a few years as databases and other sources of location information become increasingly centralized. The Commission also estimated a $460,000 per-provider cost for 18 providers of Interconnected VoIP, VRS, and IP Relay services to implement software upgrades that would detect when an end user's location has changed and to identify the new location. The Commission also sought comment on implementation costs for outbound-only VoIP providers. No commenter objected to the costs estimated in the NPRM. One commenter, however, suggested that the Commission over-estimated the costs associated with building a ''white pages like directory'' or database and software development costs.

228. Industry commenters recognize that accurate location information can be critical in ensuring a timely emergency response, including for vulnerable populations such as TRS users. Commenters suggest that providers of fixed MLTS, fixed telephony, and interconnected VoIP already provide dispatchable location, while some are concerned that applying dispatchable requirements to nomadic or remote, off-site MLTS could undermine incentives to use innovative solutions. The record reflects that industry has incentives to continue to improve 911 location capabilities and desires flexibility to adopt 911 solutions. However, industry commenters generally warn against applying rigid, overly-granular, ''one-size fits all'' dispatchable location mandates by February 16, 2020, that could be unduly burdensome on evolving technologies. For example, Sorenson and CaptionCall note that ''the technology for automatically locating mobile users is advancing rapidly and the technology for locating nomadic VoIP subscribers is improving, though it is still not reliable in every instance.'' Microsoft suggests that prematurely applying such requirements would be unachievable and ''runs the risk of preventing the use of readily available location technologies that can vastly improve the current location capabilities of MLTS and iVoIP, particularly nomadic MLTS and iVoIP services.'' Ad Hoc advises that ''the Commission should not impose obligations on MLTS owners or operators to transmit any type of information that their MLTS equipment is not technically capable of transmitting or that would require assumption of any unreasonable costs to upgrade.'' Cisco expresses concerned that ''[a] dispatchable location requirement would also amount to a de facto mandate for enterprise customers to purchase third-party solutions that may be cost-prohibitive or ineffective.''

229. Cost Mitigation. Notwithstanding the lack of cost data, commenters suggest measures to mitigate potential costs and complexity of compliance, including enshrining the principles of technological neutrality, flexibility and maintaining service specific 911 rules. The requirements we adopt today are measured, technically feasible, and technologically neutral, so that service providers can choose the most effective solutions from a range of options. In addition, our requirements allow sufficient time for advance planning and deployment of new location technology, beyond the February 16, 2020 compliance date proposed in the NPRM.

230. The record demonstrates that the scale of the potential benefits will increase over time given the magnitude of the problem we are facing, industry's incentives to improve 911 location accuracy, and the fact that the requirements that we adopt today will render the conveyance of dispatchable location an even more effective emergency response tool as technology improves and becomes more widely available.

231. Outbound-only Interconnected VoIP. In the NPRM, the Commission acknowledged potential technical challenges for outbound-only interconnected VoIP services to automatically send a caller's dispatchable location to a local PSAP during a 911 emergency. Commenters submitted estimates for the costs of such a mechanism. Precision Broadband, for example, noted in its ex parte its service of mapping a consumer broadband IP address to a dispatchable location, and projected ''an expenditure of between $200 million and $275 million per year for the Fixed Broadband 911 system at full nationwide deployment.'' We obtained a similar estimate for full nationwide coverage through alternative means. We also note this is an upper bound but an extremely unlikely scenario as many outbound-only interconnected VoIP services already have provision for delivering their location. According to a 2016 study conducted by the Pew Research Center, 90% of smartphone users have location services enabled, meaning that these users can already be located automatically without the aid of a third-party technology like the one proposed by Precision Broadband. We also believe that this statistic would apply to other devices with location service capabilities not just the smartphone. Moreover, this Pew statistic suggests there would be a similar willingness of consumers to enter the dispatchable location into applications. Thus, the costs imposed by this rule are for those consumers who neither have location services available nor enter an address. Because the $275 million figure presumes there are no location services available today, we conclude that the total cost would be $27.5 million (10% of $275 million). We believe it is a reasonable expectation that of the 506 lives saved, at least 25 lives (*i.e.,* only 5% because, as explained above and in the NPRM, about 95% of interconnected devices already have location ability) will be from this part of the rule. Indeed, just three lives saved per year would fully cover the expected cost. Furthermore, there are a variety of flexible options to provide 911 caller location information depending on the service, such as x-y-z coordinates or manually updated Registered Location, adding support for our finding that costs are likely to be on the lower end as we describe here. We therefore find the benefits exceed the estimated costs imposed.

232. We also require outbound-only interconnected VoIP service providers to comply with the customer notification requirements of our rules. We require outbound-only interconnected VoIP service providers to comply with the 911 requirements we adopt today two years after the effective date of the rules. Regarding general 911 requirements that we extend to outbound-only interconnected VoIP, we envision that the costs for consumer notification and record-keeping would also be comparable to the information collection costs applicable to other interconnected VoIP service providers under the Commission's rules. In sum, the record indicates that the costs for outbound-only interconnected service

providers to comply with our 911 rules, including dispatchable location, will not differ from the costs to interconnected VoIP providers that our well-established rules already cover and for which we have previously found to have the benefits outweigh the costs.

C. Consolidating the Commission's 911 Rules

233. In the NPRM, the Commission proposed to consolidate all the existing 911 rules into a single rule part. The Commission also proposed to simplify and streamline the rules in some instances and to eliminate corresponding duplicative rules in other rule parts. The Commission explained that rule consolidation will help to minimize the burden on small entities subject to the Commission's 911 rules by making it easier to identify and comply with all 911 requirements.

234. The majority of commenters who addressed the issue support the proposed 911 rule consolidation. iCERT states that it does not object to a non-substantive rule reorganization, and TIA supports removal of rules that are obsolete. Hamilton provided the sole comment expressing opposition, arguing that relay service rules ''are integrated with non-911 related rules in such a way that removing the 911-related rules and transferring them to part 9 would be cumbersome and counterproductive.

235. We consolidate the existing 911 rules as proposed. To address Hamilton's concerns, we find that we can transfer and amend the relay service emergency calling rules without adversely affecting the integrity of the remaining non-911 relay service rules. The revised part 9 differentiates between platforms and services where needed, but it also enables service providers, PSAPs, and other stakeholders to refer to a single part of the Commission's rules to ascertain all 911 requirements.

236. As noted in Appendix A and described for reference in conversion tables in Appendix B, we designate part 9, which currently contains our interconnected VoIP rules, as the rule part that contains the consolidated 911 rules, and we transfer and consolidate our existing 911 rules from parts 12, 20, 25, and 64 to part 9. The revised part 9 will continue to differentiate between platforms where needed, but it will also enable service providers, PSAPs, and other stakeholders to refer to a single part of the Commission's rules to ascertain all 911 requirements. Specifically, we consolidate our 911 rules as follows:

- Move relevant definitions for all services to subpart A of part 9;
- Move telecommunications carrier obligations (§ 64.3001 *et seq.*) to subpart B of part 9;
- Move CMRS obligations (§ 20.18) to subpart C of part 9;
- Move interconnected VoIP obligations (current part 9) to subpart D of part 9;
- Move emergency calling requirements for TRS providers (§§ 64.604(a)(4) and 64.605) to subpart E of part 9;
- Place proposed MLTS rules in subpart F of part 9;
- Move emergency call center requirements for MSS providers (§ 25.284) to subpart G of part 9; and
- Move 911 resiliency, redundancy, and reliability requirements (part 12) to subpart H of part 9.

In addition, as proposed in the NPRM, we remove § 12.3, an obsolete 911 rule that references a one-time information collection that has been completed, rather than recodify it in part 9. The Commission also sought comment on whether to move § 22.921 of the rules, which addresses 911 call processing procedures for analog telephones in the Cellular Radiotelephone Service, into part 9 or whether that rule has become obsolete and should be removed. As proposed in the NPRM, we remove § 22.921 as obsolete.

237. In proposing to consolidate the 911 rules, the Commission also invited commenters to identify any other rules that should be consolidated or updated. No commenters suggest additional rules for consolidation, but some commenters suggest substantive rule changes. Several of these suggestions concern 911 call routing issues. Specifically, BRETSA suggests that the Commission should require MLTS to be configured to route a 911 call to the PSAP serving the caller's location to cover cases where a different PSAP serves the enterprise's main office or location of the core MLTS equipment. MESB argues that federal intervention and enforcement mechanisms are needed to ensure accurate routing of 911 calls to the correct PSAP and accurate callback number delivery to the PSAP, noting that state MLTS statutes have not been successful in ensuring MLTS compliance with these requirements. BRETSA also suggests that the Commission propose a ''forward-looking'' location rule that would require all devices (*e.g.,* all types of computers, tablets, and phones) used for voice, text, or video communications to incorporate GPS chipsets and other location technologies such as Wi-Fi, so that the devices are location-aware and are able to route 911 calls to the appropriate PSAP. RedSky suggests that the Commission should give telecommunications carriers the ability to transmit a 911 call through a third party such as an incumbent local exchange carrier, a VoIP Provisioning Center (VPC), its agent, or directly to an Emergency Services IP Network (ESINet) or its agent, rather than have to transmit a 911 call directly to a PSAP. In a similar vein, Texas 9–1–1 Entities request that the Commission allow 911 calls to be routed through third-party call centers when dispatchable location, geographic coordinates, or registered location are not available. But MESB states that MLTS and VoIP 911 calls should not be allowed to routinely route to national call centers rather than the local serving PSAPs. BRETSA similarly states that Regional or national call centers are not a permissible alternative to proper configuration of an MLTS.

238. Commenters suggest several other miscellaneous rule changes. Specifically, APCO suggests that the Commission should monitor consumers' use of new technological platforms for communications, and that the Commission consider further expanding the scope of the 911 rules to take into account such platforms and prevent subtle technology distinctions from impacting communications with 911. Ad Hoc states that the Commission should modify § 9.11(b)(5)(iii), which requires interconnected VoIP service providers to distribute stickers or other appropriate labels warning subscribers if E911 service may be limited or not available, to ''permit carriers to discharge their 'notification/warning label' obligations differently for enterprise customers.'' BRETSA suggests an inquiry into 911 fees related to digital broadband facilities connected to an MLTS. RedSky suggests that the Commission should revisit consent decrees that an individual carrier or service provider may have entered into with the FCC or other body because such decrees ''serve to un-level the playing field.'' Next, RedSky, BRETSA, and APCO suggest modifying several terms in § 9.3 definitions. RedSky and BRETSA also suggest amendments to several definitions. Additionally, RedSky notes that several 911-related terms are missing from the part 9 terms and definitions, and Texas 9–1–1 Entities proposes adding a term and definition. Finally, RedSky suggests retitling some rule section headings.

239. While many of the suggestions described above may be worth pursuing separately, we decline to address them in this proceeding. The Commission stated that aside from the new MLTS and dispatchable location rules and deleting obsolete rules, the rule

revisions in this proceeding would simply entail consolidating our existing 911 rules without making substantive changes. Limited exceptions would include certain conforming and technical changes, such as harmonizing definitions of 911-related terms. We find that the commenters' suggestions go well beyond the scope of issues the Commission intended to address in this proceeding. We retain the discretion to address elsewhere, and parties have the option to file petitions for rulemaking or raise such issues in other appropriate proceedings.

240. We do make ministerial conforming changes to certain other rules in light of our decision to consolidate the existing 911 rules into part 9. First, we found that part 1 contains several references to § 20.18, which is being moved to part 9 as the new § 9.10. Accordingly, we update those references to § 9.10. Next, we found that four rules have references to part 20 governing CMRS. Since part 20 will no longer cover CMRS 911 obligations after the relocation of § 20.18 to § 9.10, we are adding a reference to part 9 to each of the four rules to clarify the location of CMRS 911 rules. Since these changes are ministerial in nature and facilitate the part 9 rule consolidation, for which the Commission has already provided notice and allowed for comment, we find for good cause that notice and comment are unnecessary. Finally, we harmonize the § 9.3 definition of ''Registered internet-based TRS user'' to conform with the recently updated definition in part 64 of the Commission's rules. Because the Commission's proposed § 9.3 definition of ''Registered internet-based TRS user'' is sourced from § 64.601(a), and because the Commission changed the definition in § 64.601(a) in a proper rulemaking proceeding, we find for good cause that notice and comment to adopt the same definition change for part 9 are unnecessary.

IV. Procedural Matters

241. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is set forth in Appendix C.

242. *Paperwork Reduction Act Analysis.* The requirements in §§ 9.8(a) and 9.16(b)(3)(i), (ii) and (iii) constitute new information collections subject to the Paperwork Reduction Act of 1995 (PRA), and the requirements in §§ 9.8(a); 9.10(q)(10)(v); 9.11(b)(2)(ii); 9.11(b)(2)(iv); 9.11(b)(4); 9.11(b)(5)(ii); (iii); 9.14(d)(2)(ii); (iii); 9.14(d)(2)(v); 9.14(d)(4); 9.14(e)(2)(ii); 9.14(e)(2)(iv); 9.14(e)(4); 9.16(b)(3)(i); (ii); and (iii) constitute modified information collections. They will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. This document will be submitted to OMB for review under section 3507(d) of the PRA. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which includes more businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis in Appendix C.

243. *Congressional Review Act.* The Commission has determined that these rules are non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

244. *Further Information.* For further information, contact Brenda Boykin, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–2062 or via email at *Brenda.Boykin@fcc.gov;* William Beckwith, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0134 or via email at *William.Beckwith@fcc.gov;* Thomas Eng, Engineer, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0019 or via email at *Thomas.Eng@fcc.gov;* Dr. Rasoul Safavian, Technologist, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0754 or via email at *Rasoul.Safavian@fcc.gov*.

V. Final Regulatory Flexibility Analysis

245. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFAs) was incorporated in the Notice of Proposed Rulemaking adopted in September 2018 (NPRM). The Commission sought written public comment on the proposals in the NPRM including comment on the IRFA. The Comments received are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

246. In the Report and Order, the Commission advances Congressional and Commission objectives to ensure that members of the public can successfully dial 911 to request emergency services and that Public Safety Answering Points (PSAPs) can quickly and accurately locate every 911 caller, regardless of the type of service that is used to make the call. In 2018, the President signed into law Kari's Law Act of 2017 (Kari's Law), which requires implementation of direct 911 dialing and on-site notification capabilities in a multi-line telephone system (MLTS), and Section 506 of RAY BAUM'S Act (RAY BAUM'S Act), which requires the Commission, within 18 months after the date of the legislation's enactment (March 23, 2018), to ''conclude a proceeding to consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call, regardless of the technological platform used and including with calls from [MLTS].''

247. The Report and Order implements Kari's Law by adopting direct dial and on-site notification rules governing calls to 911 made from a MLTS. The Commission takes the following actions:

- Adopts 911 direct dialing requirements as proposed in the NPRM, subject to clarification of some definitions and terms, including the term pre-configured.
- adopts a requirement that notification be sent to a location where someone is likely to hear or see it, but we do not require the location to be continuously staffed or monitored.
- requires the notification to include the fact that a 911 call has been made, a valid callback number, and the same location information that is conveyed with the call to 911. However, we provide an exception for callback number and location information in circumstances where including this information in the notification would be technologically infeasible. We also require that initiation of the notification be contemporaneous with the call to 911, provided that it is technologically feasible to do so.
- requires an MLTS to be configured to provide notification for any caller on the system, including callers at satellite or branch locations.
- adopts the statutory definition of MLTS cited in Kari's Law and RAY BAUM'S Act. In addition, we interpret this definition to cover the full range of networked communications systems

that serve enterprises, including IP-based and cloud-based systems. We also interpret the definition to include outbound-only MLTS systems that allow users to make 911 calls but do not enable PSAPs to place a return call directly to the 911 caller.

- establishes February 16, 2020 as the compliance date for regulations implementing Kari's Law.
- adopts a presumption that if an MLTS fails to comply with the rules, the MLTS manager is responsible unless the manager can rebut the presumption by demonstrating compliance with its obligations under the statute and rules.
- declines to adopt disclosure requirements for legacy MLTS that are not subject to the requirements of Kari's Law and instead encourage enterprises to disclose the limitations on dialing 911 from legacy MLTS as part of voluntary best practices.

248. As required by RAY BAUM'S Act, the Commission considered the feasibility of requiring dispatchable location for 911 calls from MLTS and other technological platforms that currently complete calls to 911, and established a dispatchable location requirement for MLTS 911 calls. In keeping with the directive in RAY BAUM'S Act to address dispatchable location for 911 calls ''regardless of the technological platform used,'' the Report and Order adds dispatchable location requirements to the Commission's existing 911 rules for fixed telephony providers, interconnected Voice over Internet Protocol (VoIP), Telecommunications Relay Services (TRS), Video Relay Services (VRS), and mobile text. Finally, consistent with RAY BAUM'S Act, we do not make any changes to the Commission's existing rules for CMRS providers to provide dispatchable location.

249. More specifically, consistent with RAY BAUM'S Act the Commission adopts the following definition of dispatchable location and alternative location information:

- *Dispatchable Location.* A location delivered to the PSAP with a 911 call that consists of the validated street address of the calling party, plus additional information such as suite, apartment or similar information necessary to adequately identify the location of the calling party, except for Commercial Mobile Radio Service providers, which shall convey the location information required by our existing rules.

250. For MLTS systems subject to Kari's Law, we separately address dispatchable location requirements for MLTS 911 calls from (1) fixed devices and non-fixed devices being used on-premises, and (2) non-fixed devices being used off-premises. Accordingly, the Commission adopts the following dispatchable location rules:

- MLTS 911 calls from *fixed* devices: One year after the effective date of the rules, MLTS must provide automated dispatchable location with each 911 call.
- MLTS 911 calls from *non-fixed* devices:
  - *On-premises* MLTS 911 calls from non-fixed devices: Two years after the effective date of the rules, MLTS must provide (1) automated dispatchable location, if technically feasible, or, otherwise, either (2) end-user manually-updated dispatchable location, or (3) alternative location information, which may be coordinate-based, sufficient to identify the caller's civic address and approximate in-building location, including floor level, in large buildings.
  - *Off-premises* MLTS 911 calls from off-premises devices: Two years after the effective date of the rules, MLTS must provide (1) automated dispatchable location, if technically feasible, or, if otherwise, either (2) end-user manually-updated dispatchable location, or (3) enhanced location information, which may be coordinate-based, consisting of the best available location that can be obtained from any available technology or combination of technologies at reasonable cost.

251. For other services currently subject to 911 requirements (Fixed Telephony, Interconnected Voice over Internet Protocol (VoIP), Telecommunications Relay Service (TRS) and mobile text, the Commission adopts the following requirements:

- *Fixed Telephony:* One year after the effective date of the rules, service providers must deliver automated dispatchable location with each 911 call.
- *Interconnected VoIP:*
  - *Fixed interconnected VoIP:* One year after the effective date of the rules, service providers must deliver automated dispatchable location with each 911 call or Registered Location. Dispatchable location may be provided by means of a customer-generated Registered Location, under the same terms and conditions specified in our current VoIP 911 rules, or by automatic provision of dispatchable location by the VoIP service provider, without additional action by the caller, at the time the 911 call is made.
  - *Non-fixed interconnected VoIP:* Two years after the effective date of the rules, service providers must provide (1) automated dispatchable location, if technically feasible, or, otherwise, either (2) manual updating of Registered Location information, or (3) alternative location information, which may be coordinate-based, sufficient to identify the caller's civic address and approximate in-building location, including floor level, in large buildings. If the provider is unable to obtain or confirm the caller's location, the provider may route the call to a national emergency call center.
  - *Outbound-only interconnected VoIP:* For purposes of compliance with our 911 rules, we amend the definition of ''Interconnected VoIP Service'' in § 9.3 of the Commission's rules to include ''outbound-only'' interconnected VoIP services that permit users generally to terminate calls to the public switched telephone network and extend the Interconnected VoIP location requirements described above to such providers.
- *Telecommunications Relay Services*
  - *Fixed TRS:* One year after the effective date of the rules, service providers must deliver automated dispatchable location with each 911 call.
  - *Non-fixed TRS:* Two years after the effective date of the rules, service providers must provide (1) automated dispatchable location, if technically feasible, or, otherwise, either (2) manual updating of Registered Location information, or (3) alternative location information sufficient to identify the caller's civic address and approximate in-building location, including floor level, in large buildings. If the provider is unable to obtain or confirm the caller's location, the provider may route the call to a national emergency call center.
- *Mobile Text:* Two years after the effective date of the rules, covered text providers must provide (1) automated dispatchable location, if technically feasible, or, otherwise, either (2) end-user manually provisioned location information, or (3) enhanced location information consisting of the best available location that can be obtained from any available technology or combination of technologies at reasonable cost.

252. Lastly, as the Commission proposed in the NPRM, the Report and Order consolidates the Commission's existing 911 rules, and the direct dialing and dispatchable location rules proposed in the NPRM, into a single rule part. The Commission historically has taken a service-specific approach to 911, with the result that 911 requirements for different services are scattered across different sections of the agency's rules. Consolidating our 911 rules from these various rule sections

into a single rule part furthers the goal of recognizing that all the components of 911 function as part of a single system and enables service providers, emergency management officials, and other stakeholders to refer to a single part of the Commission's rules to more easily ascertain all 911 requirements.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

253. There were no comments that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

254. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

255. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

256. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rule changes. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

257. *Multi-Line Telephone System Manufacturers, Importers, Sellers or Lessors.* Neither the Commission nor the SBA has developed a specific small business size standard for MLTS manufacturers, importers, sellers or lessors. The closest applicable SBA category for entities manufacturing MLTS equipment used to provide wire telephone and data communications equipment, interconnected VoIP, non-interconnected VoIP, is Telephone Apparatus Manufacturing. The SBA size standard for Telephone Apparatus Manufacturing consists of all such companies having 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that there were 266 establishments that operated that year. Of this total, 262 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

258. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be stand-alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), PBX equipment, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways. The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which consists of all such companies having 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that there were 266 establishments that operated that year. Of this total, 262 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

259. *Multi-Line Telephone System Operators, Installers and Managers.* Neither the Commission nor the SBA has developed a specific small business size standard for MLTS operators, installers and managers. MLTS Operators, Installers and Managers cut across numerous industry segments and encompass all types of businesses and organization including for-profit, not-for-profit and government agencies. Thus, for purposes of this FRFA, we group entities operating, installing, and managing MLTS in the Small Businesses, Small Organizations and Small Government Jurisdictions description contained in paragraph 21 infra.

260. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of $32.5 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had annual receipts of $25 million to $49,999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

261. *Computer Facilities Management Services.* This industry comprises establishments primarily engaged in providing on-site management and operation of clients' computer systems and/or data processing facilities. Establishments providing computer systems or data processing facilities support services are included in this industry. The SBA has developed a small business size standard for Computer Facilities Management Services which consists of all such firms with annual receipts of $27.5 million or less. U.S. Census Bureau data for 2012 indicate that 4,828 firms operated the entire year. Of this total, 4,743 had annual receipts less than $25 million and 38 firms had annual receipts of $25 million to $49,999,999. Thus, under the SBA size standard the majority of firms in this industry can be considered small.

262. *Other Computer Related Services (Except Information Technology Value Added Resellers).* This industry comprises establishments primarily engaged in providing computer related services (except custom programming, systems integration design, and facilities management services). Establishments providing computer disaster recovery services or software installation services are included in this industry. The SBA has developed a small business size standard for Other Computer Related Services, which consists of all such firms with annual receipts of $27.5 million or less. For this category, U.S. Census Bureau data for 2012 indicate that 6,354 firms operated the entire year. Of this total, 6,266 had annual receipts less than $25 million and 42 firms had annual receipts of $25 million to $49,999,999. Thus, the Commission estimates that the majority of Other Computer Related Services firms in this industry can be considered small.

263. *Information Technology Value Added Resellers.* Information Technology Value Added Resellers provide a total solution to information technology acquisitions by providing multi-vendor hardware and software along with significant value added services. Significant value added services consist of, but are not limited to, configuration consulting and design, systems integration, installation of multi-vendor computer equipment, customization of hardware or software, training, product technical support, maintenance, and end user support. The SBA has developed a small business size standard for Information Technology Value Added Resellers which consists of all such companies having 150 or fewer employees. For this category, U.S. Census Bureau data for 2012 indicate that 6,354 firms operated the entire year. Of this total, 6,241 had less than 100 employees and 113 had 100–1,000 or more employees. Thus, the Commission estimates that the majority of Information Technology Value Added Resellers in this industry can be considered small.

264. *Data Processing, Hosting, and Related Services.* This industry comprises establishments primarily engaged in providing infrastructure for hosting or data processing services. These establishments may provide specialized hosting activities, such as Web hosting, streaming services, or application hosting (except software publishing), or they may provide general time-share mainframe facilities to clients. Data processing establishments provide complete processing and specialized reports from data supplied by clients or provide automated data processing and data entry services. The SBA has developed a small business size standard for Data Processing, Hosting, and Related Services which consists of all such firms with annual receipts of $32.5 million or less. U.S. Census Bureau data for 2012 indicate that 8,252 firms operated the entire year. Of this total, 7,730 had annual receipts less than $25 million and 228 firms had annual receipts of $25 million to $49,999,999. Thus, under this size standard the majority of firms in this industry are small businesses.

265. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

266. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

267. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37, 132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on these data we estimate that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

268. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

269. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers. Under the applicable SBA size standard size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated for the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

270. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. According to U.S. Census Bureau data, 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

271. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size

standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

272. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

273. *Local Resellers.* The SBA has developed a small business size standard for Telecommunications Resellers which includes Local Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services for the entire year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of Local Resellers are small entities.

274. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

275. The Commission's own data—available in its Universal Licensing System—indicate that, as of August 31, 2018 there are 265 Cellular licensees that will be affected by our proposed actions. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

276. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. In the Commission's auction for geographic area licenses in the WCS there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

277. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 firms has 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

278. The Report and Order enacts rules that will affect the reporting, recordkeeping, and/or other compliance requirements of small businesses and enterprises of all sizes that are engaged in the business of manufacturing, importing, selling, leasing, installing, managing, or operating MLTS, provided that the MLTS is manufactured, imported, offered for first sale or lease, first sold or leased, or installed after February 16, 2020. The Report and

Order will also affect small businesses and enterprises that are engaged in the business of offering fixed telephony service, wireless telecommunications, interconnected VoIP service, and TRS. The Commission adopted these changes to implement Kari's Law and RAY BAUM'S Act, which collectively address the inability of callers to directly dial 911 from MLTS and a lack of accurate and critical location information necessary for a PSAP to dispatch emergency services to those in need because of the communications system used in making a 911 call.

279. The rules and compliance requirements the Commission adopted to implement the direct dialing and notification requirements of Kari's Law sought to balance the needs of stakeholders and maximize the public safety benefits. These benefits include potentially preventing fatalities, injuries, or property damage, improving emergency response time and access to emergency services, reducing delays in locating 911 callers, narrowing the gap between MLTS 911 service capabilities relative to other communications services subject to 911 requirements, and driving further technology development. The Commission also sought to achieve the benefits of Kari's Law in a cost-effective manner. As a result, the rules adopted generally track the statutory requirements of Kari's Law, are technologically neutral, and leverage advances in technology to improve access to emergency services as envisioned by Congress.

280. The adopted rules provide small businesses and other enterprises impacted by these requirements wide flexibility and adopt minimum criteria in direct dialing and notification requirements which should offset any potential burdens associated with compliance with our rules.

281. Consistent with Kari's Law, the Commission establishes February 16, 2020, as the compliance date for regulations implementing Kari's Law. It declines to adopt disclosure requirements for legacy MLTS but, instead, encourages industry to consider disclosure and education as part of voluntary best practices. The Commission also adopts a presumption that if an MLTS fails to comply with the rules, the MLTS manager is responsible unless the manager can rebut the presumption by demonstrating compliance with its obligations under the statute and rules.

282. Similar to its approach to implement the requirements of Kari's Law, the Commission sought to craft dispatchable location rules that leverage existing market-driven advances in technology to improve location accuracy, and that provide small businesses and others significant flexibility, are technology neutral, encourage innovation and allow a wide array of options to for compliance while minimizing the compliance burden and cost. Given the lack of cost data submitted in the record for meeting our 911 location rules or MLTS direct dialing and notification requirements, and in light of our flexible and technologically neutral approach to compliance, we do not believe compliance with these requirements will impose a significant economic burden for small businesses.

283. Similarly, we do not believe that the new or modified information collection requirements in §§ 9.8(a); 9.10(q)(10)(v); 9.11(b)(2)(ii); 9.11(b)(2)(iv); 9.11(b)(4); 9.11(b)(5)(ii); (iii); 9.14(d)(2)(ii); (iii); 9.14(d)(2)(v); 9.14(d)(4); 9.14(e)(2)(ii); 9.14(e)(2)(iv); 9.14(e)(4); 9.16(b)(3)(i); (ii); and (iii), will be unduly burdensome on small businesses. Rather than unduly burden small entities, applying the new and modified information collections will promote 911 service and emergency response, which should benefit small governmental jurisdictions, small businesses, small equipment manufacturers, and small business associations by giving them greater confidence in 911 location accuracy. Moreover, the rules we adopt in the Report and Order provide regulatory flexibility to all entities, including small businesses, and encourage service providers to leverage technology to the extent possible to reduce the burden of the information collections adopted in the Report and Order. Additionally, the Report and Order establishes a one- to two-year period from the effective date of the rules before requiring compliance with the revised rules. We provide the following analysis:

284. For compliance with the Commission's 911 requirements, interconnected VoIP service providers must collect and disclose certain information to third parties. OMB approved the information collection for § 9.5 (redesignated § 9.11) under OMB Control No. 3060–1085. This collection applies to interconnected VoIP providers obtaining and updating registered location from their customers and placing that information into ALI databases. This collection also applies to interconnected VoIP providers' customer notification obligations. The Commission modifies the definition of interconnected VoIP, thus potentially increasing the number of respondents subject to these existing information collections. The Commission also changes the wording of § 9.11's registered location requirements to facilitate the provision of automated dispatchable location, registered location, or alternative location information for 911 calls. Thus, we anticipate the burden and cost levels of these requirements would be comparable to the existing Registered Location and customer notification requirements, which OMB approved.

285. TRS service providers must collect and disclose certain information to third parties for compliance with the Commission's 911 rules. OMB approved the information collection for § 64.604 (redesignated as § 9.14) under OMB Control No. 3060–1089. This collection applies to TRS service providers transmitting location information to the PSAP, making location information available to the appropriate PSAP through the ALI database, and obtaining location information from the user. The Commission makes changes to the wording of § 9.14's registered location requirements to facilitate the provision of automated dispatchable location, registered location, or alternative location information for 911 calls. Thus, we anticipate the burden and cost levels of these requirements would be comparable to the existing location requirements, which OMB approved.

286. Covered text providers must notify consumers that they must grant permission to covered text providers to access the device's location information to enable the delivery and routing of text messages to PSAPs (*i.e.* Text-to-911) under § 20.18 (redesignated as 9.10). OMB renewed the information collection under OMB Control No. 3060–1204, ICR Reference No: 201802–3060–012. In this Report and Order, the Commission makes changes to the wording of § 9.10's text-to-911 requirements to facilitate the provision of dispatchable location or best available location information along with 911 text messages. Thus, we anticipate the burden and cost levels of these requirements will require covered text providers to update customer notification at a cost that would be comparable to the existing text-to-911 requirements, which OMB approved.

287. Finally, new § 9.8 requires providers of fixed telephony services to provide automated dispatchable location with 911 calls beginning one year after the effective date of this rule. Additionally, new § 9.16(b)(3)(i), (iii) and (iii) specifies dispatchable location requirements for on-premises fixed telephones; on premises non-fixed devices; and off-premises devices associated with a multi-line telephone system. The Report and Order reflects

that the costs to implement these requirements would be minimal. For purposes of estimating projected costs to small businesses, we find that the costs would be comparable to the costs CMRS service providers incur in delivering uncompensated barometric pressure data, which OMB approved under OMB Control No. 3060–1210, ICR Reference No: 201801–3060–010. Current rule § 20.18 (redesignated as § 9.10) requires that CMRS providers shall deliver uncompensated barometric pressure data from any device capable of delivering such data to PSAPs. The Commission stated that the furnishing of this information to PSAPs is necessary to ensure that PSAPs are receiving all location information possible to be used for dispatch.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

288. The RFA requires an agency to describe any significant, specifically small business alternatives, that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. To minimize any significant impact on small businesses, the Commission establishes a longer timetable for compliance timetable than that proposed in the NPRM relative to dispatchable location requirements. The Report and Order clarifies that the rules are flexible and technologically neutral so that small businesses may choose from a broad array of options to comply with the Commission's rules. We provide the following analysis of our rules.

289. *Direct Dialing and Notification Requirements for a Multi-Line Telephone System.* The Commission takes a number of steps in the Report and Order to provide flexibility and reduce costs for small businesses and other enterprises. As a preliminary matter, Kari's Law provides that the central notification requirements of the statute apply only if the MLTS can be configured to provide notification ''without an improvement to the hardware or software of the system.'' The legislative history of Kari's Law notes that this provision is intended to ''balance the need for an onsite notification with the goal of not placing an undue burden on MLTS owners or operators.'' The Commission adopts rules to implement and clarify this provision.

290. The Commission requires the notification to include the fact that a 911 call has been made, a valid callback number, and the same location information that is conveyed with the call to 911. However, the Commission also provides an exception for callback number and location information in circumstances where including this information in the notification would be technologically infeasible. In addition, the Commission requires that initiation of the notification be contemporaneous with the call to 911, conditioned on whether it is technologically feasible to do so. The Commission also requires that notifications be sent to a location where someone is likely to hear or see the notification but does not require the location to be continuously staffed or monitored. The absence of a continuous staffing or monitoring requirement minimizes a potentially significant cost for small businesses. The Report and Order also clarifies that an MLTS must be configured to provide notification for any caller on the system, including callers at satellite or branch locations. These requirements are highly flexible and give enterprises, including small businesses, significant latitude to configure suitable notification mechanisms without unreasonable burden or cost.

291. Consistent with Kari's Law, the Commission establishes February 16, 2020, as the compliance date for the regulations implementing the statute. The Commission also affords all entities flexibility, including small businesses, to come into compliance with the notification requirements of Kari's Law. This should give enterprises, including small businesses, sufficient advance notice to make informed manufacturing, planning, and purchasing decisions. In addition, because the statute and regulations apply to MLTS that are manufactured, imported, offered for first sale or lease, first sold or leased, or installed after February 16, 2020, enterprises have the flexibility to retain an existing MLTS until the end of its useful life should they choose to do so. The Commission declines to adopt disclosure requirements for existing MLTS and, instead, encourages industry to consider disclosure and education as part of voluntary best practices. This avoids ''one-size-fits-all'' disclosure requirements and allows enterprises the flexibility to disclose the limitations of calling 911 from legacy MLTS in a way that makes sense for their particular business.

292. *Dispatchable Location.* In the Report and Order, the Commission adopts rules to implement the dispatchable location requirements that are measured, technologically neutral and include a phased-in compliance timetable in order to minimize implementation costs, and leverage technological advances. The Commission's measured approach seeks to minimize costs and burdens for small businesses and other enterprises where possible, while providing these MLTS and communications service providers significant flexibility to comply with the rules adopted. For example, small businesses can take advantage of the option for MLTS and other communication service providers subject to 911 requirements that are unable to provide a dispatchable location consistent with the rules adopted in the Report and Order, to elect to provide alternative location information, and incur minimal to no implementation costs as a result. Moreover, the Commission's decision not to mandate any particular technology or model for implementing the 911 location rules gives small businesses the ability choose a compliance approach that best fits their economic circumstances. Because delivering dispatchable location is already technically feasible for many services today, MLTS and other service providers subject to our 911 location rules need only choose the methods necessary to close the gap between already-deployed capabilities and the Commission's requirements, ''rather than starting from scratch'' which should prove less costly for small businesses. Similarly, the Commission's decision to implement a phased-in approach for compliance and to tailor compliance deadlines to particular technologies rather than adopting a hard and fast, ''one size fits all'' approach takes into account the needs of small businesses for flexibility and a longer compliance timeframe. Additionally, by apply the adopted rules on a prospective basis, the Commission will minimize costs for small businesses and legacy MLTS systems.

293. Finally, the Commission considered adopting a small business exemption for our dispatchable location requirements but declined to adopt such an exemption because the flexible rules afford small businesses a broad menu of options for compliance that we believe are scalable in ways to make them cost-effective for small businesses. Further, the proposed criteria for small business

exemptions would have undermined the purpose of the dispatchable location rules, *i.e.,* to improve location accuracy, while offering no countervailing reduction in compliance costs. Rather than an exemption that relies on proposed criteria that would have little or no practical effect on small businesses, we believe the flexible and scalable rules that we adopt will minimize burdens on small businesses while advancing Congress's location accuracy goals.

294. *Rule Consolidation.* The Report and Order also consolidates various 911 rules into a single rule part, *i.e.,* part 9, to the extent practicable. As part of this consolidation, the Commission simplifies and streamlines the rules in some instances and eliminates corresponding duplicative rules in other rule parts. We believe the rule consolidation helps to minimize the burden on small entities subject to the Commission's 911 rules because it simplifies and streamlines the rules, making it easier for small entities to identify and understand what's required to comply with all 911 requirements.

295. *Report to Congress.* The Commission will send a copy of the Report and Order, including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order, and FRFA (or summaries thereof) will also be published in the **Federal Register**.

VI. Conversion Tables

CONVERSION TABLE A

Final rule	Source rule(s)	Comment(s)
Subpart A—Purpose and Definitions		
§9.1 Purpose		
§9.2 Reserved		
§9.3 Definitions	47 CFR 9.3, 20.3, 25.103, 64.601(a), and 64.3000.	Certain definitions from source rules added to §9.3; some definitions revised; some definitions new.
Subpart B—Telecommunications Carriers.		Part 64, subpart AA (Universal Emergency Telephone Number) is removed and reserved.
§9.4 Obligation to transmit 911 calls.	47 CFR 64.3001	Source rule moved to §9.4 and subpart AA removed and reserved in part 64.
§9.5 Transition to 911 as the universal emergency telephone number.	47 CFR 64.3002	Source rule moved to §9.5 and subpart AA removed and reserved in part 64.
§9.6 Obligation for providing a permissive dialing period.	47 CFR 64.3003	Source rule moved to §9.6 and subpart AA removed and reserved in part 64.
§9.7 Obligation for providing an intercept message.	47 CFR 64.3004	Source rule moved to §9.7 and subpart AA removed and reserved in part 64.
§9.8 Obligation of fixed telephony providers to convey dispatchable location.		New provision.
Subpart C—Commercial Mobile Radio Service		
§9.9 Definitions	47 CFR 20.3	Certain definitions from source rule added to §9.9.
§9.10 911 Service Requirements.	47 CFR 20.18	Source rule moved to §9.10 and revised to add paragraph (q)(10)(v); and removed and reserved in Part 20.
Subpart D—Interconnected Voice over Internet Protocol Services		
§9.11 E911 Service	47 CFR 9.5	Source rule moved to §9.11 and revised except for §9.5(f), which is omitted.
§9.12 Access to 911 and E911 service capabilities.	47 CFR 9.7	Source rule moved to §9.12 and revised.
Subpart E—Telecommunications Relay Services for Persons With Disabilities		
§9.13 Jurisdiction	47 CFR 64.601(b) and 64.602	Source rules added to §9.13.
§9.14 Emergency Calling Requirements.	47 CFR 64.604(a)(4) and 64.605	Source rules moved to §9.14 and revised; §64.605 removed and reserved in part 64.
Subpart F—Multi Line Telephone Systems.		New provision.
§9.15 Applicability.		
§9.16 General obligations—direct 911 dialing, notification and dispatchable location.		
§9.17 Enforcement, compliance date, State law.		
Subpart G—Mobile-Satellite Service		
§9.18 Emergency Call Center Service.	47 CFR 25.284	Source rule moved to §9.18 and removed and reserved in part 25.
Subpart H—Resiliency, redundancy and reliability of 911 communications.		Part 12 is consolidated under part 9, subpart H and is removed and reserved.
§9.19 Reliability of covered 911 service providers.	47 CFR 12.4	Source rule moved to §9.19 and removed and reserved in part 12.

CONVERSION TABLE A—Continued

Final rule	Source rule(s)	Comment(s)
§ 9.20 Backup power obligations.	47 CFR 12.5	Source rule moved to § 9.20 and removed and reserved in part 12.

Conversion Table B

PART 1—PRACTICE AND PROCEDURE, FINAL RULE CHANGES

Current rule No.	Subject	Final Changes
1.9020	Spectrum manager leasing arrangements	Updated cross-references.
1.9030	Long-term de facto transfer leasing arrangements	Updated cross-references.
1.9035	Short-term de facto transfer leasing arrangements	Updated cross-references.
1.9049	Special provisions relating to spectrum leasing arrangements involving the ancillary terrestrial component of Mobile Satellite Services.	Updated cross-references.

PART 9—INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICES, FINAL RULE CHANGES

Current rule No.	Subject	Final changes
9.1	Purposes	Revised.
9.3	Definitions	Definition of ''Registered Location'' moved to § 9.3 and revised. *All other definitions remain in § 9.3:* ANI Appropriate local emergency authority. Automatic Location Information (ALI). CMRS. Interconnected VoIP service. PSAP. Pseudo Automatic Number Identification (Pseudo-ANI). Statewide default answering point. Wireline E911 Network.
9.5	E911 Service	Moved to § 9.11 and revised, except for § 9.5(f), which is a one-time information collection that has been completed. Removed the obligation in § 9.5(f).
9.7	Access to 911 and E911 service capabilities	Moved to § 9.12 and revised.

PART 12—RESILIENCY, REDUNDANCY AND RELIABILITY OF COMMUNICATIONS, FINAL RULE CHANGES

Current rule No.	Subject	Final changes
12.1	Purpose	Removed.
12.3	911 and E911 analyses and reports	Removed (one-time reporting requirement has been completed).
12.4	Reliability of covered 911 service providers	Moved to § 9.19; corrected internal cross-references.
12.5	Backup power obligations	Moved to § 9.20; corrected internal cross-references.

PART 20—COMMERCIAL MOBILE SERVICES, FINAL RULE CHANGES

Current rule No.	Subject	Final changes
20.2	Other applicable rule parts	Section 20.2 specifies other FCC rule parts applicable to licensees in the commercial mobile radio services. Revised § 20.2 by adding a reference to compliance with the 911 requirements in part 9 of this chapter.
20.3	Definitions	*Definitions of the following terms added to § 9.3 and removed from § 20.3:* Appropriate local emergency authority. Automatic Number Identification (ANI) (The version in 9.3 is revised slightly to harmonize it with the definition of ANI from § 64.601.) Designated PSAP. Handset-based location technology. Location-capable handsets. Network-based Location Technology. Pseudo Automatic Number Identification (Pseudo-ANI). Public safety answering point (PSAP) (The version in § 9.3 is revised slightly for clarity by adding the word ''answering'' before ''point.'').

PART 20—COMMERCIAL MOBILE SERVICES, FINAL RULE CHANGES—Continued

Current rule No.	Subject	Final changes
		Statewide default answering point. *Definitions of the following terms added to § 9.3 (but not removed from § 20.3)* Commercial mobile radio service (acronym CMRS added to definition for clarity). Mobile Service. Public Switched Network. Private Mobile Radio Service. *Definitions of the following terms added to § 9.9 (but not removed from § 20.3):* Interconnection or Interconnected. Interconnected Service.
20.18	911 Service	Moved to § 9.10; corrected internal cross-references. Corrected certain internal references to paragraph (j), which was previously redesignated as paragraph (m). Corrected certain internal references to paragraph (n), which was previously redesignated as paragraph (q). Added new paragraph (q)(10)(v).

PART 22—PUBLIC MOBILE SERVICES, FINAL RULE CHANGES

Current rule No.	Subject	Final changes
22.921	911 call processing procedures; 911-only calling mode.	Removed and reserved.

PART 25—SATELLITE COMMUNICATIONS, FINAL RULE CHANGES

Current rule No.	Subject	Final changes
25.103	Definitions	*Definitions of the following terms added to § 9.3 (but not removed from § 25.103):* Earth station. Feeder link. Fixed-Satellite Service (FSS). Mobile Earth Station. Mobile-Satellite Service (MSS). Space station. *Definition of the following term added to § 9.3 and removed from § 25.103:* Emergency Call Center.
25.284	Emergency Call Center Service	Moved to § 9.18; § 25.284 removed and reserved.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS, FINAL RULE CHANGES

Current rule No.	Subject	Final changes
64.601	Definitions and provisions of general applicability	Section 64.601(b), which states that ''For purposes of this subpart, all regulations and requirements applicable to common carriers shall also be applicable to providers of interconnected VoIP service,'' is added to § 9.13, with reference to the definition of interconnected VoIP in § 9.3. Section 64.601(a), which lists several terms and defines them by cross-referencing other rule sections, is revised to remove the terms ''Public Safety Answering Point (PSAP),'' ''statewide default answering point,'' and ''appropriate local emergency authority.'' Definition of ANI added to § 9.3 but not removed from § 64.601. Definition of Registered Location added to § 9.3 and revised. Definition of Real-Time Text (RTT) is added to § 9.3 and revised to include definition from 67.1 (rather than cross-reference to § 67.1). *Definition of the following terms added to § 9.3 (but not removed from § 64.601):* Common carrier or carrier. Communications assistant (CA). Internet-based TRS (iTRS). iTRS access technology. Internet-based TRS (iTRS). Internet Protocol Captioned Telephone Service (IP CTS).

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS, FINAL RULE CHANGES—Continued

Current rule No.	Subject	Final changes
		Internet Protocol Relay Service (IP Relay). Non-English language relay service. Speech-to-speech relay service. Telecommunications relay services (TRS). Text telephone (TTY). Video relay service (VRS).
64.602	Jurisdiction	Section 64.602, which states that ''Any violation of this subpart F by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of the Act by a common carrier engaged in interstate communication,'' is added to § 9.13 (with reference to subpart E of part 9).
64.603	Provision of services	Section 64.603(a) requires common carriers providing telephone voice transmission services to provide telecommunications relay services in compliance with the regulations prescribed in subpart F of part 64. Revised § 64.603(a) so that it also refers to compliance with the emergency calling requirements prescribed in part 9, subpart E of this chapter.
64.604(a)(4)	Emergency call handling requirements for TTY-based TRS providers.	Moved to § 9.14(a); § 64.604(a)(4) removed and reserved; and § 64.604(d) revised to update cross-reference from § 64.605 to § 9.14.
64.605	Emergency calling requirements	Moved to § 9.14(b) and (c); § 64.605 removed and reserved.
64.3000	Definitions	Moved to § 9.3 and removed from part 64 as subpart AA (Universal Emergency Telephone Number) is removed and reserved. *Definition of the following terms added to § 9.3 (and removed from Part 64 as subpart AA is removed and reserved):* 911 calls. Appropriate local emergency authority. Public safety answering point (PSAP) (The version in § 9.3 is revised slightly for consistency with the version from § 20.3 and for clarity; ''facility'' changed to ''answering point.''). Statewide default answering point.
64.3001	Obligation to transmit 911 calls	Moved to § 9.4 and removed from part 64 as subpart AA (Universal Emergency Telephone Number) is removed and reserved.
64.3002	Transition to 911 as the universal emergency telephone number.	Moved to § 9.5 and removed from part 64 as subpart AA (Universal Emergency Telephone Number) is removed and reserved.
64.3003	Obligation for providing a permissive dialing period	Moved to § 9.6 and removed from part 64 as subpart AA (Universal Emergency Telephone Number) is removed and reserved.
64.3004	Obligation for providing an intercept message	Moved to § 9.7 and removed from part 64 as subpart AA (Universal Emergency Telephone Number) is removed and reserved.

VII. Ordering Clauses

296. Accordingly, *it is ordered,* pursuant to sections 1, 4(i), 4(j), 4(o), 201(b), 251(e), 301, 303(b), 303(r), 307, 309, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(o), 201(b), 251(e), 301, 303(b), 303(r), 307, 309, 316 and pursuant to Kari's Law Act of 2017, Public Law 115–127, 47 U.S.C. 623 and 623 note, section 506 of the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018 (RAY BAUM'S Act), Public Law 115–141, 47 U.S.C. 615 note, Section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 47 U.S.C. 615c, section 101 of the New and Emerging Technologies 911 Improvement Act of 2008, Public Law 110–283, 47 U.S.C. 615a–1, Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 47 U.S.C. 1471, and the Wireless Communications and Public Safety Act of 1999, Public Law 106–81, 47 U.S.C. 615 note, 615, 615a, 615b, that this Report and Order is *adopted.*

297. *It is further ordered* that the amendments of the Commission's rules as set forth in Appendix A *are adopted,* effective thirty days from the date of publication in the **Federal Register**. Sections 9.8(a); 9.10(q)(10)(v); 9.11(b)(2)(ii); 9.11(b)(2)(iv); 9.11(b)(4); 9.11(b)(5)(ii); (iii); 9.14(d)(2)(ii); (iii); 9.14(d)(2)(v); 9.14(d)(4); 9.14(e)(2)(ii); 9.14(e)(2)(iv); 9.14(e)(4); 9.16(b)(3)(i); (ii); and (iii), contain new or modified information collection requirements that require review by the OMB under the PRA. The Commission directs the Public Safety and Homeland Security Bureau (Bureau) to announce the effective date of those information collections in a document published in the **Federal Register** after the Commission receives OMB approval, and directs the Bureau to cause §§ 9.8(b); 9.10(s); 9.11(c); 9.14(f); 9.16(c), to be revised accordingly.

298. *It is further ordered* that the Commission SHALL SEND a copy of the Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

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

List of Subjects in 47 CFR Parts 1, 9, 12, 20, 25, and 64

Communications, Communications common carriers, Communications Equipment, Reporting and recordkeeping requirements, Security measures, Satellites, Telecommunications, Telephone.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 parts 1, 9, 12, 20, 25, and 64 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. Section 1.9020 is amended by revising paragraph (d)(8) to read as follows:

§ 1.9020 Spectrum manager leasing arrangements.

* * * * *

(d) * * *

(8) *E911 requirements.* If E911 obligations apply to the licensee (see § 9.10 of this chapter), the licensee retains the obligations with respect to leased spectrum. However, if the spectrum lessee is a Contraband Interdiction System (CIS) provider, as defined in § 1.9003, then the CIS provider is responsible for compliance with § 9.10(r) regarding E911 transmission obligations.

* * * * *

■ 3. Section 1.9030 is amended by revising paragraph (d)(8) to read as follows:

§ 1.9030 Long-term de facto transfer leasing arrangements.

* * * * *

(d) * * *

(8) *E911 requirements.* To the extent the licensee is required to meet E911 obligations (see § 9.10 of this chapter), the spectrum lessee is required to meet those obligations with respect to the spectrum leased under the spectrum leasing arrangement insofar as the spectrum lessee's operations are encompassed within the E911 obligations. If the spectrum lessee is a Contraband Interdiction System (CIS) provider, as defined in § 1.9003, then the CIS provider is responsible for compliance with § 9.10(r) regarding E911 transmission obligations.

* * * * *

■ 4. Section 1.9035 is amended by revising paragraph (d)(4) to read as follows:

§ 1.9035 Short-term de facto transfer leasing arrangements.

* * * * *

(d) * * *

(4) *E911 requirements.* If E911 obligations apply to the licensee (see § 9.10 of this chapter), the licensee retains the obligations with respect to leased spectrum. A spectrum lessee entering into a short-term de facto transfer leasing arrangement is not separately required to comply with any such obligations in relation to the leased spectrum. However, if the spectrum lessee is a Contraband Interdiction System (CIS) provider, as defined in § 1.9003, then the CIS provider is responsible for compliance with § 9.10(r) regarding E911 transmission obligations.

* * * * *

■ 5. Section 1.9049 is amended by revising paragraph (c) to read as follows:

§ 1.9049 Special provisions relating to spectrum leasing arrangements involving the ancillary terrestrial component of Mobile Satellite Services.

* * * * *

(c) For purposes of § 1.9020(d)(8), the Mobile Satellite Service licensee's obligation, if any, concerning the E911 requirements in § 9.10 of this chapter, will, with respect to an ATC, be specified in the licensing document for the ATC.

* * * * *

■ 6. Revise part 9 to read as follows:

PART 9—911 REQUIREMENTS

Subpart A—Purpose and Definitions

Sec.

9.1 Purpose.
9.2 [Reserved]
9.3 Definitions.

Subpart B—Telecommunications Carriers

9.4 Obligation to transmit 911 calls.
9.5 Transition to 911 as the universal emergency telephone number.
9.6 Obligation for providing a permissive dialing period.
9.7 Obligation for providing an intercept message.
9.8 Obligation of fixed telephony providers to convey dispatchable location.

Subpart C—Commercial Mobile Radio Service

9.9 Definitions.
9.10 911 Service.

Subpart D—Interconnected Voice over Internet Protocol Services

9.11 E911 Service.
9.12 Access to 911 and E911 service capabilities.

Subpart E—Telecommunications Relay Services for Persons With Disabilities

9.13 Jurisdiction.
9.14 Emergency calling requirements.

Subpart F—Multi-Line Telephone Systems

9.15 Applicability.
9.16 General obligations—direct 911 dialing, notification, and dispatchable location.
9.17 Enforcement, compliance date, State law.

Subpart G—Mobile-Satellite Service

9.18 Emergency Call Center service.

Subpart H—Resiliency, Redundancy, and Reliability of 911 Communications

9.19 Reliability of covered 911 service providers.
9.20 Backup power obligations.

Authority: 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471, unless otherwise noted.

Subpart A—Purpose and Definitions

§ 9.1 Purpose.

The purpose of this part is to set forth the 911 and E911 service requirements and conditions applicable to telecommunications carriers (subpart B); commercial mobile radio service (CMRS) providers (subpart C); interconnected Voice over Internet Protocol (VoIP) providers (subpart D); providers of telecommunications relay services (TRS) for persons with disabilities (subpart E); multi-line telephone systems (MLTS) (subpart F); and Mobile-Satellite Service (MSS) providers (subpart G). The rules in this part also include requirements to help ensure the resiliency, redundancy, and reliability of communications systems, particularly 911 and E911 networks and/or systems (subpart H).

§ 9.2 [Reserved]

§ 9.3 Definitions.

Terms with definitions including the ''(RR)'' designation are defined in the same way in § 2.1 of this chapter and in the Radio Regulations of the International Telecommunication Union.

911 calls. Any call initiated by an end user by dialing 911 for the purpose of accessing an emergency service provider. For wireless carriers, all 911 calls include those they are required to transmit pursuant to subpart C of this part.

Alternative location information. Location information (which may be coordinate-based) sufficient to identify the caller's civic address and approximate in-building location, including floor level, in large buildings.

Appropriate local emergency authority. An emergency answering point that has not been officially designated as a Public Safety Answering Point (PSAP), but has the capability of

receiving 911 calls and either dispatching emergency services personnel or, if necessary, relaying the call to another emergency service provider. An appropriate local emergency authority may include, but is not limited to, an existing local law enforcement authority, such as the police, county sheriff, local emergency medical services provider, or fire department.

Automated dispatchable location. Automatic generation of dispatchable location.

Automatic Location Information (ALI). Information transmitted while providing E911 service that permits emergency service providers to identify the geographic location of the calling party.

Automatic Number Identification (ANI). For 911 systems, the Automatic Number Identification (ANI) identifies the calling party and may be used as the callback number.

Commercial mobile radio service (CMRS). A mobile service that is:

(1)(i) Provided for profit, *i.e.,* with the intent of receiving compensation or monetary gain;

(ii) An interconnected service; and

(iii) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or

(2) The functional equivalent of such a mobile service described in paragraph (1) of this definition.

(3) A variety of factors may be evaluated to make a determination whether the mobile service in question is the functional equivalent of a commercial mobile radio service, including: Consumer demand for the service to determine whether the service is closely substitutable for a commercial mobile radio service; whether changes in price for the service under examination, or for the comparable commercial mobile radio service, would prompt customers to change from one service to the other; and market research information identifying the targeted market for the service under review.

(4) Unlicensed radio frequency devices under part 15 of this chapter are excluded from this definition of Commercial mobile radio service.

Common carrier or *carrier.* Any common carrier engaged in interstate Communication by wire or radio as defined in section 3(h) of the Communications Act of 1934, as amended (the Act), and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b) of the Act. Communications assistant (CA). A person who transliterates or interprets conversation between two or more end users of TRS.

Configured. The settings or configurations for a particular MLTS installation have been implemented so that the MLTS is fully capable when installed of dialing 911 directly and providing MLTS notification as required under the statute and rules. This does not preclude the inclusion of additional dialing patterns to reach 911. However, if the system is configured with these additional dialing patterns, they must be in addition to the default direct dialing pattern.

Designated PSAP. The Public Safety Answering Point (PSAP) designated by the local or state entity that has the authority and responsibility to designate the PSAP to receive wireless 911 calls.

Dispatchable location. A location delivered to the PSAP with a 911 call that consists of the validated street address of the calling party, plus additional information such as suite, apartment or similar information necessary to adequately identify the location of the calling party, except for Commercial Mobile Radio Service providers, which shall convey the location information required by subpart C of this part.

Earth station. A station located either on the Earth's surface or within the major portion of the Earth's atmosphere intended for communication:

(1) With one or more space stations; or

(2) With one or more stations of the same kind by means of one or more reflecting satellites or other objects in space. (RR)

Emergency Call Center. A facility that subscribers of satellite commercial mobile radio services call when in need of emergency assistance by dialing ''911'' on their mobile earth station terminals.

Feeder link. A radio link from a fixed earth station at a given location to a space station, or vice versa, conveying information for a space radiocommunication service other than the Fixed-Satellite Service. The given location may be at a specified fixed point or at any fixed point within specified areas. (RR)

Fixed-Satellite Service (FSS). A radiocommunication service between earth stations at given positions, when one or more satellites are used; the given position may be a specified fixed point or any fixed point within specified areas; in some cases this service includes satellite-to-satellite links, which may also be operated in the inter-satellite service; the Fixed-Satellite Service may also include feeder links of other space radiocommunication services. (RR)

Handset-based location technology. A method of providing the location of wireless 911 callers that requires the use of special location-determining hardware and/or software in a portable or mobile phone. Handset-based location technology may also employ additional location-determining hardware and/or software in the CMRS network and/or another fixed infrastructure.

iTRS access technology. Any equipment, software, or other technology issued, leased, or provided by an internet-based TRS provider that can be used to make and receive an internet-based TRS call.

Improvement to the hardware or software of the system. An improvement to the hardware or software of the MLTS, including upgrades to the core systems of the MLTS, as well as substantial upgrades to the software and any software upgrades requiring a significant purchase.

Interconnected VoIP service. (1) An interconnected Voice over Internet Protocol (VoIP) service is a service that:

(i) Enables real-time, two-way voice communications;

(ii) Requires a broadband connection from the user's location;

(iii) Requires internet protocol-compatible customer premises equipment (CPE); and

(iv) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(2) Notwithstanding the foregoing, solely for purposes of compliance with the Commission's 911 obligations, an interconnected VoIP service includes a service that fulfills each of paragraphs (1)(i) through (iii) of this definition and permits users generally to terminate calls to the public switched telephone network.

Internet-based TRS (iTRS). A telecommunications relay service (TRS) in which an individual with a hearing or a speech disability connects to a TRS communications assistant using an Internet Protocol-enabled device via the internet, rather than the public switched telephone network. Except as authorized or required by the Commission, internet-based TRS does not include the use of a text telephone (TTY) or RTT over an interconnected voice over Internet Protocol service.

Internet Protocol Captioned Telephone Service (IP CTS). A telecommunications relay service that permits an individual who can speak but who has difficulty hearing over the

telephone to use a telephone and an Internet Protocol-enabled device via the internet to simultaneously listen to the other party and read captions of what the other party is saying. With IP CTS, the connection carrying the captions between the relay service provider and the relay service user is via the internet, rather than the public switched telephone network.

Internet Protocol Relay Service (IP Relay). A telecommunications relay service that permits an individual with a hearing or a speech disability to communicate in text using an Internet Protocol-enabled device via the internet, rather than using a text telephone (TTY) and the public switched telephone network.

Location-capable handsets. Portable or mobile phones that contain special location-determining hardware and/or software, which is used by a licensee to locate 911 calls.

MLTS notification. An MLTS feature that can send notice to a central location at the facility where the system is installed or to another person or organization regardless of location. Examples of notification include conspicuous on-screen messages with audible alarms for security desk computers using a client application, text messages for smartphones, and email for administrators. Notification shall include, at a minimum, the following information:

(1) The fact that a 911 call has been made;

(2) A valid callback number; and

(3) The information about the caller's location that the MLTS conveys to the public safety answering point (PSAP) with the call to 911; provided, however, that the notification does not have to include a callback number or location information if it is technically infeasible to provide this information.

Mobile Earth Station. An earth station in the Mobile-Satellite Service intended to be used while in motion or during halts at unspecified points. (RR)

Mobile-Satellite Service (MSS). (1) A radiocommunication service:

(i) Between mobile earth stations and one or more space stations, or between space stations used by this service; or

(ii) Between mobile earth stations, by means of one or more space stations.

(2) This service may also include feeder links necessary for its operation. (RR)

Mobile service. A radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes:

(1) Both one-way and two-way radio communications services;

(2) A mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and

(3) Any service for which a license is required in a personal communications service under part 24 of this chapter.

Network-based location technology. A method of providing the location of wireless 911 callers that employs hardware and/or software in the CMRS network and/or another fixed infrastructure, and does not require the use of special location-determining hardware and/or software in the caller's portable or mobile phone.

Multi-line telephone system or MLTS. A system comprised of common control units, telephone sets, control hardware and software and adjunct systems, including network and premises based systems, such as Centrex and VoIP, as well as PBX, Hybrid, and Key Telephone Systems (as classified by the Commission under part 68 of title 47, Code of Federal Regulations), and includes systems owned or leased by governmental agencies and non-profit entities, as well as for profit businesses.

Non-English language relay service. A telecommunications relay service that allows persons with hearing or speech disabilities who use languages other than English to communicate with voice telephone users in a shared language other than English, through a CA who is fluent in that language.

On-premises. In the context of a multi-line telephone system, within the fixed property (*e.g.* building(s), facilities, or campus) and under the operational control of a single administrative authority.

Person engaged in the business of installing an MLTS. A person that configures the MLTS or performs other tasks involved in getting the system ready to operate. These tasks may include, but are not limited to, establishing the dialing pattern for emergency calls, determining how calls will route to the Public Switched Telephone Network (PSTN), and determining where the MLTS will interface with the PSTN. These tasks are performed when the system is initially installed, but they may also be performed on a more or less regular basis by the MLTS operator as the communications needs of the enterprise change. The MLTS installer may be the MLTS manager or a third party acting on behalf of the manager.

Person engaged in the business of managing an MLTS. The entity that is responsible for controlling and overseeing implementation of the MLTS after installation. These responsibilities include determining how lines should be distributed (including the adding or moving of lines), assigning and reassigning telephone numbers, and ongoing network configuration.

Person engaged in the business of manufacturing, importing, selling, or leasing an MLTS. A person that manufactures, imports, sells, or leases an MLTS.

Person engaged in the business of operating an MLTS. A person responsible for the day-to-day operations of the MLTS.

Pre-configured. An MLTS that comes equipped with hardware and/or software capable of establishing a setting that enables users to directly dial 911 as soon as the system is able to initiate calls to the public switched telephone network, so long as the MLTS is installed and operated properly. This does not preclude the inclusion of additional dialing patterns to reach 911. However, if the system is configured with these additional dialing patterns, they must be in addition to the default direct dialing pattern.

Private mobile radio service. A mobile service that meets neither the paragraph (1) nor paragraph (2) in the definition of *commercial mobile radio service* in this section. A mobile service that does not meet paragraph (1) in the definition of *commercial mobile radio service* in this section is presumed to be a private mobile radio service. Private mobile radio service includes the following:

(1) Not-for-profit land mobile radio and paging services that serve the licensee's internal communications needs as defined in part 90 of this chapter. Shared-use, cost-sharing, or cooperative arrangements, multiple licensed systems that use third party managers or users combining resources to meet compatible needs for specialized internal communications facilities in compliance with the safeguards of § 90.179 of this chapter are presumptively private mobile radio services;

(2) Mobile radio service offered to restricted classes of eligible users. This includes entities eligible in the Public Safety Radio Pool and Radiolocation service.

(3) 220–222 MHz land mobile service and Automatic Vehicle Monitoring systems (part 90 of this chapter) that do not offer interconnected service or that are not-for-profit; and

(4) Personal Radio Services under part 95 of this chapter (General Mobile Services, Radio Control Radio Services, and Citizens Band Radio Services); Maritime Service Stations (excluding Public Coast stations) (part 80 of this chapter); and Aviation Service Stations (part 87 of this chapter).

Pseudo Automatic Number Identification (Pseudo-ANI). A number, consisting of the same number of digits as ANI, that is not a North American Numbering Plan telephone directory number and may be used in place of an ANI to convey special meaning. The special meaning assigned to the pseudo-ANI is determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system.

Public safety answering point or PSAP. An answering point that has been designated to receive 911 calls and route them to emergency services personnel.

Public Switched Network. Any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers, that uses the North American Numbering Plan in connection with the provision of switched services.

Real-Time Text (RTT). Text communications that are transmitted over Internet Protocol (IP) networks immediately as they are created, *e.g.,* on a character-by-character basis.

Registered internet-based TRS user. An individual that has registered with a VRS, IP Relay, or IP CTS provider as described in § 64.611.

Registered Location. The most recent information obtained by a provider of interconnected VoIP service or telecommunications relay services (TRS), as applicable, that identifies the physical location of an end user.

Space station. A station located on an object which is beyond, is intended to go beyond, or has been beyond, the major portion of the Earth's atmosphere. (RR)

Speech-to-speech relay service (STS). A telecommunications relay service that allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person.

Statewide default answering point. An emergency answering point designated by the State to receive 911 calls for either the entire State or those portions of the State not otherwise served by a local PSAP.

Station. A station equipped to engage in radio communication or radio transmission of energy (47 U.S.C. 153(k)).

Telecommunications relay services (TRS). Telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a text telephone or other nonvoice terminal device and an individual who does not use such a device, speech-to-speech services, video relay services and non-English relay services. TRS supersedes the terms ''dual party relay system,'' ''message relay services,'' and ''TDD Relay.''

Text telephone (TTY). A machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. TTY supersedes the term ''TDD'' or ''telecommunications device for the deaf,'' and TT.

Video relay service (VRS). A telecommunications relay service that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller.

Wireline E911 Network. A dedicated wireline network that:

(1) Is interconnected with but largely separate from the public switched telephone network;

(2) Includes a selective router; and

(3) Is used to route emergency calls and related information to PSAPs, designated statewide default answering points, appropriate local emergency authorities or other emergency answering points.

Subpart B—Telecommunications Carriers

§ 9.4 Obligation to transmit 911 calls.

All telecommunications carriers shall transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority as set forth in § 9.5.

§ 9.5 Transition to 911 as the universal emergency telephone number.

As of December 11, 2001, except where 911 is already established as the exclusive emergency number to reach a PSAP within a given jurisdiction, telecommunications carriers shall comply with the following transition periods:

(a) Where a PSAP has been designated, telecommunications carriers shall complete all translation and routing necessary to deliver 911 calls to a PSAP no later than September 11, 2002.

(b) Where no PSAP has been designated, telecommunications carriers shall complete all translation and routing necessary to deliver 911 calls to the statewide default answering point no later than September 11, 2002.

(c) Where neither a PSAP nor a statewide default answering point has been designated, telecommunications carriers shall complete the translation and routing necessary to deliver 911 calls to an appropriate local emergency authority, within nine months of a request by the State or locality.

(d) Where no PSAP nor statewide default answering point has been designated, and no appropriate local emergency authority has been selected by an authorized state or local entity, telecommunications carriers shall identify an appropriate local emergency authority, based on the exercise of reasonable judgment, and complete all translation and routing necessary to deliver 911 calls to such appropriate local emergency authority no later than September 11, 2002.

(e) Once a PSAP is designated for an area where none had existed as of December 11, 2001, telecommunications carriers shall complete the translation and routing necessary to deliver 911 calls to that PSAP within nine months of that designation.

§ 9.6 Obligation for providing a permissive dialing period.

Upon completion of translation and routing of 911 calls to a PSAP, a statewide default answering point, to an appropriate local emergency authority, or, where no PSAP nor statewide default answering point has been designated and no appropriate local emergency authority has been selected by an authorized state or local entity, to an appropriate local emergency authority, identified by a telecommunications carrier based on the exercise of reasonable judgment, the telecommunications carrier shall provide permissive dialing between 911 and any other seven-or ten-digit emergency number or an abbreviated dialing code other than 911 that the public has previously used to reach emergency service providers until the appropriate State or local jurisdiction

determines to phase out the use of such seven-or ten-digit number entirely and use 911 exclusively.

§ 9.7 Obligation for providing an intercept message.

Upon termination of permissive dialing, as provided under § 9.6, telecommunications carriers shall provide a standard intercept message announcement that interrupts calls placed to the emergency service provider using either a seven-or ten-digit emergency number or an abbreviated dialing code other than 911 and informs the caller of the dialing code change.

§ 9.8 Obligation of fixed telephony providers to convey dispatchable location.

(a) Providers of fixed telephony services shall provide automated dispatchable location with 911 calls beginning January 6, 2021.

(b) Paragraph (a) of this section contains information-collection and recordkeeping requirements. Compliance will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing that compliance date and revising this paragraph accordingly.

Subpart C—Commercial Mobile Radio Service

§ 9.9 Definitions.

Interconnection or *Interconnected.* Direct or indirect connection through automatic or manual means (by wire, microwave, or other technologies such as store and forward) to permit the transmission or reception of messages or signals to or from points in the public switched network.

Interconnected service. (1) A service:

(i) That is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network; or

(ii) For which a request for such interconnection is pending pursuant to section 332(c)(1)(B) of the Communications Act, 47 U.S.C. 332(c)(1)(B).

(2) A mobile service offers interconnected service even if the service allows subscribers to access the public switched network only during specified hours of the day, or if the service provides general access to points on the public switched network but also restricts access in certain limited ways. Interconnected service does not include any interface between a licensee's facilities and the public switched network exclusively for a licensee's internal control purposes.

§ 9.10 911 Service.

(a) *Scope of section.* Except as described in paragraph (r) of this section, the following requirements of paragraphs (a) through (q) of this section are only applicable to CMRS providers, excluding mobile satellite service (MSS) operators, to the extent that they:

(1) Offer real-time, two way switched voice service that is interconnected with the public switched network; and

(2) Use an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These requirements are applicable to entities that offer voice service to consumers by purchasing airtime or capacity at wholesale rates from CMRS licensees.

(b) *Basic 911 service.* CMRS providers subject to this section must transmit all wireless 911 calls without respect to their call validation process to a Public Safety Answering Point, or, where no Public Safety Answering Point has been designated, to a designated statewide default answering point or appropriate local emergency authority pursuant to § 9.4, provided that ''all wireless 911 calls'' is defined as ''any call initiated by a wireless user dialing 911 on a phone using a compliant radio frequency protocol of the serving carrier.''

(c) *Access to 911 services.* CMRS providers subject to this section must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, *e.g.,* through the use of Text Telephone Devices (TTY). CMRS providers that provide voice communications over IP facilities are not required to support 911 access via TTYs if they provide 911 access via real-time text (RTT) communications, in accordance with 47 CFR part 67, except that RTT support is not required to the extent that it is not achievable for a particular manufacturer to support RTT on the provider's network.

(d) *Phase I enhanced 911 services.* (1) As of April 1, 1998, or within six months of a request by the designated Public Safety Answering Point as set forth in paragraph (j) of this section, whichever is later, licensees subject to this section must provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point through the use of ANI and Pseudo-ANI.

(2) When the directory number of the handset used to originate a 911 call is not available to the serving carrier, such carrier's obligations under the paragraph (d)(1) of this section extend only to delivering 911 calls and available call party information, including that prescribed in paragraph (l) of this section, to the designated Public Safety Answering Point.

Note to paragraph (d): With respect to 911 calls accessing their systems through the use of TTYs, licensees subject to this section must comply with the requirements in paragraphs (d)(1) and (2) of this section, as to calls made using a digital wireless system, as of October 1, 1998.

(e) *Phase II enhanced 911 service.* Licensees subject to this section must provide to the designated Public Safety Answering Point Phase II enhanced 911 service, *i.e.,* the location of all 911 calls by longitude and latitude in conformance with Phase II accuracy requirements (*see* paragraph (h) of this section).

(f) *Phase-in for network-based location technologies.* Licensees subject to this section who employ a network-based location technology shall provide Phase II 911 enhanced service to at least 50 percent of their coverage area or 50 percent of their population beginning October 1, 2001, or within 6 months of a PSAP request, whichever is later; and to 100 percent of their coverage area or 100 percent of their population within 18 months of such a request or by October 1, 2002, whichever is later.

(g) *Phase-in for handset-based location technologies.* Licensees subject to this section who employ a handset-based location technology may phase in deployment of Phase II enhanced 911 service, subject to the following requirements:

(1) Without respect to any PSAP request for deployment of Phase II 911 enhanced service, the licensee shall:

(i) Begin selling and activating location-capable handsets no later than October 1, 2001;

(ii) Ensure that at least 25 percent of all new handsets activated are location-capable no later than December 31, 2001;

(iii) Ensure that at least 50 percent of all new handsets activated are location-capable no later than June 30, 2002; and

(iv) Ensure that 100 percent of all new digital handsets activated are location-capable no later than December 31, 2002, and thereafter.

(v) By December 31, 2005, achieve 95 percent penetration of location-capable handsets among its subscribers.

(vi) Licensees that meet the enhanced 911 compliance obligations through GPS-enabled handsets and have commercial agreements with resellers will not be required to include the resellers' handset counts in their compliance percentages.

(2) Once a PSAP request is received, the licensee shall, in the area served by the PSAP, within six months or by October 1, 2001, whichever is later:

(i) Install any hardware and/or software in the CMRS network and/or other fixed infrastructure, as needed, to enable the provision of Phase II enhanced 911 service; and

(ii) Begin delivering Phase II enhanced 911 service to the PSAP.

(3) For all 911 calls from portable or mobile phones that do not contain the hardware and/or software needed to enable the licensee to provide Phase II enhanced 911 service, the licensee shall, after a PSAP request is received, support, in the area served by the PSAP, Phase I location for 911 calls or other available best practice method of providing the location of the portable or mobile phone to the PSAP.

(4) Licensees employing handset-based location technologies shall ensure that location-capable portable or mobile phones shall conform to industry interoperability standards designed to enable the location of such phones by multiple licensees.

(h) *Phase II accuracy.* Licensees subject to this section shall comply with the following standards for Phase II location accuracy and reliability, to be tested and measured either at the county or at the PSAP service area geographic level, based on outdoor measurements only:

(1) Network-based technologies:

(i) 100 meters for 67 percent of calls, consistent with the following benchmarks:

(A) One year from January 18, 2011, carriers shall comply with this standard in 60 percent of counties or PSAP service areas. These counties or PSAP service areas must cover at least 70 percent of the population covered by the carrier across its entire network. Compliance will be measured on a per-county or per-PSAP basis using, at the carrier's election, either:

(*1*) Network-based accuracy data; or

(*2*) Blended reporting as provided in paragraph (h)(1)(iv) of this section.

(B) Three years from January 18, 2011, carriers shall comply with this standard in 70 percent of counties or PSAP service areas. These counties or PSAP service areas must cover at least 80 percent of the population covered by the carrier across its entire network. Compliance will be measured on a per-county or per-PSAP basis using, at the carrier's election, either:

(*1*) Network-based accuracy data; or

(*2*) Blended reporting as provided in paragraph (h)(1)(iv) of this section.

(C) Five years from January 18, 2011, carriers shall comply with this standard in 100% of counties or PSAP service areas covered by the carrier. Compliance will be measured on a per-county or per-PSAP basis, using, at the carrier's election, either:

(*1*) Network-based accuracy data;

(*2*) Blended reporting as provided in paragraph (h)(1)(iv) of this section; or

(*3*) Handset-based accuracy data as provided in paragraph (h)(1)(v) of this section.

(ii) 300 meters for 90 percent of calls, consistent with the following benchmarks:

(A) Three years from January 18, 2011, carriers shall comply with this standard in 60 percent of counties or PSAP service areas. These counties or PSAP service areas must cover at least 70 percent of the population covered by the carrier across its entire network. Compliance will be measured on a per-county or per-PSAP basis using, at the carrier's election, either:

(*1*) Network-based accuracy data; or

(*2*) Blended reporting as provided in paragraph (h)(1)(iv) of this section.

(B) Five years from January 18, 2011, carriers shall comply in 70 percent of counties or PSAP service areas. These counties or PSAP service areas must cover at least 80 percent of the population covered by the carrier across its entire network. Compliance will be measured on a per-county or per-PSAP basis using, at the carrier's election, either:

(*1*) Network-based accuracy data; or

(*2*) Blended reporting as provided in paragraph (h)(1)(iv) of this section.

(C) Eight years from January 18, 2011, carriers shall comply in 85 percent of counties or PSAP service areas. Compliance will be measured on a per-county or per-PSAP basis using, at the carrier's election, either:

(*1*) Network-based accuracy data;

(*2*) Blended reporting as provided in paragraph (h)(1)(iv) of this section; or

(*3*) Handset-based accuracy data as provided in paragraph (h)(1)(v) of this section.

(iii) County-level or PSAP-level location accuracy standards for network-based technologies will be applicable to those counties or PSAP service areas, on an individual basis, in which a network-based carrier has deployed Phase II in at least one cell site located within a county's or PSAP service area's boundary. Compliance with the requirements of paragraphs (h)(1)(i) and (ii) of this section shall be measured and reported independently.

(iv) Accuracy data from both network-based solutions and handset-based solutions may be blended to measure compliance with the accuracy requirements of paragraphs (h)(1)(i)(A) through (C) and paragraphs (h)(1)(ii)(A) through (C) of this section. Such blending shall be based on weighting accuracy data in the ratio of assisted GPS (''A–GPS'') handsets to non-A–GPS handsets in the carrier's subscriber base. The weighting ratio shall be applied to the accuracy data from each solution and measured against the network-based accuracy requirements of paragraph (h)(1) of this section.

(v) A carrier may rely solely on handset-based accuracy data in any county or PSAP service area if at least 85 percent of its subscribers, network-wide, use A–GPS handsets, or if it offers A–GPS handsets to subscribers in that county or PSAP service area at no cost to the subscriber.

(vi) A carrier may exclude from compliance particular counties, or portions of counties, where triangulation is not technically possible, such as locations where at least three cell sites are not sufficiently visible to a handset. Carriers must file a list of the specific counties or portions of counties where they are using this exclusion within 90 days following approval from the Office of Management and Budget for the related information collection. This list must be submitted electronically into PS Docket No. 07–114, and copies must be sent to the National Emergency Number Association, the Association of Public-Safety Communications Officials-International, and the National Association of State 9–1–1 Administrators. Further, carriers must submit in the same manner any changes to their exclusion lists within thirty days of discovering such changes. This exclusion has sunset as of January 18, 2019.

(2) Handset-based technologies:

(i) Two years from January 18, 2011, 50 meters for 67 percent of calls, and 150 meters for 80 percent of calls, on a per-county or per-PSAP basis. However, a carrier may exclude up to 15 percent of counties or PSAP service areas from the 150-meter requirement based upon heavy forestation that limits handset-based technology accuracy in those counties or PSAP service areas.

(ii) Eight years from January 18, 2011, 50 meters for 67 percent of calls, and 150 meters for 90 percent of calls, on a

per-county or per-PSAP basis. However, a carrier may exclude up to 15 percent of counties or PSAP service areas from the 150-meter requirement based upon heavy forestation that limits handset-based technology accuracy in those counties or PSAP service areas.

(iii) Carriers must file a list of the specific counties or PSAP service areas where they are using the exclusion for heavy forestation within 90 days following (approval from the Office of Management and Budget for the related information collection). This list must be submitted electronically into PS Docket No. 07–114, and copies must be sent to the National Emergency Number Association, the Association of Public-Safety Communications Officials-International, and the National Association of State 9–1–1 Administrators. Further, carriers must submit in the same manner any changes to their exclusion lists within thirty days of discovering such changes.

(iv) Providers of new CMRS networks that meet the definition of covered CMRS providers under paragraph (a) of this section must comply with the requirements of paragraphs (h)(2)(i) through (iii) of this section. For this purpose, a ''new CMRS network'' is a CMRS network that is newly deployed subsequent to the effective date of the Third Report and Order in PS Docket No. 07–114 and that is not an expansion or upgrade of an existing CMRS network.

(3) Latency (Time to First Fix): For purposes of measuring compliance with the location accuracy standards of this paragraph, a call will be deemed to satisfy the standard only if it provides the specified degree of location accuracy within a maximum latency period of 30 seconds, as measured from the time the user initiates the 911 call to the time the location fix appears at the location information center: Provided, however, that the CMRS provider may elect not to include for purposes of measuring compliance therewith any calls lasting less than 30 seconds.

(i) *Indoor location accuracy for 911 and testing requirements*—(1) *Definitions.* The terms as used in this section have the following meaning:

(i) *Dispatchable location.* A location delivered to the PSAP by the CMRS provider with a 911 call that consists of the street address of the calling party, plus additional information such as suite, apartment or similar information necessary to adequately identify the location of the calling party. The street address of the calling party must be validated and, to the extent possible, corroborated against other location information prior to delivery of dispatchable location information by the CMRS provider to the PSAP.

(ii) *Media Access Control (MAC) Address.* A location identifier of a Wi-Fi access point.

(iii) *National Emergency Address Database (NEAD).* A database that uses MAC address information to identify a dispatchable location for nearby wireless devices within the CMRS provider's coverage footprint.

(iv) *Nationwide CMRS provider.* A CMRS provider whose service extends to a majority of the population and land area of the United States.

(v) *Non-nationwide CMRS provider.* Any CMRS provider other than a nationwide CMRS provider.

(vi) *Test cities.* The six cities (San Francisco, Chicago, Atlanta, Denver/Front Range, Philadelphia, and Manhattan Borough) and surrounding geographic areas that correspond to the six geographic regions specified by the February 7, 2014 ATIS Document, ''Considerations in Selecting Indoor Test Regions,'' for testing of indoor location technologies.

(2) *Indoor location accuracy standards.* CMRS providers subject to this section shall meet the following requirements:

(i) *Horizontal location.* (A) Nationwide CMRS providers shall provide; dispatchable location, or; x/y location within 50 meters, for the following percentages of wireless 911 calls within the following timeframes, measured from the effective date of the adoption of this rule:

(*1*) Within 2 years: 40 percent of all wireless 911 calls.

(*2*) Within 3 years: 50 percent of all wireless 911 calls.

(*3*) Within 5 years: 70 percent of all wireless 911 calls.

(*4*) Within 6 years: 80 percent of all wireless 911 calls.

(B) Non-nationwide CMRS providers shall provide; dispatchable location or; x/y location within 50 meters, for the following percentages of wireless 911 calls within the following timeframes, measured from the effective date of the adoption of this rule:

(*1*) Within 2 years: 40 percent of all wireless 911 calls.

(*2*) Within 3 years: 50 percent of all wireless 911 calls.

(*3*) Within 5 years or within six months of deploying a commercially-operating VoLTE platform in their network, whichever is later: 70 percent of all wireless 911 calls.

(*4*) Within 6 years or within one year of deploying a commercially-operating VoLTE platform in their network, whichever is later: 80 percent of all wireless 911 calls.

(ii) *Vertical location.* CMRS providers shall provide vertical location information with wireless 911 calls as described in this section within the following timeframes measured from the effective date of the adoption of this rule:

(A) Within 3 years: All CMRS providers shall make uncompensated barometric data available to PSAPs with respect to any 911 call placed from any handset that has the capability to deliver barometric sensor information.

(B) Within 3 years: Nationwide CMRS providers shall develop one or more z-axis accuracy metrics validated by an independently administered and transparent test bed process as described in paragraph (i)(3)(i) of this section, and shall submit the proposed metric or metrics, supported by a report of the results of such development and testing, to the Commission for approval.

(C) Within 6 years: In each of the top 25 CMAs, nationwide CMRS providers shall deploy either;) dispatchable location, or; z-axis technology in compliance with any z-axis accuracy metric that has been approved by the Commission,

(*1*) In each CMA where dispatchable location is used: nationwide CMRS providers must ensure that the NEAD is populated with a sufficient number of total dispatchable location reference points to equal 25 percent of the CMA population.

(*2*) In each CMA where z-axis technology is used: nationwide CMRS providers must deploy z-axis technology to cover 80 percent of the CMA population.

(D) Within 8 years: In each of the top 50 CMAs, nationwide CMRS providers shall deploy either

(*1*) Dispatchable location or;

(*2*) Such z-axis technology in compliance with any z-axis accuracy metric that has been approved by the Commission.

(E) Non-nationwide CMRS providers that serve any of the top 25 or 50 CMAs will have an additional year to meet each of the benchmarks in paragraphs (i)(2)(ii)(C) and (D) of this section.

(iii) *Compliance.* Within 60 days after each benchmark date specified in paragraphs (i)(2)(i) and (ii) of this section, CMRS providers must certify that they are in compliance with the location accuracy requirements applicable to them as of that date. CMRS providers shall be presumed to be in compliance by certifying that they have complied with the test bed and live call data provisions described in paragraph (i)(3) of this section.

(A) All CMRS providers must certify that the indoor location technology (or

technologies) used in their networks are deployed consistently with the manner in which they have been tested in the test bed. A CMRS provider must update certification whenever it introduces a new technology into its network or otherwise modifies its network, such that previous performance in the test bed would no longer be consistent with the technology's modified deployment.

(B) CMRS providers that provide quarterly reports of live call data in one or more of the six test cities specified in paragraph (i)(1)(vi) of this section must certify that their deployment of location technologies throughout their coverage area is consistent with their deployment of the same technologies in the areas that are used for live call data reporting.

(C) Non-nationwide CMRS providers that do not provide service or report quarterly live call data in any of the six test cities specified in paragraph (i)(1)(vi) of this section must certify that they have verified based on their own live call data that they are in compliance with the requirements of paragraphs (i)(2)(i)(B) and (i)(2)(ii) of this section.

(iv) *Enforcement.* PSAPs may seek Commission enforcement within their geographic service area of the requirements of paragraphs (i)(2)(i) and (ii) of this section, but only so long as they have implemented policies that are designed to obtain all location information made available by CMRS providers when initiating and delivering 911 calls to the PSAP. Prior to seeking Commission enforcement, a PSAP must provide the CMRS provider with [30] days written notice, and the CMRS provider shall have an opportunity to address the issue informally. If the issue has not been addressed to the PSAP's satisfaction within 90 days, the PSAP may seek enforcement relief.

(3) *Indoor location accuracy testing and live call data reporting*—(i) *Indoor location accuracy test bed.* CMRS providers must establish the test bed described in this section within 12 months of the effective date of this rule. CMRS providers must validate technologies intended for indoor location, including dispatchable location technologies and technologies that deliver horizontal and/or vertical coordinates, through an independently administered and transparent test bed process, in order for such technologies to be presumed to comply with the location accuracy requirements of this paragraph. The test bed shall meet the following minimal requirements in order for the test results to be considered valid for compliance purposes:

(A) Include testing in representative indoor environments, including dense urban, urban, suburban and rural morphologies;

(B) Test for performance attributes including location accuracy (ground truth as measured in the test bed), latency (Time to First Fix), and reliability (yield); and

(C) Each test call (or equivalent) shall be independent from prior calls and accuracy will be based on the first location delivered after the call is initiated.

(D) In complying with paragraph (i)(3)(i)(B) of this section, CMRS providers shall measure yield separately for each individual indoor location morphology (dense urban, urban, suburban, and rural) in the test bed, and based upon the specific type of location technology that the provider intends to deploy in real-world areas represented by that particular morphology. CMRS providers must base the yield percentage based on the number of test calls that deliver a location in compliance with any applicable indoor location accuracy requirements, compared to the total number of calls that successfully connect to the testing network. CMRS providers may exclude test calls that are dropped or otherwise disconnected in 10 seconds or less from calculation of the yield percentage (both the denominator and numerator).

(ii) *Collection and reporting of aggregate live 911 call location data.* CMRS providers providing service in any of the Test Cities or portions thereof must collect and report aggregate data on the location technologies used for live 911 calls in those areas.

(A) CMRS providers subject to this section shall identify and collect information regarding the location technology or technologies used for each 911 call in the reporting area during the calling period.

(B) CMRS providers subject to this section shall report Test City call location data on a quarterly basis to the Commission, the National Emergency Number Association, the Association of Public Safety Communications Officials, and the National Association of State 911 Administrators, with the first report due 18 months from the effective date of rules adopted in this proceeding.

(C) CMRS providers subject to this section shall also provide quarterly live call data on a more granular basis that allows evaluation of the performance of individual location technologies within different morphologies (*e.g.,* dense urban, urban, suburban, rural). To the extent available, live call data for all CMRS providers shall delineate based on a per technology basis accumulated and so identified for:

(*1*) Each of the ATIS ESIF morphologies;

(*2*) On a reasonable community level basis; or

(*3*) By census block. This more granular data will be used for evaluation and not for compliance purposes.

(D) Non-nationwide CMRS providers that operate in a single Test City need only report live 911 call data from that city or portion thereof that they cover. Non-nationwide CMRS providers that operate in more than one Test City must report live 911 call data only in half of the regions (as selected by the provider). In the event a non-nationwide CMRS provider begins coverage in a Test City it previously did not serve, it must update its certification pursuant to paragraph (i)(2)(iii)(C) of this section to reflect this change in its network and begin reporting data from the appropriate areas. All non-nationwide CMRS providers must report their Test City live call data every 6 months, beginning 18 months from the effective date of rules adopted in this proceeding.

(E) Non-nationwide CMRS providers that do not provide coverage in any of the Test Cities can satisfy the requirement of this paragraph (i)(3)(ii) by collecting and reporting data based on the largest county within its footprint. In addition, where a non-nationwide CMRS provider serves more than one of the ATIS ESIF morphologies, it must include a sufficient number of representative counties to cover each morphology.

(iii) *Data retention.* CMRS providers shall retain testing and live call data gathered pursuant to this section for a period of 2 years.

(4) *Submission of plans and reports.* The following reporting and certification obligations apply to all CMRS providers subject to this section, which may be filed electronically in PS Docket No. 07–114:

(i) *Initial implementation plan.* No later than 18 months from the effective date of the adoption of this rule, nationwide CMRS providers shall report to the Commission on their plans for meeting the indoor location accuracy requirements of paragraph (i)(2) of this section. Non-nationwide CMRS providers will have an additional 6 months to submit their implementation plans.

(ii) *Progress reports.* No later than 18 months from the effective date of the adoption of this rule), each CMRS provider shall file a progress report on implementation of indoor location accuracy requirements. Non-nationwide CMRS providers will have an additional

6 months to submit their progress reports. All CMRS providers shall provide an additional progress report no later than 36 months from the effective date of the adoption of this rule. The 36-month reports shall indicate what progress the provider has made consistent with its implementation plan, and the nationwide CMRS providers shall include an assessment of their deployment of dispatchable location solutions. For any CMRS provider participating in the development of the NEAD database, this progress report must include detail as to the implementation of the NEAD database described in paragraphs (i)(4)(iii) and (iv) of this section.

(iii) *NEAD privacy and security plan.* Prior to activation of the NEAD but no later than 18 months from the effective date of the adoption of this rule, the nationwide CMRS providers shall file with the Commission and request approval for a security and privacy plan for the administration and operation of the NEAD. The plan must include the identity of an administrator for the NEAD, who will serve as a point of contact for the Commission and shall be accountable for the effectiveness of the security, privacy, and resiliency measures.

(iv) *NEAD use certification.* Prior to use of the NEAD or any information contained therein to meet such requirements, CMRS providers must certify that they will not use the NEAD or associated data for any non-911 purpose, except as otherwise required by law.

(j) *Confidence and uncertainty data.* (1) Except as provided in paragraphs (j)(2) and (3) of this section, CMRS providers subject to this section shall provide for all wireless 911 calls, whether from outdoor or indoor locations, x- and y-axis (latitude, longitude) confidence and uncertainty information (C/U data) on a per-call basis upon the request of a PSAP. The data shall specify:

(i) The caller's location with a uniform confidence level of 90 percent, and;

(ii) The radius in meters from the reported position at that same confidence level. All entities responsible for transporting confidence and uncertainty between CMRS providers and PSAPs, including LECs, CLECs, owners of E911 networks, and emergency service providers, must enable the transmission of confidence and uncertainty data provided by CMRS providers to the requesting PSAP.

(2) Upon meeting the 3-year timeframe pursuant to paragraph (i)(2)(i) of this section, CMRS providers shall provide with wireless 911 calls that have a dispatchable location the C/U data for the x- and y-axis (latitude, longitude) required under paragraph (j)(1) of this section.

(3) Upon meeting the 6-year timeframe pursuant to paragraph (i)(2)(i) of this section, CMRS providers shall provide with wireless 911 calls that have a dispatchable location the C/U data for the x- and y-axis (latitude, longitude) required under paragraph (j)(1) of this section.

(k) *Provision of live 911 call data for PSAPs.* Notwithstanding other 911 call data collection and reporting requirements in paragraph (i) of this section, CMRS providers must record information on all live 911 calls, including, but not limited to, the positioning source method used to provide a location fix associated with the call. CMRS providers must also record the confidence and uncertainty data that they provide pursuant to paragraphs (j)(1) through (3) of this section. This information must be made available to PSAPs upon request, and shall be retained for a period of two years.

(l) *Reports on Phase II plans.* Licensees subject to this section shall report to the Commission their plans for implementing Phase II enhanced 911 service, including the location-determination technology they plan to employ and the procedure they intend to use to verify conformance with the Phase II accuracy requirements by November 9, 2000. Licensees are required to update these plans within thirty days of the adoption of any change. These reports and updates may be filed electronically in a manner to be designated by the Commission.

(m) *Conditions for enhanced 911 services*—(1) *Generally.* The requirements set forth in paragraphs (d) through (h)(2) and in paragraph (j) of this section shall be applicable only to the extent that the administrator of the applicable designated PSAP has requested the services required under those paragraphs and such PSAP is capable of receiving and using the requested data elements and has a mechanism for recovering the PSAP's costs associated with them.

(2) *Commencement of six-month period.* (i) Except as provided in paragraph (m)(2)(ii) of this section, for purposes of commencing the six-month period for carrier implementation specified in paragraphs (d), (f) and (g) of this section, a PSAP will be deemed capable of receiving and using the data elements associated with the service requested, if it can demonstrate that it has:

(A) Ordered the necessary equipment and has commitments from suppliers to have it installed and operational within such six-month period; and

(B) Made a timely request to the appropriate local exchange carrier for the necessary trunking, upgrades, and other facilities.

(ii) For purposes of commencing the six-month period for carrier implementation specified in paragraphs (f) and (g) of this section, a PSAP that is Phase I-capable using a Non-Call Path Associated Signaling (NCAS) technology will be deemed capable of receiving and using the data elements associated with Phase II service if it can demonstrate that it has made a timely request to the appropriate local exchange carrier for the ALI database upgrade necessary to receive the Phase II information.

(3) *Tolling of six-month period.* Where a wireless carrier has served a written request for documentation on the PSAP within 15 days of receiving the PSAP's request for Phase I or Phase II enhanced 911 service, and the PSAP fails to respond to such request within 15 days of such service, the six-month period for carrier implementation specified in paragraphs (d), (f), and (g) of this section will be tolled until the PSAP provides the carrier with such documentation.

(4) *Carrier certification regarding PSAP readiness issues.* At the end of the six-month period for carrier implementation specified in paragraphs (d), (f), and (g) of this section, a wireless carrier that believes that the PSAP is not capable of receiving and using the data elements associated with the service requested may file a certification with the Commission. Upon filing and service of such certification, the carrier may suspend further implementation efforts, except as provided in paragraph (m)(4)(x) of this section.

(i) As a prerequisite to filing such certification, no later than 21 days prior to such filing, the wireless carrier must notify the affected PSAP, in writing, of its intent to file such certification. Any response that the carrier receives from the PSAP must be included with the carrier's certification filing.

(ii) The certification process shall be subject to the procedural requirements set forth in §§ 1.45 and 1.47 of this chapter.

(iii) The certification must be in the form of an affidavit signed by a director or officer of the carrier, documenting:

(A) The basis for the carrier's determination that the PSAP will not be ready;

(B) Each of the specific steps the carrier has taken to provide the E911 service requested;

(C) The reasons why further implementation efforts cannot be made until the PSAP becomes capable of receiving and using the data elements associated with the E911 service requested; and

(D) The specific steps that remain to be completed by the wireless carrier and, to the extent known, the PSAP or other parties before the carrier can provide the E911 service requested.

(iv) All affidavits must be correct. The carrier must ensure that its affidavit is correct, and the certifying director or officer has the duty to personally determine that the affidavit is correct.

(v) A carrier may not engage in a practice of filing inadequate or incomplete certifications for the purpose of delaying its responsibilities.

(vi) To be eligible to make a certification, the wireless carrier must have completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness.

(vii) A copy of the certification must be served on the PSAP in accordance with § 1.47 of this chapter. The PSAP may challenge in writing the accuracy of the carrier's certification and shall serve a copy of such challenge on the carrier. See §§ 1.45 and 1.47 and 1.720 through 1.740 of this chapter.

(viii) If a wireless carrier's certification is facially inadequate, the six-month implementation period specified in paragraphs (d), (f), and (g) of this section will not be suspended as provided for in paragraph (m)(4) of this section.

(ix) If a wireless carrier's certification is inaccurate, the wireless carrier will be liable for noncompliance as if the certification had not been filed.

(x) A carrier that files a certification under this paragraph (m)(4) shall have 90 days from receipt of the PSAP's written notice that it is capable of receiving and using the data elements associated with the service requested to provide such service in accordance with the requirements of paragraphs (d) through (h) of this section.

(5) *Modification of deadlines by agreement.* Nothing in this section shall prevent Public Safety Answering Points and carriers from establishing, by mutual consent, deadlines different from those imposed for carrier and PSAP compliance in paragraphs (d), (f), and (g)(2) of this section.

(n) *Dispatch service.* A service provider covered by this section who offers dispatch service to customers may meet the requirements of this section with respect to customers who use dispatch service either by complying with the requirements set forth in paragraphs (b) through (e) of this section, or by routing the customer's emergency calls through a dispatcher. If the service provider chooses the latter alternative, it must make every reasonable effort to explicitly notify its current and potential dispatch customers and their users that they are not able to directly reach a PSAP by calling 911 and that, in the event of an emergency, the dispatcher should be contacted.

(o) *Non-service-initialized handsets.* (1) Licensees subject to this section that donate a non-service-initialized handset for purposes of providing access to 911 services are required to:

(i) Program each handset with 911 plus the decimal representation of the seven least significant digits of the Electronic Serial Number, International Mobile Equipment Identifier, or any other identifier unique to that handset;

(ii) Affix to each handset a label which is designed to withstand the length of service expected for a non-service-initialized phone, and which notifies the user that the handset can only be used to dial 911, that the 911 operator will not be able to call the user back, and that the user should convey the exact location of the emergency as soon as possible; and

(iii) Institute a public education program to provide the users of such handsets with information regarding the limitations of non-service-initialized handsets.

(2) Manufacturers of 911-only handsets that are manufactured on or after May 3, 2004, are required to:

(i) Program each handset with 911 plus the decimal representation of the seven least significant digits of the Electronic Serial Number, International Mobile Equipment Identifier, or any other identifier unique to that handset;

(ii) Affix to each handset a label which is designed to withstand the length of service expected for a non-service-initialized phone, and which notifies the user that the handset can only be used to dial 911, that the 911 operator will not be able to call the user back, and that the user should convey the exact location of the emergency as soon as possible; and

(iii) Institute a public education program to provide the users of such handsets with information regarding the limitations of 911-only handsets.

(3) The following definitions apply for purposes of this paragraph.

(i) *Non-service-initialized handset.* A handset for which there is no valid service contract with a provider of the services enumerated in paragraph (a) of this section.

(ii) *911-only handset.* A non-service-initialized handset that is manufactured with the capability of dialing 911 only and that cannot receive incoming calls.

(p) *Reseller obligation.* (1) Beginning December 31, 2006, resellers have an obligation, independent of the underlying licensee, to provide access to basic and enhanced 911 service to the extent that the underlying licensee of the facilities the reseller uses to provide access to the public switched network complies with § 9.10(d) through (g).

(2) Resellers have an independent obligation to ensure that all handsets or other devices offered to their customers for voice communications and sold after December 31, 2006 are capable of transmitting enhanced 911 information to the appropriate PSAP, in accordance with the accuracy requirements of § 9.10(i).

(q) *Text-to-911 requirements*—(1) *Covered text provider.* Notwithstanding any other provisions in this section, for purposes of this paragraph (q) of this section, a ''covered text provider'' includes all CMRS providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones.

(2) *Automatic bounce-back message.* An automatic text message delivered to a consumer by a covered text provider in response to the consumer's attempt to send a text message to 911 when the consumer is located in an area where text-to-911 service is unavailable or the covered text provider does not support text-to-911 service generally or in the area where the consumer is located at the time.

(3) *Provision of automatic bounce-back messages.* No later than September 30, 2013, all covered text providers shall provide an automatic bounce-back message under the following circumstances:

(i) A consumer attempts to send a text message to a Public Safety Answering Point (PSAP) by means of the three-digit short code ''911''; and

(ii) The covered text provider cannot deliver the text because the consumer is located in an area where:

(A) Text-to-911 service is unavailable; or

(B) The covered text provider does not support text-to-911 service at the time.

(4) *Automatic bounce-back message exceptions.* (i) A covered text provider is not required to provide an automatic bounce-back message when:

(A) Transmission of the text message is not controlled by the provider;

(B) A consumer is attempting to text 911, through a text messaging application that requires CMRS service, from a non-service initialized handset;

(C) When the text-to-911 message cannot be delivered to a PSAP due to failure in the PSAP network that has not been reported to the provider; or

(D) A consumer is attempting to text 911 through a device that is incapable of sending texts via three digit short codes, provided the software for the device cannot be upgraded over the air to allow text-to-911.

(ii) The provider of a preinstalled or downloadable interconnected text application is considered to have ''control'' over transmission of text messages for purposes of paragraph (q)(4)(i)(A) of this section. However, if a user or a third party modifies or manipulates the application after it is installed or downloaded so that it no longer supports bounce-back messaging, the application provider will be presumed not to have control.

(5) *Automatic bounce-back message minimum requirements.* The automatic bounce-back message shall, at a minimum, inform the consumer that text-to-911 service is not available and advise the consumer or texting program user to use another means to contact emergency services.

(6) *Temporary suspension of text-to-911 service.* Covered text providers that support text-to-911 must provide a mechanism to allow PSAPs that accept text-to-911 to request temporary suspension of text-to-911 service for any reason, including, but not limited to, network congestion, call taker overload, PSAP failure, or security breach, and to request resumption of text-to-911 service after such temporary suspension. During any period of suspension of text-to-911 service, the covered text provider must provide an automatic bounce-back message to any consumer attempting to text to 911 in the area subject to the temporary suspension.

(7) *Roaming.* Notwithstanding any other provisions in this section, when a consumer is roaming on a covered text provider's host network pursuant to § 20.12, the covered text provider operating the consumer's home network shall have the obligation to originate an automatic bounce-back message to such consumer when the consumer is located in an area where text-to-911 service is unavailable, or the home provider does not support text-to-911 service in that area at the time. The host provider shall not impede the consumer's 911 text message to the home provider and/or any automatic bounce-back message originated by the home provider to the consumer roaming on the host network.

(8) *Software application provider.* A software application provider that transmits text messages directly into the SMS network of the consumer's underlying CMRS provider satisfies the obligations of paragraph (q)(3) of this section provided it does not prevent or inhibit delivery of the CMRS provider's automatic bounce-back message to the consumer.

(9) *911 text message.* A 911 text message is a message, consisting of text characters, sent to the short code ''911'' and intended to be delivered to a PSAP by a covered text provider, regardless of the text messaging platform used.

(10) *Delivery of 911 text messages.* (i) No later than December 31, 2014, all covered text providers must have the capability to route a 911 text message to a PSAP. In complying with this requirement, covered text providers must obtain location information sufficient to route text messages to the same PSAP to which a 911 voice call would be routed, unless the responsible local or state entity designates a different PSAP to receive 911 text messages and informs the covered text provider of that change. All covered text providers using device-based location information that requires consumer activation must clearly inform consumers that they must grant permission for the text messaging application to access the wireless device's location information in order to enable text-to-911. If a consumer does not permit this access, the covered text provider's text application must provide an automated bounce-back message as set forth in paragraph (q)(3) of this section.

(ii) Covered text providers must begin routing all 911 text messages to a PSAP by June 30, 2015, or within six months of the PSAP's valid request for text-to-911 service, whichever is later, unless an alternate timeframe is agreed to by both the PSAP and the covered text provider. The covered text provider must notify the Commission of the dates and terms of the alternate timeframe within 30 days of the parties' agreement.

(iii) Valid Request means that:

(A) The requesting PSAP is, and certifies that it is, technically ready to receive 911 text messages in the format requested;

(B) The appropriate local or state 911 service governing authority has specifically authorized the PSAP to accept and, by extension, the covered text provider to provide, text-to-911 service; and

(C) The requesting PSAP has provided notification to the covered text provider that it meets the foregoing requirements. Registration by the PSAP in a database made available by the Commission in accordance with requirements established in connection therewith, or any other written notification reasonably acceptable to the covered text provider, shall constitute sufficient notification for purposes of this paragraph.

(iv) The requirements set forth in paragraphs (q)(10)(i) through (iii) of this section do not apply to in-flight text messaging providers, MSS providers, or IP Relay service providers, or to 911 text messages that originate from Wi-Fi only locations or that are transmitted from devices that cannot access the CMRS network.

(v) No later than January 6, 2022, covered text providers must provide the following location information with all 911 text messages routed to a PSAP: Automated dispatchable location, if technically feasible; otherwise, either end-user manual provision of location information, or enhanced location information, which may be coordinate-based, consisting of the best available location that can be obtained from any available technology or combination of technologies at reasonable cost.

(11) *Access to SMS networks for 911 text messages.* To the extent that CMRS providers offer Short Message Service (SMS), they shall allow access by any other covered text provider to the capabilities necessary for transmission of 911 text messages originating on such other covered text providers' application services. Covered text providers using the CMRS network to deliver 911 text messages must clearly inform consumers that, absent an SMS plan with the consumer's underlying CMRS provider, the covered text provider may be unable to deliver 911 text messages. CMRS providers may migrate to other technologies and need not retain SMS networks solely for other covered text providers' 911 use, but must notify the affected covered text providers not less than 90 days before the migration is to occur.

(r) *Contraband Interdiction System (CIS) requirement.* CIS providers regulated as private mobile radio service (*see* § 9.3) must transmit all wireless 911 calls without respect to their call validation process to a Public Safety Answering Point, or, where no Public Safety Answering Point has been designated, to a designated statewide default answering point or appropriate local emergency authority pursuant to § 9.4, provided that ''all wireless 911 calls'' is defined as ''any call initiated by a wireless user dialing 911 on a phone using a compliant radio

frequency protocol of the serving carrier.'' This requirement shall not apply if the Public Safety Answering Point or emergency authority informs the CIS provider that it does not wish to receive 911 calls from the CIS provider.

(s) *Compliance date.* Paragraph (q)(10)(v) of this section contains information-collection and recordkeeping requirements. Compliance will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing that compliance date and revising this paragraph accordingly.

Subpart D—Interconnected Voice over Internet Protocol Services

§ 9.11 E911 Service.

(a) *Before January 6, 2021, for fixed services and before January 6, 2022, for non-fixed services.*—(1) *Scope.* The following requirements of paragraphs (a)(1) through (5) of this section are only applicable to providers of interconnected VoIP services, except those interconnected VoIP services that fulfill each paragraphs (1)(i) through (iii) of the definition of interconnected VoIP service in § 9.3, and also permit users generally to terminate calls to the public switched telephone network. Further, the following requirements apply only to 911 calls placed by users whose Registered Location is in a geographic area served by a Wireline E911 Network (which, as defined in § 9.3, includes a selective router).

(2) *E911 Service.* As of November 28, 2005:

(i) Interconnected VoIP service providers must, as a condition of providing service to a consumer, provide that consumer with E911 service as described in this section;

(ii) Interconnected VoIP service providers must transmit all 911 calls, as well as ANI and the caller's Registered Location for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location and that has been designated for telecommunications carriers pursuant to § 9.4, provided that ''all 911 calls'' is defined as ''any voice communication initiated by an interconnected VoIP user dialing 911;''

(iii) All 911 calls must be routed through the use of ANI and, if necessary, pseudo-ANI, via the dedicated Wireline E911 Network; and

(iv) The Registered Location must be available to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate automatic location information (ALI) database.

(3) *Service Level Obligation.* Notwithstanding the provisions in paragraph (a)(2) of this section, if a PSAP, designated statewide default answering point, or appropriate local emergency authority is not capable of receiving and processing either ANI or location information, an interconnected VoIP service provider need not provide such ANI or location information; however, nothing in this paragraph affects the obligation under paragraph (a)(2)(iii) of this section of an interconnected VoIP service provider to transmit via the Wireline E911 Network all 911 calls to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location and that has been designated for telecommunications carriers pursuant to § 9.4.

(4) *Registered Location requirement.* As of November 28, 2005, interconnected VoIP service providers must:

(i) Obtain from each customer, prior to the initiation of service, the physical location at which the service will first be used; and

(ii) Provide their end users one or more methods of updating their Registered Location, including at least one option that requires use only of the CPE necessary to access the interconnected VoIP service. Any method used must allow an end user to update the Registered Location at will and in a timely manner.

(5) *Customer notification.* Each interconnected VoIP service provider shall:

(i) Specifically advise every subscriber, both new and existing, prominently and in plain language, of the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service. Such circumstances include, but are not limited to, relocation of the end user's IP-compatible CPE, use by the end user of a non-native telephone number, broadband connection failure, loss of electrical power, and delays that may occur in making a Registered Location available in or through the ALI database;

(ii) Obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood the advisory described in paragraph (a)(5)(i) of this section; and

(iii) Either—

(A) Distribute to its existing subscribers, and to each new subscriber prior to the initiation of that subscriber's service, warning stickers or other appropriate labels warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on or near the equipment used in conjunction with the interconnected VoIP service; or

(B) Notify existing subscribers, and each new subscriber prior to the initiation of that subscriber's service, by other conspicuous means if E911 service may be limited or not available.

(b) *On or after January 6, 2021, for fixed services, and on or after January 6, 2022, for non-fixed services*—(1) *Scope.* The following requirements of paragraphs (b)(1) through (5) of this section are only applicable to all providers of interconnected VoIP services. Further, these requirements apply only to 911 calls placed by users whose dispatchable location is in a geographic area served by a Wireline E911 Network (which, as defined in § 9.3, includes a selective router).

(2) *E911 Service*—(i) Interconnected VoIP service providers must, as a condition of providing service to a consumer, provide that consumer with E911 service as described in this section;

(ii) Interconnected VoIP service providers must transmit the following to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's dispatchable location and that has been designated for telecommunications carriers pursuant to § 9.4:

(A) All 911 calls, provided that ''all 911 calls'' is defined as ''any voice communication initiated by an interconnected VoIP user dialing 911;''

(B) ANI; and

(C) The location information described in paragraph (b)(4) of this section.

(iii) All 911 calls must be routed through the use of ANI and, if necessary, pseudo-ANI, via the dedicated Wireline E911 Network, provided that nothing in this subparagraph shall preclude routing the call first to a national emergency call center to ascertain the caller's location in the event that the interconnected VoIP service provider is unable to obtain or confirm the caller's location information; and

(iv) The location information described in paragraph (b)(4) of this section must be available to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or

through the appropriate automatic location information (ALI) database.

(3) *Service level obligation.* Notwithstanding the provisions in paragraph (b)(2) of this section, if a PSAP, designated statewide default answering point, or appropriate local emergency authority is not capable of receiving and processing either ANI or location information, an interconnected VoIP service provider need not provide such ANI or location information; however, nothing in this paragraph affects the obligation under paragraph (b)(2)(iii) of this section of an interconnected VoIP service provider to transmit via the Wireline E911 Network all 911 calls to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's dispatchable location and that has been designated for telecommunications carriers pursuant to § 9.4.

(4) *Location requirements.* To meet E911 service requirements, interconnected VoIP service providers must provide location information with each 911 call as follows:

(i) Fixed interconnected VoIP services. Providers of fixed interconnected VoIP services must provide automated dispatchable location with each 911 call.

(ii) Non-fixed interconnected VoIP services. For non-fixed interconnected VoIP service (service that is capable of being used from more than one location), interconnected VoIP service providers must provide location information in accordance with paragraph (b)(4)(ii)(A) of this section, if technically feasible. Otherwise, interconnected VoIP service providers must either provide location information in accordance with paragraph (b)(4)(ii)(B) or (C), or meet paragraph (b)(4)(ii)(D) of this section.

(A) Provide automated dispatchable location, if technically feasible.

(B) Provide Registered Location information that meets the following requirements:

(*1*) The service provider has obtained from the customer, prior to the initiation of service, the Registered Location (as defined in § 9.3) at which the service will first be used;

(*2*) The service provider has provided end users one or more methods of updating their Registered Location, including at least one option that requires use only of the CPE necessary to access the interconnected VoIP service. Any method used must allow an end user to update the Registered Location at will and in a timely manner; and

(*3*) The service provider must identify whether the service is being used to call 911 from a different location than the Registered Location, and if so, either:

(*i*) Prompt the customer to provide a new Registered Location; or

(*ii*) Update the Registered Location without requiring additional action by the customer.

(C) Provide Alternative Location Information as defined in § 9.3.

(D) Route the caller to a national emergency call center.

(5) *Customer notification.* (i) Each interconnected VoIP service provider shall specifically advise every subscriber, both new and existing, prominently and in plain language, of the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service. Such circumstances include, but are not limited to, relocation of the end user's IP-compatible CPE, use by the end user of a non-native telephone number, broadband connection failure, loss of electrical power, and delays that may occur in making a dispatchable location available in or through the ALI database;

(ii) Each interconnected VoIP service provider shall obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood the advisory described in paragraph (b)(5)(i) of this section; and

(iii) Each interconnected VoIP service provider shall either:

(A) Distribute to its existing subscribers, and to each new subscriber prior to the initiation of that subscriber's service, warning stickers or labels warning subscribers if E911 service may be limited or not available, and instructing the subscriber to place them on or near the equipment used in conjunction with the interconnected VoIP service; or

(B) Notify existing subscribers, and each new subscriber prior to the initiation of that subscriber's service, by other conspicuous means if E911 service may be limited or not available.

(c) Paragraphs (b)(2)(ii) and (iv), (b)(4), and (b)(5)(ii) and (iii) of this section contain information-collection and recordkeeping requirements. Compliance will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing that compliance date and revising this paragraph accordingly.

§ 9.12 Access to 911 and E911 service capabilities.

(a) *Access.* Subject to the other requirements of this part, an owner or controller of a capability that can be used for 911 or E911 service shall make that capability available to a requesting interconnected VoIP provider as set forth in paragraphs (a)(1) and (2) of this section.

(1) If the owner or controller makes the requested capability available to a CMRS provider, the owner or controller must make that capability available to the interconnected VoIP provider. An owner or controller makes a capability available to a CMRS provider if the owner or controller offers that capability to any CMRS provider.

(2) If the owner or controller does not make the requested capability available to a CMRS provider within the meaning of paragraph (a)(1) of this section, the owner or controller must make that capability available to a requesting interconnected VoIP provider only if that capability is necessary to enable the interconnected VoIP provider to provide 911 or E911 service in compliance with the Commission's rules.

(b) *Rates, terms, and conditions.* The rates, terms, and conditions on which a capability is provided to an interconnected VoIP provider under paragraph (a) of this section shall be reasonable. For purposes of this paragraph, it is evidence that rates, terms, and conditions are reasonable if they are:

(1) The same as the rates, terms, and conditions that are made available to CMRS providers, or

(2) In the event such capability is not made available to CMRS providers, the same rates, terms, and conditions that are made available to any telecommunications carrier or other entity for the provision of 911 or E911 service.

(c) *Permissible use.* An interconnected VoIP provider that obtains access to a capability pursuant to this section may use that capability only for the purpose of providing 911 or E911 service in accordance with the Commission's rules.

Subpart E—Telecommunications Relay Services for Persons with Disabilities

§ 9.13 Jurisdiction.

Any violation of this subpart E by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of the Act by a common carrier engaged in interstate communication. For purposes of this subpart, all

regulations and requirements applicable to common carriers shall also be applicable to providers of interconnected VoIP service as defined in § 9.3.

§ 9.14 Emergency calling requirements.

(a) *Emergency call handling requirements for TTY-based TRS providers.* TTY-based TRS providers must use a system for incoming emergency calls that, at a minimum, automatically and immediately transfers the caller to an appropriate Public Safety Answering Point (PSAP). An appropriate PSAP is either a PSAP that the caller would have reached if the caller had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.

(b) *Additional emergency calling requirements applicable to internet-based TRS providers.* (1) The requirements of paragraphs (b)(2)(i) and (iv) of this section shall not apply to providers of VRS and IP Relay to which § 9.14(c) and (d) apply.

(2) Each provider of internet-based TRS shall:

(i) When responsible for placing or routing voice calls to the public switched telephone network, accept and handle emergency calls and access, either directly or via a third party, a commercially available database that will allow the provider to determine an appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority that corresponds to the caller's location, and to relay the call to that entity;

(ii) Implement a system that ensures that the provider answers an incoming emergency call before other non-emergency calls (*i.e.,* prioritize emergency calls and move them to the top of the queue);

(iii) Provide 911 and E911 service in accordance with paragraphs (c) through (e) of this section, as applicable;

(iv) Deliver to the PSAP, designated statewide default answering point, or appropriate local emergency authority, at the outset of the outbound leg of an emergency call, at a minimum, the name of the relay user and location of the emergency, as well as the name of the relay provider, the CA's callback number, and the CA's identification number, thereby enabling the PSAP, designated statewide default answering point, or appropriate local emergency authority to re-establish contact with the CA in the event the call is disconnected;

(v) In the event one or both legs of an emergency call are disconnected (*i.e.,* either the call between the TRS user and the CA, or the outbound voice telephone call between the CA and the PSAP, designated statewide default answering point, or appropriate local emergency authority), immediately re-establish contact with the TRS user and/or the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority and resume handling the call; and

(vi) Ensure that information obtained as a result of this section is limited to that needed to facilitate 911 services, is made available only to emergency call handlers and emergency response or law enforcement personnel, and is used for the sole purpose of ascertaining a user's location in an emergency situation or for other emergency or law enforcement purposes.

(c) *E911 Service for VRS and IP Relay before January 6, 2021, for fixed services, and before January 6, 2022, for non-fixed services*—(1) *Scope.* The following requirements of paragraphs (c)(1) through (4) of this section are only applicable to providers of VRS or IP Relay. Further, these requirements apply only to 911 calls placed by registered users whose Registered Location is in a geographic area served by a Wireline E911 Network and is available to the provider handling the call.

(2) *E911 Service.* VRS or IP Relay providers must, as a condition of providing service to a user:

(i) Provide that user with E911 service as described in this section;

(ii) Request, at the beginning of each emergency call, the caller's name and location information, unless the VRS or IP Relay provider already has, or has access to, Registered Location information for the caller;

(iii) Transmit all 911 calls, as well as ANI, the caller's Registered Location, the name of the VRS or IP Relay provider, and the CA's identification number for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location and that has been designated for telecommunications carriers pursuant to § 9.4, provided that ''all 911 calls'' is defined as ''any communication initiated by an VRS or IP Relay user dialing 911'';

(iv) Route all 911 calls through the use of ANI and, if necessary, pseudo-ANI, via the dedicated Wireline E911 Network, provided that nothing in this subparagraph shall preclude routing the call first to a call center to ascertain the caller's location in the event that the VRS or IP Relay provider believes the caller may not be located at the Registered Location; and

(v) Make the Registered Location, the name of the VRS or IP Relay provider, and the CA's identification number available to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate automatic location information (ALI) database.

(3) *Service level obligation.* Notwithstanding the provisions in paragraph (c)(2) of this section, if a PSAP, designated statewide default answering point, or appropriate local emergency authority is not capable of receiving and processing either ANI or location information, a VRS or IP Relay provider need not provide such ANI or location information; however, nothing in this paragraph affects the obligation under paragraph (c)(2)(iv) of this section of a VRS or IP Relay provider to transmit via the Wireline E911 Network all 911 calls to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location and that has been designated for telecommunications carriers pursuant to § 9.4.

(4) *Registered location requirement.* VRS and IP Relay providers must:

(i) Obtain from each Registered internet-based TRS user, prior to the initiation of service, the physical location at which the service will first be used; and

(ii) If the VRS or IP Relay is capable of being used from more than one location, provide their registered internet-based TRS users one or more methods of updating the user's Registered Location, including at least one option that requires use only of the iTRS access technology necessary to access the VRS or IP Relay. Any method used must allow a registered internet-based TRS user to update the Registered Location at will and in a timely manner.

(d) *E911 Service for VRS and IP Relay on or after January 6, 2021, for fixed services, and on or after January 6, 2022, for non-fixed services*—(1) *Scope.* The following requirements of paragraphs (d)(1) through (4) of this section are only applicable to providers of VRS or IP Relay. Further, these requirements apply only to 911 calls placed by registered users whose dispatchable location is in a geographic area served by a Wireline E911 Network and is available to the provider handling the call.

(2) *E911 Service.* VRS or IP Relay providers must, as a condition of providing service to a user:

(i) Provide that user with E911 service as described in this section;

(ii) Request, at the beginning of each emergency call, the caller's name and dispatchable location, unless the VRS or IP relay provider already has, or has access to the location information described in paragraph (d)(4) of this section;

(iii) Transmit the following to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's dispatchable location and that has been designated for telecommunications carriers pursuant to § 9.4:

(A) All 911 calls, provided that ''all 911 calls'' is defined as ''any communication initiated by an VRS or IP Relay user dialing 911;''

(B) ANI, the name of the VRS or IP Relay provider, and the CA's identification number for each call; and

(C) The location information described in paragraph (d)(4) of this section.

(iv) Route all 911 calls through the use of ANI and, if necessary, pseudo-ANI, via the dedicated Wireline E911 Network, provided that nothing in this subparagraph shall preclude routing the call first to a call center to ascertain the caller's location in the event that the VRS or IP Relay provider is unable to obtain or confirm the caller's location information; and

(v) Make the location information described in paragraph (d)(4) of this section, the name of the VRS or IP Relay provider, and the CA's identification number available to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate automatic location information (ALI) database.

(3) *Service level obligation.* Notwithstanding the provisions in paragraph (d)(2) of this section, if a PSAP, designated statewide default answering point, or appropriate local emergency authority is not capable of receiving and processing either ANI or location information, a VRS or IP Relay provider need not provide such ANI or location information; however, nothing in this paragraph affects the obligation under paragraph (d)(2)(iv) of this section of a VRS or IP Relay provider to transmit via the Wireline E911 Network all 911 calls to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's dispatchable location and that has been designated for telecommunications carriers pursuant to § 9.4.

(4) *Location requirements.* To meet E911 service requirements, VRS and IP Relay providers must provide location information with each 911 call as follows:

(i) Fixed VRS and IP Relay services. Providers of fixed VRS and IP Relay services must provide automated dispatchable location with each 911 call.

(ii) Non-fixed VRS and IP Relay services. For non-fixed VRS and IP Relay services (service that is capable of being used from more than one location), VRS and IP Relay service providers must provide location information in accordance with paragraph (d)(4)(ii)(A) of this section, if technically feasible. Otherwise, VRS and IP Relay service providers must either provide location information in accordance with paragraph (d)(4)(ii)(B) or (C), or meet paragraph (d)(4)(ii)(D) of this section.

(A) Provide automated dispatchable location, if technically feasible.

(B) Provide Registered Location information that meets the following requirements:

(*1*) The service provider has obtained from the customer, prior to the initiation of service, the Registered Location (as defined in § 9.3) at which the service will first be used;

(*2*) The service provider has provided end users one or more methods of updating their Registered Location, including at least one option that requires use only of the internet-based TRS access technology necessary to access the VRS or IP Relay. Any method used must allow an end user to update the Registered Location at will and in a timely manner; and

(*3*) If the VRS or IP Relay is capable of being used from more than one location, if it is not possible to automatically determine the Registered internet-based TRS user's location at the time of the initiation of an emergency call, verify the current location with the user at the beginning of an emergency call.

(C) Provide Alternative Location Information as defined in § 9.3.

(D) Route the caller to a call center.

(e) *E911 Service for IP CTS on or after January 6, 2021, for fixed services, and on or after January 6, 2022, for non-fixed services*—(1) *Scope.* The following requirements of paragraphs (e)(1) through (4) of this section are only applicable to ''covered IP CTS providers,'' who are providers of IP CTS to the extent that the IP CTS provider, itself or through an entity with whom the IP CTS provider contracts, places or routes voice calls to the public switched telephone network. Further, these requirements apply only to 911 calls placed by a registered user whose dispatchable location is in a geographic area served by a Wireline E911 Network and is available to the provider handling the call.

(2) *E911 Service.* Covered IP CTS providers must, as a condition of providing service to a user:

(i) Provide that user with E911 service as described in this section;

(ii) Transmit or provide the following to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's dispatchable location and that has been designated for telecommunications carriers pursuant to § 9.4:

(A) All 911 calls, provided that ''all 911 calls'' is defined as ''any communication initiated by an IP CTS user dialing 911;''

(B) With the call, a telephone number that is assigned to the caller and that enables the PSAP, designated statewide default answering point, or appropriate local emergency authority to call the 911 caller back directly, while enabling the caller to receive captions on the callback; and

(C) The location information described in paragraph (e)(4) of this section.

(iii) Route all 911 calls through the use of ANI and, if necessary, pseudo-ANI, via the dedicated Wireline E911 Network, provided that nothing in this subparagraph shall preclude routing the call first to a call center to ascertain the caller's location in the event that the covered IP CTS provider is unable to obtain or confirm the caller's location information; and

(iv) Make the location information described in paragraph (e)(4) of this section and callback number available to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate automatic location information (ALI) database.

(3) *Service level obligation.* Notwithstanding the provisions in paragraph (e)(2) of this section, if a PSAP, designated statewide default answering point, or appropriate local emergency authority is not capable of receiving and processing either ANI or location information, a covered IP CTS provider need not provide such ANI or location information; however, nothing in this paragraph affects the obligation under paragraph (e)(2)(iii) of this section of a covered IP CTS provider to transmit via the Wireline E911 Network all 911 calls to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's dispatchable location and that has been designated for

telecommunications carriers pursuant to § 9.4.

(4) *Location requirements.* To meet E911 service requirements, covered IP CTS providers must provide location information with each 911 call as follows:

(i) Fixed IP CTS. Providers of fixed IP CTS must provide automated dispatchable location with each 911 call.

(ii) Non-fixed IP CTS. For non-fixed IP CTS (service that is capable of being used from more than one location), covered IP CTS providers must provide location information in accordance with paragraph (e)(4)(ii)(A) of this section, if technically feasible. Otherwise, covered IP CTS providers must either provide location information in accordance with paragraph (e)(4)(ii)(B) or (C), or meet paragraph (e)(4)(iii)(D) of this section.

(A) Provide automated dispatchable location, if technically feasible.

(B) Provide Registered Location information that meets the following requirements:

(*1*) The service provider has obtained from the customer, prior to the initiation of service, the Registered Location (as defined in § 9.3) at which the service will first be used; and

(*2*) The service provider has provided end users one or more methods of updating their Registered Location, including at least one option that requires use only of the internet-based TRS access technology necessary to access the IP CTS. Any method used must allow an end user to update the Registered Location at will and in a timely manner.

(C) Provide Alternative Location Information as defined in § 9.3.

(D) Route the caller to a call center.

(f) Paragraphs (d)(2)(ii), (iii), and (v), (d)(4), (e)(2)(ii) and (iv), and (e)(4) of this section contain information-collection and recordkeeping requirements. Compliance will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing that compliance date and revising this paragraph accordingly.

Subpart F—Multi-Line Telephone Systems

§ 9.15 Applicability.

The rules in this subpart F apply to:

(a) A person engaged in the business of manufacturing, importing, selling, or leasing multi-line telephone systems;

(b) A person engaged in the business of installing, managing, or operating multi-line telephone systems;

(c) Any multi-line telephone system that is manufactured, imported, offered for first sale or lease, first sold or leased, or installed after February 16, 2020.

§ 9.16 General obligations—direct 911 dialing, notification, and dispatchable location.

(a) *Obligation of manufacturers, importers, sellers, and lessors.* (1) A person engaged in the business of manufacturing, importing, selling, or leasing multi-line telephone systems may not manufacture or import for use in the United States, or sell or lease or offer to sell or lease in the United States, a multi-line telephone system, unless such system is pre-configured such that, when properly installed in accordance with paragraph (b) of this section, a user may directly initiate a call to 911 from any station equipped with dialing facilities, without dialing any additional digit, code, prefix, or post-fix, including any trunk-access code such as the digit 9, regardless of whether the user is required to dial such a digit, code, prefix, or post-fix for other calls.

(2) A person engaged in the business of manufacturing, importing, selling, or leasing multi-line telephone systems may not manufacture or import for use in the United States, or sell or lease or offer to sell or lease in the United States, a multi-line telephone system, unless such system has the capability, after proper installation in accordance with paragraph (b) of this section, of providing the dispatchable location of the caller to the PSAP with 911 calls.

(b) *Obligation of installers, managers, or operators.* (1) A person engaged in the business of installing, managing, or operating multi-line telephone systems may not install, manage, or operate for use in the United States such a system, unless such system is configured such that a user may directly initiate a call to 911 from any station equipped with dialing facilities, without dialing any additional digit, code, prefix, or post-fix, including any trunk-access code such as the digit 9, regardless of whether the user is required to dial such a digit, code, prefix, or post-fix for other calls.

(2) A person engaged in the business of installing, managing, or operating multi-line telephone systems shall, in installing, managing, or operating such a system for use in the United States, configure the system to provide MLTS notification to a central location at the facility where the system is installed or to another person or organization regardless of location, if the system is able to be configured to provide the notification without an improvement to the hardware or software of the system. MLTS notification must meet the following requirements:

(i) MLTS notification must be initiated contemporaneously with the 911 call, provided that it is technically feasible to do so;

(ii) MLTS notification must not delay the call to 911; and

(iii) MLTS notification must be sent to a location where someone is likely to see or hear it.

(3) A person engaged in the business of installing multi-line telephone systems may not install such a system in the United States unless it is configured such that it is capable of being programmed with and conveying the dispatchable location of the caller to the PSAP with 911 calls consistent with paragraphs (i), (ii) and (iii) of this section. A person engaged in the business of managing or operating multi-line telephone systems may not manage or operate such a system in the United States unless it is configured such that the dispatchable location of the caller is conveyed to the PSAP with 911 calls consistent with paragraphs (i), (ii) and (iii) of this section.

(i) Dispatchable location requirements for on-premises fixed telephones associated with a multi-line telephone system. An on-premises fixed telephone associated with a multi-line telephone system shall provide automated dispatchable location no later than January 6, 2021;

(ii) Dispatchable location requirements for on-premises non-fixed devices associated with a multi-line telephone system. No later than January 6, 2022, an on-premises non-fixed device associated with a multi-line telephone system shall provide to the appropriate PSAP automated dispatchable location, when technically feasible; otherwise, it shall provide dispatchable location based on end user manual update, or alternative location information as defined in § 9.3.

(iii) Dispatchable location requirements for off-premises devices associated with a multi-line telephone system. No later than January 6, 2022, an off-premises device associated with a multi-line telephone system shall provide to the appropriate PSAP automatic dispatchable location, if technically feasible; otherwise, it shall provide dispatchable location based on end user manual update, or enhanced location information, which may be coordinate-based, consisting of the best available location that can be obtained from any available technology or combination of technologies at reasonable cost.

(c) *Compliance date.* Paragraphs (b)(3)(i) through (iii) of this section contain information-collection and recordkeeping requirements.

Compliance will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing that compliance date and revising this paragraph accordingly.

§ 9.17 Enforcement, compliance date, State law.

(a) *Enforcement.* (1) Sections 9.16(a)(1) and (b)(1) and (2) shall be enforced under title V of the Communications Act of 1934, as amended, 5 U.S.C. 501 *et seq.,* except that section 501 applies only to the extent that such section provides for the punishment of a fine.

(2) In the event of noncompliance with § 9.16(b), the person engaged in the business of managing the multi-line telephone system shall be presumed to be responsible for the noncompliance.

(3) Persons alleging a violation of the rules in § 9.16 may file a complaint under the procedures set forth in §§ 1.711 through 1.737 of this chapter.

(b) *Compliance date.* The compliance date for this subpart F is February 16, 2020, unless otherwise noted. Accordingly, the requirements in this subpart apply to a multi-line telephone system that is manufactured, imported, offered for first sale or lease, first sold or leased, or installed after February 16, 2020, unless otherwise noted.

(c) *Effect on State law.* Nothing in § 9.16(a)(1) and (b)(1) and (2) is intended to alter the authority of State commissions or other State or local agencies with jurisdiction over emergency communications, if the exercise of such authority is not inconsistent with this subpart.

Subpart G—Mobile-Satellite Service

§ 9.18 Emergency Call Center service.

(a) Providers of Mobile-Satellite Service to end-user customers (47 CFR part 25, subparts A through D) must provide Emergency Call Center service to the extent that they offer real-time, two way switched voice service that is interconnected with the public switched network and use an in-network switching facility which enables the provider to reuse frequencies and/or accomplish seamless hand-offs of subscriber calls. Emergency Call Center personnel must determine the emergency caller's phone number and location and then transfer or otherwise redirect the call to an appropriate public safety answering point. Providers of Mobile-Satellite Services that use earth terminals that are not capable of use while in motion are exempt from providing Emergency Call Center service for such terminals.

(b) Each Mobile-Satellite Service carrier that is subject to the provisions of paragraph (a) of this section must maintain records of all 911 calls received at its emergency call center. By October 15, of each year, Mobile-Satellite Service carriers providing service in the 1.6/2.4 GHz and 2 GHz bands must submit a report to the Commission regarding their call center data, current as of September 30 of that year. By June 30, of each year, Mobile-Satellite Service carriers providing service in bands other than 1.6/2.4 GHz and 2 GHz must submit a report to the Commission regarding their call center data, current as of May 31 of that year. These reports must include, at a minimum, the following:

(1) The name and address of the carrier, the address of the carrier's emergency call center, and emergency call center contact information;

(2) The aggregate number of calls received by the call center each month during the relevant reporting period;

(3) An indication of how many calls received by the call center each month during the relevant reporting period required forwarding to a public safety answering point and how many did not require forwarding to a public safety answering point.

Subpart H—Resiliency, Redundancy, and Reliability of 911 Communications

§ 9.19 Reliability of covered 911 service providers.

(a) *Definitions.* Terms in this section shall have the following meanings:

(1) *Aggregation point.* A point at which network monitoring data for a 911 service area is collected and routed to a network operations center (NOC) or other location for monitoring and analyzing network status and performance.

(2) *Certification.* An attestation by a certifying official, under penalty of perjury, that a covered 911 service provider:

(i) Has satisfied the obligations of paragraph (c) of this section.

(ii) Has adequate internal controls to bring material information regarding network architecture, operations, and maintenance to the certifying official's attention.

(iii) Has made the certifying official aware of all material information reasonably necessary to complete the certification.

(iv) The term ''certification'' shall include both an annual reliability certification under paragraph (c) of this section and an initial reliability certification under paragraph (d)(1) of this section, to the extent provided under paragraph (d)(1).

(3) *Certifying official.* A corporate officer of a covered 911 service provider with supervisory and budgetary authority over network operations in all relevant service areas.

(4) *Covered 911 service provider.* (i) Any entity that:

(A) Provides 911, E911, or NG911 capabilities such as call routing, automatic location information (ALI), automatic number identification (ANI), or the functional equivalent of those capabilities, directly to a public safety answering point (PSAP), statewide default answering point, or appropriate local emergency authority as defined in § 9.3; and/or

(B) Operates one or more central offices that directly serve a PSAP. For purposes of this section, a central office directly serves a PSAP if it hosts a selective router or ALI/ANI database, provides equivalent NG911 capabilities, or is the last service-provider facility through which a 911 trunk or administrative line passes before connecting to a PSAP.

(ii) The term ''covered 911 service provider'' shall not include any entity that:

(A) Constitutes a PSAP or governmental authority to the extent that it provides 911 capabilities; or

(B) Offers the capability to originate 911 calls where another service provider delivers those calls and associated number or location information to the appropriate PSAP.

(5) *Critical 911 circuits.* 911 facilities that originate at a selective router or its functional equivalent and terminate in the central office that serves the PSAP(s) to which the selective router or its functional equivalent delivers 911 calls, including all equipment in the serving central office necessary for the delivery of 911 calls to the PSAP(s). Critical 911 circuits also include ALI and ANI facilities that originate at the ALI or ANI database and terminate in the central office that serves the PSAP(s) to which the ALI or ANI databases deliver 911 caller information, including all equipment in the serving central office necessary for the delivery of such information to the PSAP(s).

(6) *Diversity audit.* A periodic analysis of the geographic routing of network components to determine whether they are physically diverse. Diversity audits may be performed through manual or automated means, or through a review of paper or electronic records, as long as they reflect whether critical 911 circuits are physically diverse.

(7) *Monitoring links.* Facilities that collect and transmit network monitoring data to a NOC or other location for

monitoring and analyzing network status and performance.

(8) *Physically diverse.* Circuits or equivalent data paths are Physically Diverse if they provide more than one physical route between end points with no common points where a single failure at that point would cause both circuits to fail. Circuits that share a common segment such as a fiber-optic cable or circuit board are not Physically diverse even if they are logically diverse for purposes of transmitting data.

(9) *911 service area.* The metropolitan area or geographic region in which a covered 911 service provider operates a selective router or the functional equivalent to route 911 calls to the geographically appropriate PSAP.

(10) *Selective router.* A 911 network component that selects the appropriate destination PSAP for each 911 call based on the location of the caller.

(11) *Tagging.* An inventory management process whereby critical 911 circuits are labeled in circuit inventory databases to make it less likely that circuit rearrangements will compromise diversity. A covered 911 service provider may use any system it wishes to tag circuits so long as it tracks whether critical 911 circuits are physically diverse and identifies changes that would compromise such diversity.

(b) *Provision of reliable 911 service.* All covered 911 service providers shall take reasonable measures to provide reliable 911 service with respect to circuit diversity, central-office backup power, and diverse network monitoring. Performance of the elements of the certification set forth in paragraphs (c)(1)(i), (c)(2)(i), and (c)(3)(i) of this section shall be deemed to satisfy the requirements of this paragraph. If a covered 911 service provider cannot certify that it has performed a given element, the Commission may determine that such provider nevertheless satisfies the requirements of this paragraph based upon a showing in accordance with paragraph (c) of this section that it is taking alternative measures with respect to that element that are reasonably sufficient to mitigate the risk of failure, or that one or more certification elements are not applicable to its network.

(c) *Annual reliability certification.* One year after the initial reliability certification described in paragraph (d)(1) of this section and every year thereafter, a certifying official of every covered 911 service provider shall submit a certification to the Commission as follows.

(1) *Circuit auditing.* (i) A covered 911 service provider shall certify whether it has, within the past year:

(A) Conducted diversity audits of critical 911 circuits or equivalent data paths to any PSAP served;

(B) Tagged such critical 911 circuits to reduce the probability of inadvertent loss of diversity in the period between audits; and

(C) Eliminated all single points of failure in critical 911 circuits or equivalent data paths serving each PSAP.

(ii) If a Covered 911 Service Provider does not conform with all of the elements in paragraph (c)(1)(i) of this section with respect to the 911 service provided to one or more PSAPs, it must certify with respect to each such PSAP:

(A) Whether it has taken alternative measures to mitigate the risk of critical 911 circuits that are not physically diverse or is taking steps to remediate any issues that it has identified with respect to 911 service to the PSAP, in which case it shall provide a brief explanation of such alternative measures or such remediation steps, the date by which it anticipates such remediation will be completed, and why it believes those measures are reasonably sufficient to mitigate such risk; or

(B) Whether it believes that one or more of the requirements of this paragraph are not applicable to its network, in which case it shall provide a brief explanation of why it believes any such requirement does not apply.

(2) *Backup power.* (i) With respect to any central office it operates that directly serves a PSAP, a covered 911 service provider shall certify whether it:

(A) Provisions backup power through fixed generators, portable generators, batteries, fuel cells, or a combination of these or other such sources to maintain full-service functionality, including network monitoring capabilities, for at least 24 hours at full office load or, if the central office hosts a selective router, at least 72 hours at full office load; provided, however, that any such portable generators shall be readily available within the time it takes the batteries to drain, notwithstanding potential demand for such generators elsewhere in the service provider's network.

(B) Tests and maintains all backup power equipment in such central offices in accordance with the manufacturer's specifications;

(C) Designs backup generators in such central offices for fully automatic operation and for ease of manual operation, when required;

(D) Designs, installs, and maintains each generator in any central office that is served by more than one backup generator as a stand-alone unit that does not depend on the operation of another generator for proper functioning.

(ii) If a covered 911 service provider does not conform with all of the elements in paragraph (c)(2)(i) of this section, it must certify with respect to each such central office:

(A) Whether it has taken alternative measures to mitigate the risk of a loss of service in that office due to a loss of power or is taking steps to remediate any issues that it has identified with respect to backup power in that office, in which case it shall provide a brief explanation of such alternative measures or such remediation steps, the date by which it anticipates such remediation will be completed, and why it believes those measures are reasonably sufficient to mitigate such risk; or

(B) Whether it believes that one or more of the requirements of this paragraph are not applicable to its network, in which case it shall provide a brief explanation of why it believes any such requirement does not apply.

(3) *Network monitoring.* (i) A covered 911 service provider shall certify whether it has, within the past year:

(A) Conducted diversity audits of the aggregation points that it uses to gather network monitoring data in each 911 service area;

(B) Conducted diversity audits of monitoring links between aggregation points and NOCs for each 911 service area in which it operates; and

(C) Implemented physically diverse aggregation points for network monitoring data in each 911 service area and physically diverse monitoring links from such aggregation points to at least one NOC.

(ii) If a Covered 911 Service Provider does not conform with all of the elements in paragraph (c)(3)(i) of this section, it must certify with respect to each such 911 Service Area:

(A) Whether it has taken alternative measures to mitigate the risk of network monitoring facilities that are not physically diverse or is taking steps to remediate any issues that it has identified with respect to diverse network monitoring in that 911 service area, in which case it shall provide a brief explanation of such alternative measures or such remediation steps, the date by which it anticipates such remediation will be completed, and why it believes those measures are reasonably sufficient to mitigate such risk; or

(B) Whether it believes that one or more of the requirements of this paragraph are not applicable to its network, in which case it shall provide a brief explanation of why it believes any such requirement does not apply.

(d) *Other matters*—(1) *Initial reliability certification.* One year after October 15, 2014, a certifying official of every covered 911 service provider shall certify to the Commission that it has made substantial progress toward meeting the standards of the annual reliability certification described in paragraph (c) of this section. Substantial progress in each element of the certification shall be defined as compliance with standards of the full certification in at least 50 percent of the covered 911 service provider's critical 911 circuits, central offices that directly serve PSAPs, and independently monitored 911 service areas.

(2) *Confidential treatment.* (i) The fact of filing or not filing an annual reliability certification or initial reliability certification and the responses on the face of such certification forms shall not be treated as confidential.

(ii) Information submitted with or in addition to such certifications shall be presumed confidential to the extent that it consists of descriptions and documentation of alternative measures to mitigate the risks of nonconformance with certification elements, information detailing specific corrective actions taken with respect to certification elements, or supplemental information requested by the Commission or Bureau with respect to a certification.

(3) *Record retention.* A covered 911 service provider shall retain records supporting the responses in a certification for two years from the date of such certification, and shall make such records available to the Commission upon request. To the extent that a covered 911 service provider maintains records in electronic format, records supporting a certification hereunder shall be maintained and supplied in an electronic format.

(i) With respect to diversity audits of critical 911 circuits, such records shall include, at a minimum, audit records separately addressing each such circuit, any internal report(s) generated as a result of such audits, records of actions taken pursuant to the audit results, and records regarding any alternative measures taken to mitigate the risk of critical 911 circuits that are not physically diverse.

(ii) With respect to backup power at central offices, such records shall include, at a minimum, records regarding the nature and extent of backup power at each central office that directly serves a PSAP, testing and maintenance records for backup power equipment in each such central office, and records regarding any alternative measures taken to mitigate the risk of insufficient backup power.

(iii) With respect to network monitoring, such records shall include, at a minimum, records of diversity audits of monitoring links, any internal report(s) generated as a result of such audits, records of actions taken pursuant to the audit results, and records regarding any alternative measures taken to mitigate the risk of aggregation points and/or monitoring links that are not physically diverse.

§ 9.20 Backup power obligations.

(a) *Covered service.* For purposes of this section, a Covered Service is any facilities-based, fixed voice service offered as residential service, including fixed applications of wireless service offered as a residential service, that is not line powered.

(b) *Obligations of providers of a Covered Service to offer backup power.* Providers of a Covered Service shall, at the point of sale for a Covered Service, offer subscribers the option to purchase backup power for the Covered Service as follows:

(1) *Eight hours.* Providers shall offer for sale at least one option with a minimum of eight hours of standby backup power.

(2) *Twenty-four hours.* By February 13, 2019, providers of a Covered Service shall offer for sale also at least one option that provides a minimum of twenty-four hours of standby backup power.

(3) *Options.* At the provider's discretion, the options in paragraphs (b)(1) and (2) of this section may be either:

(i) A complete solution including battery or other power source; or

(ii) Installation by the provider of a component that accepts or enables the use of a battery or other backup power source that the subscriber obtains separately. If the provider does not offer a complete solution, the provider shall install a compatible battery or other power source if the subscriber makes it available at the time of installation and so requests. After service has been initiated, the provider may, but is not required to, offer to sell any such options directly to subscribers.

(c) *Backup power required.* The backup power offered for purchase under paragraph (b) of this section must include power for all provider-furnished equipment and devices installed and operated on the customer premises that must remain powered in order for the service to provide 911 access.

(d) *Subscriber disclosure.* (1) The provider of a Covered Service shall disclose to each new subscriber at the point of sale and to all subscribers to a Covered Service annually thereafter:

(i) Capability of the service to accept backup power, and if so, the availability of at least one backup power solution available directly from the provider, or after the initiation of service, available from either the provider or a third party. After the obligation to offer for purchase a solution for twenty-four hours of standby backup power becomes effective, providers must disclose this information also for the twenty-four-hour solution;

(ii) Service limitations with and without backup power;

(iii) Purchase and replacement information, including cost;

(iv) Expected backup power duration;

(v) Proper usage and storage conditions, including the impact on duration of failing to adhere to proper usage and storage;

(vi) Subscriber backup power self-testing and -monitoring instructions; and

(vii) Backup power warranty details, if any.

(2) Disclosure reasonably calculated to reach each subscriber. A provider of a Covered Service shall make disclosures required by this rule in a manner reasonably calculated to reach individual subscribers, with due consideration for subscriber preferences. Information posted on a provider's public website and/or within a subscriber portal accessed by logging through the provider's website are not sufficient to comply with these requirements.

(3) The disclosures required under this paragraph are in addition to, but may be combined with, any disclosures required under § 9.11(a)(5) and (b)(5).

(e) *Obligation with respect to existing subscribers.* Providers are not obligated to offer for sale backup power options to or retrofit equipment for those who are subscribers as of the effective date listed in paragraph (f) of this section for the obligations in paragraph (b)(1) of this section, but shall provide such subscribers with the annual disclosures required by paragraph (d) of this section.

(f) *Dates of obligations.* (1) Except as noted in paragraphs (b)(2) and (f)(2) of this section, the obligations under paragraph (b) of this section are in effect February 16, 2016, and the obligations under paragraph (d) of this section are in effect August 5, 2016.

(2) For a provider of a Covered Service that (together with any entities under common control with such provider) has fewer than 100,000 domestic retail subscriber lines, the obligations in paragraph (b)(1) of this section are in effect August 11, 2016, the obligations in paragraph (b)(2) of this section are in effect as prescribed therein, and the obligations under paragraph (d) of this section are in effect February 1, 2017.

(g) *Sunset date.* The requirements of this section shall no longer be in effect as of September 1, 2025.

PART 12—[REMOVED AND RESERVED]

■ 7. Under the authority of 47 U.S.C. 154(i), part 12 is removed.

PART 20—COMMERCIAL MOBILE SERVICES

■ 8. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, 615c, unless otherwise noted.

■ 9. Section 20.2 is amended by adding paragraph (c) to read as follows:

§ 20.2 Other applicable rule parts.

* * * * *

(c) *Part 9.* This part contains 911 and E911 requirements applicable to telecommunications carriers and commercial mobile radio service (CMRS) providers.

§ 20.3 [Amended]

■ 10. Section 20.3 is amended by removing the definitions of ''Appropriate local emergency authority,'' ''Automatic Number Identification (ANI),'' ''Designated PSAP,'' ''Handset-based location technology,'' ''Location-capable handsets,'' ''Network-based Location Technology,'' ''Pseudo Automatic Number Identification (Pseudo-ANI),'' ''Public safety answering point (PSAP),'' and ''Statewide default answering point''.

§ 20.18 [Removed and Reserved]

■ 11. Section 20.18 is removed and reserved.

PART 22—PUBLIC MOBILE SERVICES

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

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

§ 22.921 [Removed and Reserved]

■ 13. Section 22.921 is removed and reserved.

PART 25—SATELLITE COMMUNICATIONS

■ 14. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

§ 25.103 [Amended]

■ 15. Section 25.103 is amended by removing the definition of ''Emergency Call Center''.

§ 25.284 [Removed and Reserved]

■ 16. Section 25.284 is removed and reserved.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 17. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, 1401–1473, unless otherwise noted.

■ 18. Section 64.601 is amended by revising paragraph (a) to read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) For purposes of this subpart, the term affiliate is defined in 47 CFR 52.12(a)(1)(i), and the terms majority and debt are defined in 47 CFR 52.12(a)(1)(ii).

* * * * *

■ 19. Section 64.603 is amended by revising paragraph (a) to read as follows:

§ 64.603 Provision of services.

(a) Each common carrier providing telephone voice transmission services shall provide, in compliance with the regulations prescribed herein and the emergency calling requirements in part 9, subpart E of this chapter, throughout the area in which it offers services, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. Interstate Spanish language relay service shall be provided. Speech-to-speech relay service also shall be provided, except that speech-to-speech relay service need not be provided by IP Relay providers, VRS providers, captioned telephone relay service providers, and IP CTS providers. In addition, each common carrier providing telephone voice transmission services shall provide access via the 711 dialing code to all relay services as a toll free call. CMRS providers subject to this 711 access requirement are not required to provide 711 dialing code access to TTY users if they provide 711 dialing code access via real-time text communications, in accordance with 47 CFR part 67.

* * * * *

■ 20. Section 64.604 is amended by removing and reserving paragraph (a)(4) and revising paragraph (d).

The revision reads as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(d) Other standards. The applicable requirements of § 9.14 of this chapter and §§ 64.611, 64.615, 64.617, 64.621, 64.631, 64.632, 64.5105, 64.5107, 64.5108, 64.5109, and 64.5110 of this part are to be considered mandatory minimum standards.

§ 64.605 [Removed and Reserved]

■ 21. Section 64.605 is removed and reserved.

Subpart AA—[Removed and Reserved]

■ 22. Subpart AA, consisting of §§ 64.3000 through 64.3004, is removed and reserved.

[FR Doc. 2019–20137 Filed 11–27–19; 8:45 am]

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Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Part 273

Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[FNS–2018–0004]

RIN 0584–AE57

Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents

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

ACTION: Final rule.

SUMMARY: USDA is finalizing its rulemaking proposed February 1, 2019. The rule revises the conditions under which USDA would waive, when requested by States, the able-bodied adult without dependents (ABAWD) time limit in areas that have an unemployment rate of over 10 percent or a lack of sufficient jobs. In addition, the rule limits carryover of ABAWD discretionary exemptions.

DATES: This rule is effective April 1, 2020, except for the amendment to 7 CFR 273.24(h), which is effective October 1, 2020.

ADDRESSES: SNAP Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 812, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Certification Policy Branch, Program Development Division, FNS, 3101 Park Center Drive, Alexandria, Virginia 22302. *SNAPCPBRules@usda.gov.*

SUPPLEMENTARY INFORMATION:

Acronyms or Abbreviations

Able-Bodied Adults without Dependents, ABAWDs
Advanced Notice of Public Rulemaking, ANPRM
Agriculture Improvement Act of 2018 (Pub. L. 115–334), the 2018 Farm Bill
Bureau of Labor Statistics, BLS
Census Bureau's American Community Survey, ACS
Code of Federal Regulations, CFR
Department of Labor, DOL
Employment and Training Administration, ETA
Employment and Training, E&T
Food and Nutrition Act of 2008, Act
Food and Nutrition Service, FNS
Labor Market Area(s), LMA(s)
Labor Surplus Area(s), LSA(s)
Office of Management and Budget, OMB
Notice of Proposed Rulemaking, NPRM
Supplemental Nutrition Assistance Program, SNAP
The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PRWORA
U.S. Department of Agriculture, the Department or USDA

References

The following references may be helpful background.

(1) Section 6(d) and section 6(o) of the Food and Nutrition Act of 2008, as amended
(2) Title 7 of the Code of Federal Regulations, parts 273.7 and 273.24
(3) Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Proposed Rule, 64 FR 70920 (December 17, 1999). Available at: *https://www.federalregister.gov/documents/1999/12/17/99-32527/food-stamp-program-personalresponsibility-provisions-of-the-personalresponsibility-and-work.*
(4) Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Final Rule, 66 FR 4437 (January 17, 2001). Available at: *https://www.federalregister.gov/documents/2001/01/17/01-1025/foodstamp-program-personal-responsibilityprovisions-of-the-personal-responsibilityand-work*
(5) Guide to Serving ABAWDs Subject to Time-limited Participation, 2015. Available at: *https://fns-prod.azureedge.net/sites/default/files/Guide_to_Serving_ABAWDs_Subject_to_Time_Limit.pdf*
(6) Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents, 2016. Available at: *https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Guide-to-Supporting-Requests-to-Waive-the-Time-Limit-for-ABAWDs.pdf*
(7) Expiration of Statewide ABAWD Time Limit Waivers, 2015. Available at: *https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Expiration-of-Statewide-ABAWD-Time-Limit-Waivers.pdf*
(8) ABAWD Time Limit Policy and Program Access, 2015. Available at: *https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD-Time-Limit-Policy-and-Program-Access-Memo-Nov2015.pdf*
(9) ABAWD Questions and Answers, 2015. Available at: *https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD-Questions-and-Answers-June%202015.pdf*
(10) ABAWD Questions and Answers, 2013. Available at: *https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD-Questions-and-Answers-December-2013.pdf*
(11) Historical Policy Document: Waivers of Work Requirement Time Limits Based on Insufficient Jobs, March 1997. Available at: *https://fns-prod.azureedge.net/sites/default/files/media/file/HistoricalPolicyDocument_FSPWaiversofWorkRequirementTimeLimitsBasedonInsufficientJobs_Mar1997_0.pdf*
(12) Historical Policy Document: Guidance for States Seeking Waivers for Food Stamp Limits, December 1996. Available at: *https://fns-prod.azureedge.net/sites/default/files/media/file/HistoricalPolicyDocument_GuidanceforStatesSeekingWaiversforFoodStampLimits_December1996.pdf*
(13) Overuse of the 15 Percent Able-Bodied Adults Without Dependents (ABAWD) Exemptions by States Agencies, November 2007. Available at: *https://fns-prod.azureedge.net/sites/default/files/media/file/Overuse%20of%20the%2015%20Percent%20ABAWD%20Exemptions%20by%20States%20Agencies%20Nov%202007.pdf*
(14) BLS Local Area Unemployment Statistics. Available at: *https://www.bls.gov/lau/*
(15) DOL Labor Surplus Area. Available at: *https://www.doleta.gov/programs/lsa.cfm*
(16) Executive Order 13828: Reducing Poverty in America by Promoting Opportunity and Economic Mobility. Available at: *https://www.federalregister.gov/documents/2018/04/13/2018-07874/reducing-poverty-in-america-by-promoting-opportunity-and-economic-mobility*

Background on This Rulemaking

Section 6(o) of the Food and Nutrition Act of 2008, as amended (the Act) generally limits the amount of time an able-bodied adult without dependents (ABAWD) can receive Supplemental Nutrition Assistance Program (SNAP) benefits to 3 months in a 36-month period (the time limit), unless the individual meets certain work requirements. On the request of a State SNAP agency, the Act also gives the U.S. Department of Agriculture (the Department) the authority to temporarily waive the time limit in areas that have an unemployment rate of over 10 percent or a lack of sufficient jobs. The Act also provides State agencies with a limited number of discretionary exemptions that can be used by States to extend SNAP eligibility for ABAWDs subject to the time limit.

The ABAWD time limit and work requirement were initially enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which was signed into law on August 22, 1996. According to the Conference Report accompanying PRWORA, the main purpose of PRWORA was to ''[promote] work over welfare and self-reliance over dependency, thereby showing true compassion for those in America who need a helping hand, not a handout'' (H. Rept. 104–725, p. 261). Congress also explained that the legislation ''reforms welfare to make it more consistent with fundamental American values—by rewarding work and self-reliance, encouraging personal responsibility, and restoring a sense of hope in the future'' (H. Rept. 104–725, p. 263). By

adding the time limit and work requirement to the Food Stamp Act of 1977 (now the Food and Nutrition Act of 2008, as amended) at section 6(o), Congress highlighted the importance of work and self-sufficiency for the ABAWD population. Specifically, Congress noted that: ''It [PRWORA] makes substantial reforms in the Food Stamp Program, cracking down on fraud and abuse and applying tough work standards'' (H. Rept. 104–725, p. 261). The time limit and work requirement for ABAWDs enacted by PRWORA has been maintained by Congress through several reauthorizations of the Federal law governing SNAP, most recently through the Agriculture Improvement Act of 2018, indicating that Congress remains committed to promoting work, self-reliance, and personal accountability among the ABAWD population.

On April 2, 2018, the President signed Executive Order (E.O.) 13828, on ''Reducing Poverty in America by Promoting Opportunity and Economic Mobility.'' E.O. 13828 sets forth the Administration's policy that, with regard to social welfare, the Federal Government's role is to clear paths to self-sufficiency and to invest in Federal programs that are effective at moving people into the workforce and out of poverty. Federal programs should empower individuals to seek employment and achieve economic independence, while reserving public assistance programs for those who are truly in need. Government must examine Federal policies and programs to ensure that they are consistent with principles that are central to the American spirit—work, free enterprise, and safeguarding human and economic resources.

E.O. 13828 also provided a list of ''Principles of Economic Mobility'' that should inform and guide program administration in the context of applicable law. One such principle, relevant to this rulemaking, is to ''improve employment outcomes and economic independence.'' To advance this principle, the E.O. calls for Federal agencies to ''first enforce work requirements that are required by law [and to] also strengthen requirements that promote obtaining and maintaining employment in order to move people to independence.'' Moreover, E.O. 13828 directed Federal agencies to review regulations and guidance documents to advance these objectives consistent with the principles of increasing self-sufficiency, well-being, and economic mobility.

In accordance with E.O.13828 and other Administration priorities, the Department undertook a review of its regulations and policies associated with ABAWDs. The time limit and work requirement for ABAWDs in SNAP clearly align with E.O. 13828 and the Department's shared principle that those who can work—adults who are able-bodied and do not have dependent care responsibilities—should work or participate in a work program, as a condition of receiving their benefits.

The Department's review of these rules, along with its more than 20 years of operational experience overseeing the States' administration of the ABAWD time limit, has led the Department to identify key weaknesses in the current regulations on ABAWD time limit waivers. Over the years, States have taken advantage of these weaknesses to request and qualify for waivers of the ABAWD time limit in areas where it is questionable as to whether the statutory conditions for approval as outlined in section 6(o)(4) of the Act, an unemployment rate over 10 percent or a lack of sufficient jobs, are present. This manipulation is demonstrated by the fact that currently about half of the ABAWDs on SNAP live in waived areas, despite low unemployment levels across the majority of the country.

Similarly, the current regulations' interpretation of section 6(o)(6)(G) of the Act, which requires the Department to increase or decrease the number of exemptions available to the State during the fiscal year based on the prior year's usage, allows States to carryover and accumulate unused ABAWD discretionary exemptions indefinitely. As a result, States have accumulated extremely high amounts of unused discretionary exemptions that well exceed the number allotted to each State for the fiscal year. The Department views the accumulation of such significant amounts of unused exemptions to be an unintended outcome of the current regulations. In the Department's view, the indefinite carryover and accumulation of unused exemptions is inconsistent with Congress' decision to limit the number of exemptions available to States in a given fiscal year, as expressed by sections 6(o)(6)(C), (D), and (E) of the Act.

The Department is committed to providing SNAP benefits to those who truly need them, but it must also encourage participants to take proactive steps toward long-term self-sufficiency. In order to ensure these goals are met, the Department believes that waivers of the time limit should only be permitted when the circumstances clearly warrant that action and meet the statutory conditions for approval.

Therefore, the Department is amending its regulations to address these policy issues by setting clear limitations and introducing new safeguards. In particular, the Department is codifying a strict definition of an ''area in which the individuals reside'' for purposes of a geographic area covered by a waiver; and redefining what demonstrates that such an area ''has an unemployment rate of over 10 percent'' or ''does not have a sufficient number of jobs to provide employment for the individuals'' for purposes of such an area qualifying for a waiver. In addition, the Department is setting a reasonable limit on the carryover of unused discretionary exemptions. The Department is making these changes in order to encourage broader application of the time limit, to more appropriately target waivers and limit discretionary exemptions, and to incentivize ABAWDs to proactively pursue any and all work and/or work training opportunities within commuting distance of their residences.

Proposed Rule and Comments

On February 1, 2019 (84 FR 980), the Department published a proposed rule, *Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents,* proposing to amend the regulatory standards by which the Department evaluates State agency requests to waive the time limit for ABAWDs and to limit the carryover of ABAWD discretionary exemptions. The 60-day comment period ended on April 2, 2019. The comment period was reopened on April 8, 2019, for a period of 3 days ending April 10, 2019, due to problems with the **Federal Register** website on April 1 and 2, 2019, which contributed to commenters facing challenges when trying to submit comments.

The Department received more than 100,000 comments. The comments came from a broad range of stakeholders, including Members of Congress, State agencies, State elected officials, local governments, advocacy groups, religious organizations, food banks, legal services organizations, private citizens, and others. The Department greatly appreciates the comments received on the proposed rule as they have been essential in developing the final rule.

The Department reviewed and considered all comments received. Based on the Department's review of all the comments received, about one quarter were unique and/or substantive, with the remaining three quarters consisting of form letters, duplicates, or non-germane submissions. Generally

speaking, the Department viewed a comment as substantive if it provided an opinion or recommendation on a specific policy and included detailed reasoning. In the sections that follow, the Department's discussion focuses on those comments that provided substantive and specific feedback on particular proposed provisions and those comments that have most influenced the Department's decisions on whether to revise the proposed rule. The provisions are presented and discussed in a section-by-section format for consistency with the proposed rule and the amendatory text to the extent possible. The majority of comments that were submitted generally opposed the proposed rule but did not comment on specific provisions or provide recommendations on how to address the policy issues identified by the Department. In general, the preamble does not address in detail these comments. Similarly, the preamble does not address in detail those comments that generally supported the proposed provisions.

The Department also received comments that were outside the scope of the proposed rulemaking. By outside the scope, the Department means that commenters provided substantive feedback on policies that were not proposed to be changed as part of this rulemaking. Though the Department appreciates the feedback on those policies, comments that are clearly out of scope are not discussed in detail in this final rule.

To view public comments on the proposed rule, go to *www.regulations.gov* and search for public submissions under docket number FNS–2018–0004.

For a full understanding of the background of the provisions in this rule, see the proposed rulemaking, which was published in the **Federal Register** February 1, 2019, at 84 FR 980.

Establishing Core Standards for Approval

The Department proposed the establishment of core standards for waivers in § 273.24(f)(2). The proposed core standards would provide States with a set of consistent criteria for approval. Any supporting unemployment data provided by the State would need to rely on standard Bureau of Labor Statistics (BLS) data or methods, or data from BLS-cooperating agencies. BLS is the principal federal agency responsible for measuring labor market activity, working conditions, and price changes in the economy. BLS produces unemployment data that is accurate, objective, relevant, timely, and accessible, and that is generally considered by experts to be reliable and robust evidence for evaluating labor market conditions. For areas which BLS does not produce data, such as Indian Reservations and some U.S. Territories, the core standards would not apply.

The Department did not receive any substantive comments on the general concept of establishing core standards; however, many comments were received on each specific core standard. These comments and the Department's responses are detailed in the following sections.

Core Standards: Retaining Waivers Based on a 12-Month Unemployment Rate Over 10 Percent

The Department proposed to maintain the criterion allowing an area to qualify for a waiver when it has a recent 12-month average unemployment rate over 10 percent, and to include that criterion as a core standard.

The comments provided on this particular proposal were generally supportive. Some comments suggested that this proposal was inadequate and that other time periods should be allowed to demonstrate an unemployment rate over 10 percent. The Department addresses these viewpoints in the *Other Data and Evidence in Exceptional Circumstances* and *Other Changes to Waivers* sections of the final rule.

The final rule adopts this provision of the proposed rule at § 273.24(f)(2)(i) as written.

Core Standards: Establishing a Floor for Waivers Based on the 20 Percent Standard

Current regulations at § 273.24(f)(2) and (3) provide for a waiver approval for a requested area that has been designated as a Labor Surplus Area (LSA) by the Department of Labor (DOL) for the current fiscal year. Prior to the final rule in 2001 that established § 273.24(f), the Department introduced the use of LSAs for waivers in its December 1996 memorandum, *Guidance for States Seeking Waivers of Food Stamp Limits.* DOL designates LSAs based on specific unemployment rate criteria. In order to be designated as an LSA for the fiscal year, the area must have had an unemployment rate 20 percent or more above the national unemployment rate for the previous 2 calendar years. In addition, the area must have had an unemployment rate of 6 percent or higher for the same 24-month period, which DOL refers to as the ''floor'' unemployment rate for LSAs. So, together, an area must have an average unemployment rate at least 20 percent above the national average *and* at least 6 percent for the previous 2 calendar years in order to be designated as an LSA.

Current regulations at § 273.24(f)(2) and (3) also provide for ABAWD time limit waiver approvals for requested areas with an average unemployment rate at least 20 percent above the national average for a recent 24-month period, beginning no earlier than the same 24-month period that DOL uses to determine LSAs for the current fiscal year (otherwise known as the ''20 percent standard''). The Department introduced the 20 percent standard in its March 1997 memorandum *FSP—Waivers of Work Requirement Time Limits Based on Insufficient Jobs.* The Department explained in that memo that its reason for introducing the 20 percent standard was to give States a method to demonstrate a lack of sufficient jobs for areas that are not considered by DOL for LSA designation. In the current regulations, the Department adopted the 20 percent standard as a standalone criterion beyond the LSA designation, to provide States with the flexibility to support waivers of areas that are not considered by DOL for LSA designation, and to allow States to use a more flexible 24-month reference period. Importantly, while the 20 percent standard was modeled after and is similar to the calculation of an LSA, the 20 percent standard does not include an unemployment rate floor, as the LSA criteria does. Because the 20 percent standard lacks an unemployment rate floor, areas that do not clearly lack sufficient jobs qualify for waivers solely because they are 20 percent above the national unemployment rate. For example, the national average unemployment rate for the 24-month period of May 2017 through June 2019 was 3.9 percent.[1] Given this national average, a State could request and qualify for a waiver in areas with an unemployment rate as low as 4.7 percent for the same 24-month period. Not including a floor has had the effect of allowing areas with low rates of unemployment to qualify for waivers.

In the February 1, 2019, proposed rule, the Department proposed to include a 7 percent unemployment rate floor within the 20 percent standard, meaning that an area would need to have an average unemployment rate at least 20 percent above the national average and of at least 7 percent for the 24-month period. In so doing, the

[1] Calculations based on BLS unemployment data, not seasonally adjusted, pulled from *https://www.bls.gov/data/#unemployment* on August 15, 2019.

Department also requested evidence-based and data-driven feedback on the appropriate threshold for the floor, specifically whether a 6 percent, 7 percent, or 10 percent floor would be most effective and consistent with the Act's requirement that waivers be determined based on a lack of sufficient jobs. In addition, the Department proposed to eliminate the LSA designation as a basis of waiver approval because the LSA unemployment rate floor of 6 percent was inconsistent with the 7 percent unemployment rate the Department proposed for the similar 20 percent standard.

The vast majority of those who commented on the unemployment rate floor opposed setting any unemployment rate floor within the 20 percent standard. However, the Department did receive several other important comments with respect to the unemployment rate floor options described in the proposed rule. The comments regarding the 6 percent, 7 percent, and 10 percent options are addressed below, along with the comments of those who opposed any floor and comments recommending alternatives.

Comments on a 6 Percent Unemployment Rate Floor for the 20 Percent Standard

Several commenters argued that, if the Department is to set an unemployment rate floor, then 6 percent is the best option. These commenters provided evidence-based support that the 20 percent standard with a 6 percent floor would demonstrate that an area lacks sufficient jobs better than 7 percent or other potential options. Some of these commenters stated that a 6 percent floor would align with DOL's LSA designation criteria. These commenters pointed out that LSA designation is a longstanding Federal standard for job insufficiency relied upon by Federal and State governments and other workforce development partners.

Some commenters suggested that in the context of the 20 percent standard, setting the floor at 6 percent makes sense in that it could be viewed as 20 percent above the natural rate of unemployment,[2] which has historically hovered around 5 percent and is one way to define a ''normal'' level of unemployment. These commenters indicated that it would be logical and appropriate to only allow areas at least 20 percent above the natural rate of unemployment to be considered for waivers under this standard.

A few commenters compared the proposed 7 percent floor to the 6 percent floor, and provided data and evidence to show that including a 6 percent floor would more appropriately target areas qualifying under the 20 percent standard to areas demonstrating a ''lack of sufficient jobs'' than would a 7 percent floor. In particular, a commenter provided analysis showing that, when looking at economic metrics other than unemployment rates, such as a county's poverty rates, education levels, and other demographics associated with poverty, counties with 6 to 7 percent unemployment more closely resemble areas above 7 percent unemployment than areas below 6 percent unemployment, indicating that 6 percent was a meaningful threshold for economic distress.

The Department is persuaded and agrees with these commenters that 6 percent is the best option for an unemployment rate floor within the 20 percent standard. The Department finds 6 percent to be particularly justified, relative to the other options, in that it aligns with DOL's LSA standard. Including the 6 percent floor within the 20 percent standard would further align the 20 percent standard with the longstanding LSA criteria on which the 20 percent standard was originally based. The Department is also influenced by the data and analysis provided by commenters that demonstrated 6 percent as a relatively meaningful threshold for economic distress and for targeting waivers to areas with a ''lack of sufficient jobs''. Moreover, the Department has determined that as a practical outcome, a 6 percent floor will ensure that the 20 percent standard appropriately demonstrates a lack of sufficient jobs and acts as an effective safeguard against any future waiver misuse. For these reasons, the Department has decided that a 6 percent floor represents areas that demonstrate a lack of sufficient jobs better than the proposed rule's 7 percent floor. As explained earlier in this section, a 20 percent standard without an unemployment rate floor can be misused because areas that do not clearly lack sufficient jobs will continue to qualify for waivers solely because they are 20 percent above the national unemployment rate.

The Department also agrees with the comments suggesting that a 6 percent floor could be viewed as sensible in that it is about 20 percent above where the natural rate of unemployment has hovered. However, as discussed in detail in later sections, the Department acknowledges that the natural rate of unemployment is a theoretical concept that is not fixed at 5 percent, but fluctuates over time and has a large range of estimates, making it an impractical basis by which to set a floor for the 20 percent standard. As a result, the Department did not view the natural rate of unemployment as a deciding factor in its decision to set the floor at 6 percent. Rather, as explained in the preceding paragraphs, the Department's decision to set the floor at 6 percent is primarily driven by the fact that it aligns with DOL's LSA standard and that it represents the most justified option relative to the proposed rule's 7 percent floor or other potential unemployment rate floors. While the comments received on the proposed rule included strong arguments, data, and evidence to support a 6 percent floor, they also exposed the relative weakness of the 7 percent proposal and the 10 percent option.

The Department is therefore adopting a 6 percent unemployment rate floor within the 20 percent standard at § 273.24(f)(2)(ii). As explained later in this rule in the section entitled *Restricting the Combining of Data to Group Substate Areas and Redefining ''Area''* and the section entitled *Other Changes to Waivers,* the Department is not including LSA designation as a criterion for waiver approval under the core standards because the Department is redefining ''area'' in such a way that will exclude civil jurisdictions used by DOL when designating LSAs.

The following subsections will focus on the comments made regarding the proposed 7 percent floor, the 10 percent floor, and other options suggested by commenters. While the Department's decision not to adopt any of these other options is based, in part, on its belief that a 6 percent floor has a stronger rationale for determining which areas demonstrate a lack of sufficient jobs than do these other options, the following subsections will not repeat the rationale for adopting the 6 percent floor, as that has already been discussed.

Comments on a 7 Percent Unemployment Rate Floor for the 20 Percent Standard

Many commenters opposed the proposed 7 percent unemployment rate floor to the 20 percent standard. A number of commenters stated that the 7 percent floor lacks justification and is arbitrary, as the proposed rule did not clearly tie the 7 percent floor to evidence for lack of sufficient jobs. Some commenters pointed to the justification provided in the proposed

[2] For more information on the natural rate of unemployment, see *https://fred.stlouisfed.org/series/NROU*.

rule that a 7 percent floor aligns with a proposal in the Agriculture and Nutrition Act of 2018, H.R. 2, 115th Cong. section 4015 (as passed by House, June 21, 2018). These commenters argued that this rationale is invalid because Congress ultimately did not include that provision when it enacted the Agriculture Improvement Act of 2018 (Pub. L. 115–334) (the 2018 Farm Bill).

Several commenters argued that setting a floor at 7 percent unemployment is too high. Some commenters asserted that jobs are not widely available to all who may seek them when unemployment is below 7 percent. Commenters also suggested that ABAWDs face barriers to employment that the general population does not. These commenters noted that unemployment rates for ABAWDs, as a distinct group, would generally be higher than the official unemployment rate because many ABAWDs share demographic characteristics with subpopulations that have relatively high unemployment rates. One commenter pointed out that areas with unemployment rates just below the 7 percent floor would share many of the same characteristics as those above the 7 percent floor, for example: Unemployment higher than at any point nationally during the 2001–2002 recession; hidden unemployment due to cyclically low labor force participation; and, very limited employer demand for the ''hardest to employ'' groups, such as those with criminal records, lengthy periods of unemployment, or other barriers to work. Another commenter argued that the proposed 7 percent floor is too high because it is well above 4 percent, which is the statutory definition of full employment set by the Full Employment and Balanced Growth Act of 1978.

Commenters also suggested that the proposed 7 percent floor would not adequately provide States with waiver coverage during times of rising unemployment because the combination of an unemployment rate floor with the lengthy 24-month data reference period would prevent many areas with rising unemployment from qualifying for waivers.

One commenter provided data analysis showing that many areas considered ''distressed communities'' according to a series of economic metrics would not have met the 7 percent unemployment rate threshold. This commenter argued that the 7 percent floor fails to capture the economic realities of regions, and that this divergence highlights the shortcomings of a 7 percent unemployment rate floor.

Many commenters provided specific examples that the proposed 7 percent floor would harm their State or locality, with some citing specific poor, food insecure, or economically distressed areas in their State, that would not currently meet the 7 percent floor.

Several commenters suggested that the Department did not properly apply the concept of the natural rate of unemployment in choosing a 7 percent floor. Some commenters suggested that the proposed rule did not provide adequate justification to explain the relationship between the 7 percent floor and the natural rate of unemployment.

The detailed comments in opposition to the 7 percent floor described in the preceding paragraphs provided the Department with helpful perspective, in particular those that provided data and analysis to illustrate that some areas with unemployment rates below 7 percent may be considered economically distressed or in recession. The Department took these comments into consideration in its decision to adopt DOL's 6 percent floor, instead of a 7 percent floor.

A few commenters expressed support for the 7 percent unemployment rate floor. While these comments did not provide evidence or data to support that a 7 percent floor within the 20 percent standard would better demonstrate a lack of sufficient jobs, they did suggest that a 7 percent floor represented a reasonable middle ground between a 10 percent floor and a 6 percent floor. The Department appreciates that when considering among several options, it is sometimes prudent to select that option which best represents a reasonable middle ground, especially when there is a lack of data or evidence to distinguish one option as more or less justified as another. However, in this situation there is clear justification supporting a 6 percent floor versus the other options, as explained in the immediately preceding section.

Comments on a 10 Percent Unemployment Rate Floor for the 20 Percent Standard

Many commenters opposed a 10 percent unemployment rate floor for the 20 percent standard. Some commenters argued that this proposal conflicts with Congressional intent. In particular, these commenters argued that Congress designated a 10 percent unemployment rate as one way for a State to qualify for a waiver, and a second criterion of ''insufficient jobs'' as an alternative to demonstrating a 10 percent unemployment rate. These commenters stated that adopting a 10 percent unemployment rate floor would make the lack of sufficient jobs criterion too similar to the 10 percent unemployment rate criterion in the statute. Commenters also suggested that this proposal would be largely duplicative of existing criteria allowing waiver approval for areas with over 10 percent unemployment during a recent 12-month period.

A few commenters supported setting an unemployment rate floor at 10 percent. These commenters argued that this high floor would most effectively reduce the number of ABAWDs living in waived areas. One commenter used data to argue that a 10 percent floor would more often act to reduce the number of areas that would qualify than would a 7 percent floor. Another commenter suggested that a 10 percent unemployment rate floor is appropriate because the current economic conditions in the United States are favorable for ABAWDs finding jobs.

The Department has not been persuaded to adopt the 10 percent floor option presented in the proposed rule, in part, because the Department found the comments expressing concern over Congressional intent and duplication with other waiver standards to be valid, and in part because sufficient evidence-based and data-driven support was not provided to go in this direction.

Opposition to any Unemployment Rate Floor Within the 20 Percent Standard

As previously mentioned, the vast majority of those who commented on the unemployment rate floor opposed setting any unemployment rate floor within the 20 percent standard. Commenters argued that the statutory language requires the Department to base the waiver standards on whether there are a lack of sufficient jobs for the specific ABAWD population, not the broader population. Many commenters opposed setting an unemployment floor because they argued unemployment rates fail to accurately capture the availability of jobs specifically for ABAWDs who face particular barriers to employment. They argued that the proposed rule represents an overreliance on unemployment data, especially with regard to an unemployment rate floor in the 20 percent standard. Many suggested that while the standard unemployment rate available in local areas does provide essential data, it does not accurately reflect labor market prospects for ABAWDs, and it does not fully account for the ability of ABAWDs to find and keep jobs due to lack of skills, training, or other barriers. Commenters argued that ABAWDs should not be subject to

the unemployment rate floor used in designating LSAs because ABAWDs face labor market disadvantages that the general public does not.

Commenters also provided analysis, based on the 2017 USDA Household Characteristics data,[3] that non-disabled individuals aged 18 through 49 in households without children in SNAP report lower than average educational attainment. Commenters pointed to research indicating that, on average, unemployment rates for people with low-education attainment are much higher than what BLS unemployment rates for the general public indicate. Commenters provided research indicating that lower unemployment rates are less indicative of strong labor markets in recent years than in the past, and particularly for those with lower levels of education. Commenters also provided research indicating that employment rates for workers with low levels of education still have not recovered from the recession and pointed to evidence that workers with less education may be hit harder by recessions. In addition, commenters suggested that ABAWDs are more likely to have part-time work, irregular hours, seasonal work, underemployment, high turnover, and low job security within low-skill professions. Commenters pointed to analysis commissioned by the Department that indicates that those subject to SNAP work requirements face substantial barriers to employment. Commenters provided research indicating that involuntary part-time work is increasing at dramatically higher rates than other types of work. These commenters argued that this impacts the ability of ABAWDs to be able to meet the work requirement. Commenters provided data indicating that individuals who were projected to lose their benefits due to the time limit also faced other barriers to work. One State provided data indicating that ABAWDs have higher levels of homelessness than other SNAP participants. Commenters asserted that formerly incarcerated persons encounter obstacles attaching to employment quickly and provided data showing that unemployment rates among this population was significantly higher than the unemployment rate of the general public. Other commenters provided recent studies finding significant racial discrimination in the labor market and hiring in particular. These commenters asked the Department to consider racial discrimination and other reasons that result in significant racial and ethnic employment disparities, and these commenters argued that evidence of discrimination and employment disparities indicates that general unemployment rates are not a good predictor of job availability for people of color. Commenters also asked the Department to consider access to transportation, housing stability, and forced moves among the ABAWD population that lead to particular problems maintaining stable employment.

Commenters argued that the Department has previously acknowledged that time limit waivers were intended by Congress to recognize the challenges that the ABAWD population faces when finding permanent employment. Commenters pointed to the Department's December 1996 guidance in which it offered several reflections on its understanding of Congressional intent at the time. In this guidance, the Department stated, ''USDA believes that the law provided authority to waive these provisions in recognition of the challenges that low-skilled workers may face in finding and keeping permanent employment. In some areas, including parts of rural America, the number of employed persons and the number of job seekers may be far larger than the number of vacant jobs. This may be especially so for person with limited skills and minimal work history.'' Commenters also argued that in its original rulemaking the Department realized that ABAWDs were a more diverse population than had originally been anticipated and that many faced barriers to employment. In response to these comments, the Department recognizes that ABAWDs may face barriers to employment and have more limited employment prospects than the general public due to low educational attainment or other factors discussed above. The Department also recognizes that there is no measure available for determining the number of available jobs specifically for ABAWDs participating in SNAP in any given area. However, notwithstanding the issues raised by these comments, the Department is resolute that establishing an unemployment rate floor within the 20 percent standard is necessary to ensure that the standard is designed to accurately reflect a lack of sufficient jobs in a given area. The Department's position is based on its operational experience, during which it has recognized that, without an unemployment rate floor, areas that do not clearly lack sufficient jobs will continue to qualify for waivers solely because they are 20 percent above the national unemployment rate. For example, the national average unemployment rate for the 24-month period of May 2017 through June 2019 was 3.9 percent.[4] Given this national average, a State could request and qualify for a waiver in areas with an unemployment rate as low as 4.7 percent for the same 24-month period. Not including a floor has had the effect of allowing areas with low rates of unemployment to qualify for waivers.

As discussed in the previous section, the Department finds the 20 percent standard with a 6 percent floor to be one of the most objective and defensible ways of determining a lack of sufficient jobs, as it aligns with a longstanding DOL measure of job insufficiency. The LSA designation criteria developed by DOL was used by the Department when originally developing the 20 percent standard. Including a 6 percent floor within the 20 percent standard would further align the 20 percent standard with the longstanding LSA standard on which it was originally based. This will improve the 20 percent standard and make it a better measure of job insufficiency.

Some commenters argued that the proposed rule's justification for applying an unemployment rate floor is not in line with Congressional intent. One commenter pointed to the House Committee on Budget's report (H. Rept. 104–651) on its original version of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which stated that waivers would be based on ''high unemployment . . . or other specified circumstances'' limiting the availability of jobs. The commenter argued that the ''other specified circumstances'' language means that Congress did not intend for unemployment rates alone to govern waiver decisions. Commenters argued that unemployment rates measure the proportion of the workforce who are employed or unemployed, but they do not measure how many jobs are available. Commenters also suggested that, if Congress intended to include an unemployment rate threshold for the ''sufficient number of jobs'' criteria, Congress would have done so. Commenters stated that Congress did not intend for lack of sufficient jobs criteria to be based on whether there are

[3] The Department publishes a characteristics report and corresponding SNAP Quality Control data annually, which provide information about the demographic and economic circumstances of SNAP households.

[4] Calculations based on BLS unemployment data, not seasonally adjusted, pulled from *https://www.bls.gov/data/#unemployment* on August 15, 2019.

too many or too few waivers that result from the criteria—Congress did not establish a desired level of waiver coverage. Another commenter stated that Congress intended for there to be many different ways to meet ''insufficient jobs,'' and that the Department acknowledged this when first implementing the policy in the late 1990s and early 2000s.

While the Department appreciates these commenters' references to the legislative history, the Department does not find setting an unemployment rate floor to be in conflict with Congressional intent. The Department is limiting the number of ways that a State may demonstrate a lack of jobs in order to prevent the misapplication of waivers in areas in which the lack of jobs is questionable. These changes are well within the authority under section 6(o)(4)(A) of the Act, which provides the Secretary with broad discretion on how to define what does and does not constitute a lack of sufficient jobs. By introducing a 6 percent unemployment rate floor, the Department aims to prevent the misapplication of waivers to areas with unemployment rates that do not demonstrate a lack of sufficient jobs.

One commenter argued that the proposed rule's assertion that the current rate of waivers was unforeseen is inconsistent with the historical record. This commenter provided evidence that USDA's original estimate of the extent of waiver coverage under its rules is in line with current actual waiver coverage. This commenter pointed to a document sent from Department staff to Office of Management and Budget (OMB) staff in 1997 that stated, ''Thirty percent to 45 percent of the able-bodied caseload may be waived. However, USDA's best estimate is that the areas that have been waived represent approximately 35 percent of the able-bodied caseload in the nation as a whole.''

In response to this comment, the Department sees fit to reiterate that its concern over the current number of waivers is based on the number of areas that continue to qualify when their unemployment rates are relatively low and the areas do not clearly demonstrate a lack of sufficient jobs. Over the past 20 years, the Department has identified the lack of a floor in the 20 percent standard as a particular weakness in the current regulations. The Department did not foresee the extent to which States would take advantage of this weakness to request and qualify for waivers in areas with unemployment rates not generally considered to indicate a lack of jobs, such as the 4.7 percent unemployment rate used as an example previously. The Department aims to address this and other weaknesses with reasonable policy changes, based on objective data and evidence. In the case of the 20 percent standard, the introduction of a 6 percent unemployment rate floor will ensure that the waiver standards appropriately account for fluctuations in the national unemployment rate without allowing areas in which unemployment is objectively low to qualify for waivers.

Commenters also pointed to research asserting that there is no one way to identify conditions that make it difficult to secure employment, but there are several measures of labor market weakness that can indicate a lack of sufficient jobs. In stating their opposition to the floor, some commenters noted that unemployment relative to the national average is an important signal that the economic conditions warrant waiving work requirements. Commenters stated that, by generally tying waiver eligibility to a ratio threshold of the overall U.S. unemployment rate, as the Department currently does with the 20 percent standard, States are able to target their waivers to jurisdictions that are lagging behind in comparison to the state and national economy. Commenters provided data showing that these areas with higher relative unemployment share significant overlap with the areas that have the greatest rates of poverty and food insecurity. These commenters argued that adding an unemployment rate floor to the 20 percent standard provides less flexibility for States to capture insufficient jobs for the ABAWD population.

The Department appreciates this information provided by commenters, but disagrees that a relative unemployment rate is a sufficient indicator of a lack of sufficient jobs in and of itself. As explained in several other sections of this rule, the Department is adding a 6 percent floor to the 20 percent standard based on its operational experience, during which it has recognized that, without an unemployment rate floor, areas that do not clearly lack sufficient jobs will continue to qualify for waivers solely because they are 20 percent above the national unemployment rate.

Some commenters argued that the natural rate of unemployment is an impractical measure by which to set a floor. They argued that it has a very wide range of estimates, is a macroeconomic concept that is not a fixed or precisely identifiable unemployment rate, has not been a useful tool for setting policy or for predicting inflation, and is the subject of disagreement among economists.

As described previously, though substate unemployment data for the general population is available, the Department recognizes there is no measure available for determining the number of available jobs specifically for ABAWDs on SNAP in any given area. The Department also acknowledges that the natural rate of unemployment is a theoretical concept that is not fixed at 5 percent, but fluctuates over time and has a wide range of estimates, making it an impractical basis by which to set a floor for the 20 percent standard. As a result, the Department did not view the natural rate of unemployment as a deciding factor in its decision to set the floor at 6 percent. The Department is also not persuaded by the arguments for no unemployment rate floor. Rather, the Department is adopting a 6 percent floor within the 20 percent standard because it aligns with DOL's LSA standard and it represents the most meaningful, justified option relative to the proposed rule's 7 percent floor or other potential unemployment rate floors.

Alternative Measures of Unemployment Rates

Several commenters argued that using the standard unemployment rate [5]—the U–3 rate, which is defined by BLS as the number of people unemployed as a percent of the civilian labor force—as a floor does not adequately capture job availability for ABAWDs and suggested that some alternative measures better represent labor market conditions for this population. Some commenters provided evidence that an alternative measure of unemployment published by BLS, known as the U–6 unemployment rate, indicates that job prospects for

[5] BLS publishes 6 measures of labor underutilization (U–1 through U–6). U–3 is the official unemployment rate, and it is equal to the total number of unemployed persons, as a percent of the civilian labor force. The number of unemployed persons includes all jobless persons who are available to take a job and have actively sought work in the past four weeks. U–6 is an alternative measure defined as total unemployed persons, plus all marginally attached workers, plus total employed part time for economic reasons, as a percent of the civilian labor force plus all marginally attached workers. ''Marginally attached workers'' include ''discouraged workers'' who are persons who are not in the labor force, want and are available for work, and had looked for a job sometime in the prior 12 months. They are not counted as unemployed because they had not searched for work in the prior 4 weeks. Persons employed part time for economic reasons are those working less than 35 hours per week who want to work full time, are available to do so, and gave an economic reason (their hours had been cut back or they were unable to find a full-time job) for working part time. These individuals are sometimes referred to as involuntary part-time workers. U–6 data is not published by BLS on the substate level.

some disadvantaged groups have not improved as much as the unemployment rate for the general population. The U–6 unemployment rate is defined by BLS as the total number of people unemployed, plus all marginally attached workers, plus the total number of people employed part time for economic reasons, as a percent of the civilian labor force and all persons marginally attached to the labor force. Put more generally, the U–6 measure is the percent of people unemployed, people underemployed, and people who want a job but are not looking because they are unable to find jobs or are discouraged. These commenters point out that the standard U–3 rate includes the employed and unemployed people who have searched for a job in the past 4 weeks. The commenter argued that the U–6 rate, which includes people who want full-time work but had to settle for part-time work and unemployed people who have looked for a job in the last 12 months, more accurately captures the condition of the labor market for ABAWDs. Commenters provided evidence showing that the U–6 unemployment rate recovered more slowly during the recovery from the Great Recession than did the U–3 rate. Additionally, one State suggested that the U–3 unemployment rate fails to include working-age people who are not in the labor force, and this group includes many so-called ''discouraged workers'' who have given up on searching for employment. The State argued that because these individuals are not included in the BLS unemployment calculation, the BLS will underestimate the true joblessness rate in areas with proportionately larger populations of these individuals. Another State provided data showing that the Labor Force Participation Rate had increased by only 0.1 percent between September 2014 and November 2018, even though the U–3 unemployment rate had fallen significantly over that time period. Commenters also suggested that an unemployment rate floor based on the U–3 rate could disadvantage rural areas or other areas that primarily rely on declining industries because ABAWDs living in these areas may ultimately be unable to secure employment even if it is not reflected in a sustained high U–3 unemployment rate. Other commenters said that, in addition to facing higher unemployment rates, racial minorities are more likely to be marginally attached to the workforce, and thus ignored by the U–3 unemployment rates.

While these comments about alternative unemployment measures are appreciated, the Department also recognizes that there is no measure available for precisely determining the number of available jobs specifically for SNAP ABAWDs in any given area. For example, while some commenters argued that the U–6 unemployment rate may better reflect the unemployment situation for ABAWDs, this measure is deficient for purposes of time limit waivers because it is not available at the substate level and therefore cannot be used to support or validate waiver requests for substate areas. Only U–3 unemployment data is available at the substate level.

As stated previously, the Department believes that setting a 6 percent floor within the 20 percent standard strengthens the standard by aligning it more closely with the DOL LSA criteria upon which it was originally modeled. Section 6(o)(4) of the Act states that the Secretary may waive the ABAWD time limit if an area has an unemployment rate of over 10 percent or if an area does not have a sufficient number of jobs. In this rule, the Department aims to prevent the misapplication of waivers to areas with unemployment rates that do not clearly meet the statutory conditions for waivers, and setting an unemployment rate floor using the BLS U–3 rate for the 20 percent standard is one of the means by which the Department will do so.

Alternative Unemployment Rate Floors

Some commenters suggested that, if the Department is to set an unemployment rate floor within the 20 percent standard, the floor should be set at or closer to the natural rate of unemployment. In particular, some commenters suggested that the Department set a floor at the current estimate of the natural rate of unemployment or adopt a fluctuating floor based on the quarterly estimates of the natural rate of unemployment from the Congressional Budget Office (CBO).

The Department appreciates these alternative suggestions. However, as previously discussed the Department believes that setting a fluctuating floor could be administratively difficult and setting a floor based solely on the current natural rate of unemployment may not account for changes to the natural rate of unemployment in the future. The Department is not persuaded by the arguments for alternative unemployment rate floors, and, as previously discussed, is adopting a 6 percent floor within the 20 percent standard.

Ceiling for the 20 Percent Standard

A commenter argued that imposing a floor similar to that used in LSA determinations is inconsistent with the Department's decision not to apply the LSA unemployment ceiling at 10 percent. The commenter stated that FNS is picking and choosing elements of LSA determinations without rationale.

The Department acknowledges that the LSAs have a 10 percent ceiling and that any civil jurisdiction above 10 percent unemployment for the appropriate 24-month period qualifies as an LSA regardless of whether the area is 20 percent above the national average. However, the Department believes it is unnecessary to include a 10 percent ceiling in the 20 percent standard, as the Department will continue to approve waivers for areas that have an unemployment rate over 10 percent during a recent 12-month period. As this commenter pointed out, areas with an unemployment rate over 10 percent during a recent 24-month period typically also have an unemployment rate above 10 percent for a recent 12-month period. For this reason, the Department is not adopting a 10 percent ceiling at § 273.24(f)(2)(ii).

Core Standards: Eliminating the Extended Unemployment Benefits Qualification Standard

The Department proposed that it would continue to approve any waiver request that is supported by the requesting State's qualification for extended unemployment benefits, as determined by DOL's Unemployment Insurance Service. The Department also proposed to prohibit statewide waivers when substate data is available, except for those States qualifying under the extended unemployment benefits standard.

Although the Department did not receive many comments with regard to retaining the extended unemployment benefits standard, some commenters supported the proposal to retain the extended unemployment benefits standard, arguing that this standard is an appropriate indicator that a State lacks sufficient jobs. Some of those who supported the proposal also argued that it is insufficient to have this as the only remaining criterion for statewide waivers, as this criterion does not adequately capture all States with a lack of sufficient jobs. These commenters noted that, under the extended unemployment benefits criterion, States must have increasing unemployment, and States that have continuing high unemployment that is flat and not increasing would not qualify under this

criterion. Other commenters cited research finding that extended unemployment triggers are set too high and asserted that Congress has had to step in too often to establish temporary programs of extended unemployment insurance benefits. Commenters also argued that States should not need to wait until statewide labor market conditions become so dire that the State qualifies for extended unemployment benefits before they are eligible for a statewide waiver.

Although the Department appreciates these comments in support of the criterion, the Department has decided not to adopt the rule as proposed because the Department is concerned that the extended unemployment benefits criterion would allow States to receive statewide waivers even when there is not a lack of sufficient jobs within certain areas of the State. One commenter stated that, while remaining sensitive to the administrative burden placed on State agencies, the Department should strive to approve waivers for distinct economic regions, as State boundaries often encompass multiple labor markets with significant variation in economic conditions. The Department agrees that waivers should be targeted to economically-tied areas with a lack of sufficient jobs, rather than entire states that contain distinct economic regions. In fact, the Department referenced a similar concept in the preamble to proposed rule for the current regulations at § 273.24, noting that statewide unemployment averages may mask ''slack'' job markets (insufficient jobs) in some substate areas.[6] The Department maintains the validity of this concept, and notes it is also true that statewide averages may mask tight labor markets in some substate areas. Additionally, as discussed later in the *Restricting the Combining of Data to Group Substate Areas and Establishing Strict Definition of Waiver* ''*Area*'' section, the Department is choosing to provide a strict definition of a waiver area that will also restrict statewide waivers. Therefore, the Department is removing the extended unemployment benefits criterion from the core standards, which was included at § 273.24(f)(2)(iii) in the proposed rule, as qualification for extended unemployment benefits is designated only at the state level, not at the LMA level. Accordingly, the Department is also eliminating the proposed exception to the restriction on statewide waivers for extended unemployment benefits that was included at § 273.24(f)(4) in the proposed rule. The Department believes this change will ensure that waivers of the ABAWD time limit are more appropriately targeted to those particular areas that have unemployment rates over 10 percent or lack sufficient jobs, rather than the larger areas of entire states. This is discussed further in the later section, *Restricting Statewide Waivers.*

Criteria Excluded From Core Standards

The Department proposed excluding some of the current ABAWD time limit waiver criteria when standard BLS unemployment data is available. These excluded criteria include a low and declining employment-to-population ratio, a lack of jobs in declining occupations or industries, or an academic study or other publication(s) that describes an area's lack of jobs.

Many commenters opposed excluding these criteria. Some commenters argued specifically that a low and declining employment-to-population ratio should be retained as a criterion for all areas. These commenters stated that this metric is well-defined and widely-used. Commenters asserted that data for this metric is readily available from the U.S. Census Bureau and BLS, and BLS regularly calculates this metric. Commenters argued that because employment-to-population ratio includes individuals who are employable but have not looked for a job in more than a year, during periods of severe and long-term economic recessions, the number of individuals in this category will grow and the employment-to-population ratio will paint a clearer picture of the strength of the labor market than other measures. Commenters argued that the employment-to-population ratio captures valuable information about discouraged workers and those classified as ''marginally attached to the workforce'' who are not actively looking for work, which is valuable because labor market depressions can discourage some ABAWDs from even searching for employment. Commenters argued that, compared to U–3 unemployment rates, the employment-to-population ratio is a more appropriate measure in some cases for labor market conditions for low-skill workers who face serious barriers to employment. Commenters provided evidence that researchers routinely use the employment-to-population ratio in addition to, or instead of, the unemployment rate to measure labor market conditions. One commenter asserted that the employment-to-population ratio provides useful information in assessing labor market conditions over the business cycle because it takes into account changes in labor market ''slack'' due to changes in both unemployment and labor-force participation. This commenter noted that employment-to-population ratio is a measure that labor economists use to capture weak labor markets in areas where there is a notable lack of jobs relative to the size of the working-age population. The commenter also pointed to previous Department guidance which stated that the employment-to-population ratio complements measures of unemployment by taking into account working age persons who may have dropped out of the labor force altogether, and that a decline in this ratio over a period of months could indicate an adverse job growth rate for the area. This commenter provided data indicating that an improved unemployment rate does not necessarily directly correspond to an improvement of the employment situation, and only a stable participation rate allows for unambiguous conclusions from a changing unemployment rate. This commenter also pointed out that States have used the employment-to-population criterion sparingly, and the Department requires States to provide additional evidence showing the requested area's labor market weakness for approval.

The Department is not adding the low and declining employment-to-population ratio criterion to the core standards and is maintaining this criterion only for areas with limited data or evidence, consistent with the proposed rule. While the employment-to-population ratio metric is standardized, it is not produced by BLS at the substate level. Just as importantly, the employment-to-population ratio's meaning in terms of job-availability can be ambiguous due to shifting demographics at the local or national level. As one of the commenters pointed out, due to the potential for ambiguity, the Department currently requires the few States using the employment-to-population criterion to provide additional evidence showing the requested area's labor market weaknesses. Therefore, the Department believes this criterion is not as robust as standard unemployment data in demonstrating a lack of sufficient jobs and is not adding the low-and-declining population ratio criterion.

Commenters also argued that information about declining industries or occupations should be retained as a criterion, arguing that such information

[6] Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Proposed Rule, 64 FR 70920 (December 17, 1999).

provides appropriate flexibility for local labor conditions. One commenter argued that, while a population may as a whole remain employed, a large subset may be significantly affected by declining occupations. Another commenter argued that this criterion is especially important for smaller, rural areas in which the loss of a single job provider, such a major manufacturing plant or mining industry, can have a major effect on local job availability. The commenter stated that the impact of a plant closure may not impact a 24-month unemployment rate until several months, or even a year, have passed. The commenter argued that the criterion regarding declining industries or occupations allows waivers to quickly respond to deteriorating labor market conditions. This commenter pointed out that, although states have rarely used this criterion to request waivers, the Department has approved them on a limited case-by-case basis, including cases in which the State agencies provided evidence of the number of workers affected by layoffs and rapidly increasing unemployment rates over a short period of time due to plant closings. A few commenters also stated that academic studies and publications can often provide a more accurate description of a region's unemployment or can more accurately describe job availability among the ABAWD population than unemployment rates.

The Department agrees that information about declining industries or occupations, and academic studies can be used to help understand employment changes in an area. However, information about declining industries or occupations, and academic studies are not as standardized and reliable as unemployment data, and the Department believes the best data should be used when it is available.

Commenters broadly argued that excluding a low and declining employment-to-population ratio, a lack of jobs in declining occupations or industries, or an academic study or other publication(s), along with the change to include an unemployment rate floor in the 20 percent standard, results in an overreliance on unemployment rates. These commenters assert, as previously noted, that unemployment rates do not precisely capture job availability for ABAWDs, and States should have other options to demonstrate a lack of sufficient jobs, through other evidence and consideration of other economic factors. Commenters stated that States should retain flexibility to rely on metrics other than BLS' U–3 unemployment rates in their waiver requests. Commenters pointed to the fact that labor market participation has not recovered since the Great Recession, even though unemployment rates have. As already noted, commenters stated that U–3 unemployment rates do not capture the underemployed and those who drop out of the labor force altogether. One commenter stated that the unemployment rate is a lagging indicator and does not indicate job insufficiency soon enough, so a one-size fits all approach is ill-advised. Another commenter asserted that, due to weaknesses in existing data sets and challenges in defining economic conditions, many researchers use qualitative data to support an understanding of employment challenges. This commenter noted that even the National Bureau of Economic Research does not use a single formula or data set for a definition of a recession. Some commenters stated that not including these criteria in the core standards would undercut a more nuanced understanding of local job markets. Commenters also argued that Congress intended for there to be many different ways to meet ''insufficient jobs'' and stated that the Department acknowledged this when implementing in the late 1990s and early 2000s.

Although the Department believes a low and declining employment-to-population ratio, a lack of jobs in declining occupations or industries, or an academic study or other publication(s) can enhance the understanding of the job market, the arguments made by the commenters were not sufficiently compelling to justify making changes to the proposed rule. The core standards established in this final rule are designed to provide States with a set of consistent criteria for approval based on reliable and robust available evidence for evaluating labor market conditions. Through its operational experience, the Department has recognized that a low and declining employment-to-population ratio, a lack of jobs in declining occupations or industries, or an academic study or other publication(s) are less reliable and consistent than standard unemployment data in demonstrating a lack of sufficient jobs. Therefore, the Department does not believe that these criteria should be included as part of the core standards for waiver approval. The final rule, however, is including these criteria as available for areas with limited data or evidence as the Department believes these are appropriate alternative measures when standard unemployment data is not available for an area. The final rule is adopting the language for those criteria as proposed. This language was included within § 273.24(f)(7) in the proposed rule, and is located within § 273.24(f)(6) in the final rule.

Other Data and Evidence in an Exceptional Circumstance

The Department proposed that waiver requests that are supported by data or evidence other than the core standards may be approved if the request demonstrates an exceptional circumstance in an area. Though requests tied to an exceptional circumstance need not necessarily meet the core standards, the Department proposed that the requests include some form of data or evidence showing that the exceptional circumstance has caused a lack of sufficient jobs in the area. As an example of the kind of data or evidence that could support a waiver under exceptional circumstances, the Department cited a most recent three-month average unemployment rate over 10 percent. Under the proposed rule, any supporting unemployment data provided by the State under this criterion must rely on standard BLS data or methods.

Exceptional Circumstances

A few commenters expressed concerns with elements of this provision. Commenters pointed out that the proposed language in § 273.24(f)(3) would require that the request demonstrate that the exceptional circumstance has caused a lack of sufficient jobs, but then provided an example of a State showing that an area has a most recent 3-month average unemployment rate over 10 percent. Commenters noted that the Act provides for two separate bases for waiver approvals, if the area ''has an unemployment rate of over 10 percent'' or ''does not have a sufficient number of jobs to provide employment for the individuals.'' The Department acknowledges that an example of an exceptional circumstance causing a 3-month average unemployment rate over 10 percent is an example of ''an unemployment rate of over 10 percent.'' The Department is, therefore, correcting this language at § 273.24(f)(3) to include the phrase ''or an unemployment rate over 10 percent'' after the phrase ''has caused a lack of sufficient number of jobs.'' Some commenters suggested that the term ''exceptional circumstance'' was unclear. As stated in the preamble to the proposed rule, given that economic conditions can change dramatically due to sudden and unforeseen forces, the Department believes it is appropriate to maintain a

level of flexibility to approve waivers as needed in extreme, dynamic circumstances. Therefore, the Department does not believe an exhaustive list of all circumstances that will be considered exceptional can be provided. However, the Department can reiterate and further clarify the examples provided in the proposed rule. An exceptional circumstance may arise from the rapid disintegration of an economically and regionally important industry, the prolonged impact of a natural disaster, or a sharp continuing economic decline. As stated in the proposed rule, a short-term aberration, such as a temporary closure of a plant, would not constitute an exceptional circumstance.

One commenter pointed to the closing of an automobile plant earlier this year. This commenter stated that this plant was major driver of the economy in the region, and its closing is having an immediate and massive ripple effect throughout the area. The commenter noted that the county the plant was located in would have qualified under the current regulations, but was unsure if the area would qualify under the new regulations, including the exceptional circumstance criterion. The Department would like to make it clear that permanent closure of a large plant (relative to the labor market area) or an ongoing significant reduction in the plant's workforce would be considered an exceptional circumstance, as long as it is not a temporary closing. If the closing were temporary and its impact not ongoing, then it would not justify a waiver. To provide more clarity regarding this criterion, the Department is editing the amendatory text at § 273.24(f)(3) to require that, under the exceptional circumstance criterion, the waiver request demonstrate that the impact of the exceptional circumstance is ongoing at the time of the request.

Based on these comments, the Department also sees fit to underscore that the example provided in the proposed regulatory text, a 3-month average unemployment rate over 10 percent, is not the only potential way that States could demonstrate that an area has an unemployment rate over 10 percent or a lack of sufficient jobs due to an exceptional circumstance. The Department is editing the amendatory text at § 273.24(f)(3) to more clearly indicate that this is simply one example. States are free to provide other data and/or evidence and to construct arguments that there are not enough jobs for individuals in an area due to an exceptional circumstance. For example, a State might provide unemployment data or other evidence that is similar to the core standards except in that it covers a shorter duration because the area's economy suffered a rapid decline due to the exceptional circumstance that is not yet demonstrated by a full 12-month or 24-month data period. The Department will evaluate requests made based on exceptional circumstances carefully to ensure that that the sudden lack of jobs or high unemployment in the area is clearly connected to a recent exceptional circumstance, that the lack of jobs or high unemployment is ongoing, and that the lack of jobs or high unemployment is demonstrated by recent data or evidence.

3-Month Unemployment Rate of Over 10 Percent

Commenters argued that restricting the use of a recent 3-month unemployment rate of over 10 percent to exceptional circumstances, rather than including it as a core standard, is contrary to the proposed rule's stated preference that waivers reflect current economic conditions. The Department points out that, while the current regulations suggest that States could submit evidence that an area has a recent 3-month average unemployment rate over 10 percent provide to support a claim of unemployment over 10 percent, the current regulations do not categorize this type of waiver as ''readily approvable.'' In this way, the Department believes that the proposed rule is relatively similar to the current regulations in excluding a recent 3-month average unemployment rate over 10 percent from the core standards. Moreover, the Department believes that requiring a 3-month average unemployment rate over 10 percent be tied to an exceptional circumstance will strengthen this criterion so that a 3-month average would not be used to grant a year-long waiver when that 3-month average is simply a short-term aberration or reflective of regular seasonal employment.

Commenters also argued that restricting the use of a recent 3-month unemployment rate of over 10 percent to only exceptional circumstances, along with the elimination of the historical seasonal unemployment rate over 10 percent criterion, is inconsistent with the Act. Commenters noted that the proposed rule would essentially leave only one criterion—having a 12-month average unemployment rate over 10 percent—as the basis for approval using an average unemployment rate over 10 percent. These commenters argued that these changes are inconsistent with the Act, as the Act does not specify requirements regarding the duration of time that an area must have an unemployment rate above 10 percent.

Commenters argued that the Department has previously discussed shortcomings with requiring a 12-month average unemployment rate to demonstrate an unemployment rate over 10 percent. Commenters noted that in guidance issued in December 1996, the Department stated that it would not require a 12-month average to approve a waiver based on an unemployment rate over 10 percent. Commenters noted that this guidance stated, ''A 12-month average will mask portions of the year when the unemployment rate rises above or falls below 10 percent. In addition, requiring a 12-month average before a waiver could be approved would necessitate a sustained period of high unemployment before an area became eligible for a waiver.'' Commenters argued that to address these issues, the guidance document stated, ''. . . states have several options. First, a state might opt to use a shorter moving average. A moving average of at least three months is preferred. In periods of rising unemployment, a three-month average provides a reliable and relatively early signal of a labor market with high unemployment. A state might also consider using historical unemployment trends to show that such an increase is not part of a predictable seasonal pattern to support a waiver for an extended period (up to one year).'' Commenters argued that this guidance was reinforced in the preamble of the 1999 proposed rule.

Commenters also argued that eliminating the 3-month average unemployment rate over 10 percent as the basis for waiver approval is contrary to the Department's preference that waivers reflect current economic conditions, as stated in the 2019 proposed rule. These commenters asserted that a most recent three-month average unemployment rate over 10 percent is the criterion that most closely aligns with current economic conditions and signals deteriorating labor market conditions in an area.

The Department believes the changes being made are consistent with the Act. In fact, the current regulations also include duration requirements to demonstrate an area has an unemployment rate above 10 percent, and only guarantee approval of waivers based on unemployment over 10 percent for a 12-month period. For example, an area with a 1-month unemployment rate of over 10 percent cannot qualify for a waiver based on that evidence alone. Similarly, in order for a State to demonstrate an area has an unemployment rate above 10 percent,

the core standards in the final regulations only guarantee approval of waivers based on unemployment over 10 percent for a 12-month period. As the Act does not specify duration requirements, the Department is within its authority to define how 10 percent unemployment is to be measured through the rulemaking process, as it did when it originally promulgated regulations regarding the ABAWD time limit.

One commenter also argued that requiring that the 3-month unemployment rate be above 10 percent is too high and provided data from recent economic downturns to argue that a 10 percent unemployment rate is not always reached, even in times that are considered times of severe economic distress. The commenter argued that the waiver standards need to be more responsive to economic declines in order to serve as an automatic stabilizer and help mitigate the negative economic impacts of the decline. As explained in the preceding section, in the event of an exceptional circumstance a recent 3-month unemployment rate is only one example of evidence that can be provided to support a waiver.

Restricting the Combining of Data to Group Substate Areas and Establishing a Strict Definition of Waiver ''Area''

Comments on Restricting the Combining of Data to Group Substate Areas

The Department proposed to prohibit States from combining unemployment data from individual substate areas to calculate an unemployment rate for the combined area (otherwise referred to as ''grouped'' areas or ''grouping''), unless the combined area is designated as a Labor Market Area (LMA) by the Federal government. According to DOL, an LMA is an economically integrated area within which individuals can reside and find employment within a reasonable distance or can readily change jobs without changing their place of residence. LMAs are an exhaustive level of substate geography delineated in partnership by DOL and OMB, then published by the DOL BLS Local Area Unemployment Statistics program.[7] The Department also proposed that States would not be able to omit certain areas within the LMA in the State from the area covered by the waiver. In addition, the Department specifically asked for comment on whether grouping should be limited to LMAs or whether grouping should be prohibited entirely.

[7] For more information on LMAs, please visit *https://www.bls.gov/lau/laugeo.htm.*

Some commenters generally supported the restriction on States' ability to group areas, stating that using LMAs would limit grouping to regions with demonstrable economic ties and prevent manipulative grouping practices by States. Commenters noted that LMAs are a relevant and reliable tool for evaluating labor market conditions within a local area. Commenters stated that States should not be able to combine areas on the basis of their own judgment, as they will seek to maximize any discretion in order to receive and use as much Federal money as possible. One commenter noted that allowing States to combine areas has led to combining low unemployment counties with high unemployment counties as a means to waive the work requirement for as many ABAWDs as possible, which this commenter considered abuse.

Many commenters opposed the proposed restriction on grouping to only LMAs. Some commenters argued that the current discretion given to States works and that this is shown by evidence that States are gradually phasing out waivers in the areas with the lowest rates of unemployment as the economy improves. The Department does not share this view. Based on the Department's extensive experience reviewing and processing ABAWD waiver requests, it believes that many areas have remained under waivers for longer than appropriate due to, in particular, States' strategic use of grouping to maximize the geographic coverage of waived areas rather than to demonstrate high unemployment or a lack of sufficient jobs for ABAWDs, as outlined in the Act. In the Department's view, States' strategic use of grouping to maximize the geographic coverage of waived areas subverts the Act's condition that waivers apply where unemployment exceeds 10 percent or there is a lack of sufficient jobs.

Some commenters suggested the Department used too narrow of a definition of the terms ''economically tied'' and ''labor market area.'' They suggested that LMAs are not the only appropriate areas for grouping because LMAs are based on commuting patterns of the general workforce and are not specific to low-income, low-skilled ABAWDs who lack affordable transportation options. Commenters argued that LMAs are not always an accurate indication of which communities interact economically or are accessible for the purposes of employment. Commenters stated that the LMA designation does not take into account variations by industry or socioeconomic characteristics. Commenters provided research showing that a given county may belong to multiple commuting areas depending on the industry or type of occupation. Commenters also stated that job losses in some LMAs can have significant ripple effects in other neighboring LMAs. Commenters gave examples in which some LMAs are too big to properly define commuting patterns for ABAWDs because it could take more than two hours without traffic to commute one way from one end of an LMA to the other by car and provided examples where it is impossible to access most of the communities within an LMA using public transportation. Commenters argued that the LMA methodology misses the fact that, in some counties, workers may have to travel in all directions and often beyond a contiguous county for their job, and, therefore, LMAs are too small in some cases. Commenters provided research indicating that the change in proximity to jobs in recent years varies by socioeconomic characteristics, with poor, minority residents seeing the biggest decline in jobs within a reasonable commuting distance.

The Department is not compelled by the commenters' suggestions described in the preceding paragraphs, which generally argue that LMAs do not account for specific ABAWD commuting patterns and other factors specific to ABAWDs. While commenters suggested alternatives that the Department considered, as discussed below, LMAs remain the best available and most appropriate delineation to address the issue of grouping, as there are no Federally-designated areas that specifically assess commuting patterns and other related economic factors for ABAWDs. According to DOL, an LMA is an economically integrated area within which individuals can reside and find employment within a reasonable distance or can readily change jobs without changing their place of residence; therefore the Department maintains that they are the best available and most appropriate area delineation at this time. However, the Department notes that if in the future a more robust delineation becomes available from a Federal source, the Department may consider its appropriateness in the context of future rulemaking.

Other commenters argued that States have the best understanding of the regional patterns in their labor markets, local commuting burdens, and other local nuances specific to ABAWDs, and should retain flexibility in combining data to group areas. A State agency commented that each State has the

contextual knowledge and experience to identify the most appropriate grouping areas for a waiver. Commenters suggested that the proposal to impose restrictions on grouping substate areas is inconsistent with the philosophy that the government closest to the people governs best. Commenters stated that an erosion of State autonomy in forming these substate groupings could result in SNAP participants being removed from the program despite a demonstrable lack of sufficient jobs in their labor market.

Commenters argued that in its original rulemaking the Department recognized that it did not have sufficient expertise to evaluate whether local labor markets could offer ''a sufficient number of jobs to provide employment for the individuals'' because the Department was not in a position to know where new jobs were located or the feasibility of commuting to them given driving times and public transportation. Commenters argued that in its original rulemaking the Department found that county unemployment rates were the most available measure of the vitality of local labor markets, and the Department specifically allowed States to determine which areas would be grouped together to receive waivers because the patterns of employment and mobility for the low-skilled employment market can be quite different from those for the overall employment market. Commenters argued that the Department concluded that States were best-equipped to determine whether high unemployment in some areas adversely affected employment prospects in others.

Commenters suggested that there are numerous reasons that a State would choose to group towns other than by LMA, such as cost of living, lack of access to or availability of transportation, lack of employers with a certain job field, or other demographic considerations.

Commenters argued that the proposed change to State flexibility in grouping areas is contrary to years of FNS guidance and departs from USDA's longstanding position without reasoned support. They pointed out that in regulations and guidance over the past two decades, the Department has given States broad discretion to define areas and has never expressed that commuting patterns be the primary or only basis for whether or not substate areas could be grouped together.

The Department appreciates and has considered the comments described in the preceding paragraphs, which broadly argue that States should maintain their current flexibility to group substate areas. However, the Department disagrees. The Department has learned through its extensive operational experience that this flexibility allows States to strategically group substate areas to maximize the geographic coverage of waived areas rather than to demonstrate high unemployment or a lack of sufficient jobs for ABAWDs, as outlined in the Act. The Department has determined that this problem is one of the primary reasons why about half of the ABAWDs participating in SNAP live in waived areas, despite current low unemployment levels across the majority of the country. Therefore, the need to address this problem outweighs the arguments received in support of States' need to maintain current flexibility.

The Department is within its authority to revise its regulations as the statute does not define what constitutes an ''area'', and the Department's operational experience has shown that current regulations provide States with too much flexibility. As previously stated, States are grouping areas in such a way to maximize waived areas rather than demonstrate high unemployment or lack of sufficient jobs for ABAWDs. As noted in the proposed rule, the Department has learned that its standards for combining areas provide too much flexibility for State agencies. While the Department has attempted to clarify its intention that areas be economically tied through policy guidance,[8] this has not prevented States from strategically using grouping to maximize waived areas. For example, some States have grouped nearly all contiguous counties in the State together while omitting a few counties with relatively low unemployment in order to maximize the waived areas in the State. In other cases, States have grouped certain towns together that share the same economic region while omitting others with relatively low unemployment from the group, thereby maximizing the waived areas in the State.

A few commenters stated that the proposed rule's restriction on grouping contradicts the statutory language permitting waivers for ''any group of individuals in the State if the Secretary makes a determination that the area in which the individuals reside'' has an unemployment rate above 10 percent or lacks sufficient jobs. Commenters suggested that Congress intended to allow States to use their discretion in how to group regions together for the purposes of obtaining a waiver. Commenters argued that States are not using waivers in ways that were ''not foreseen by Congress'' as described in the proposed rule. Commenters noted that Congress specifically considered language in the House-passed version of the 2018 Farm Bill that would have limited grouping and then rejected this provision in the final enacted 2018 Farm Bill. Commenters also pointed to the Conference Report that accompanied the 2018 Farm Bill, which states, in particular, ''[t]he Managers intend to maintain the practice that bestows authority on the State agency responsible for administering SNAP to determine when and how waiver requests for ABAWDs are submitted.'' These commenters argued that to add new geographic restrictions through this rulemaking would contradict the intent of Congress.

In response to these comments, the Department points out that Congress has been silent on the specific issue of combining data to group substate areas. Nothing in the statute or legislative history clearly states how the Department should handle this issue. The Department believes the Conference Report that accompanied the 2018 Farm Bill is referring broadly to maintaining the States' ability to choose which areas it wishes to request when submitting a request to the Department, not referring to maintaining the discretion of States to combine data from substate areas to form an economic region.

Other commenters argued that the LMA standard is reliant on outdated data. They pointed out that the current list of LMAs are based on population data from the 2010 Census and commuting data from the American Community Survey five-year dataset for 2006–2010. These commenters argued that LMAs are not updated frequently enough to capture recent labor market trends. Commenters also stated that OMB has cautioned that LMA delineations (specifically Metropolitan Statistical Area and Micropolitan Statistical Area delineations) should not be used to develop and implement Federal, State, and local non-statistical programs and policies without full consideration of the effects of using these delineations for such purposes.

The Department appreciates the concerns described in the preceding paragraph regarding the age of the data used for LMAs and using caution when applying LMAs to implementing Federal policies. However, after assessing alternative options, the Department has not identified any other labor market definition that uses more

[8] Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents, 2016. Available at: *https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Guide-to-Supporting-Requests-to-Waive-the-Time-Limit-for-ABAWDs.pdf.*

recent data and would equally address the problem of States' manipulative usage of grouping substate areas to maximize waived areas. The Department is resolute that it must address this problem, and that LMAs represent the best available and most practical solution.

Commenters also stated that the proposed rule ignores that a variety of other factors that can account for areas having ''economic ties,'' such as employer recruiting practices, regional workforce development strategies, regional economic development and investment patterns, service delivery models, and migration patterns. Commenters asserted that States consider multiple factors when grouping areas to align resources, administrative capacity, and service delivery, and may also consider the location of SNAP E&T services, Workforce Innovation and Opportunity Act (WIOA) services, and other work programs or grant programs. In particular, commenters stated that the proposed restriction on grouping would reduce States' ability to allocate and coordinate E&T resources effectively. One commenter provided examples of States that coordinated E&T programs with unwaived areas when the State could not provide or guarantee SNAP E&T slots in all counties. Commenters argued that the proposed rule would make State planning more difficult given the inability to group areas consistent with Workforce Development Boards. Commenters suggested that the Department consider other alternative frameworks for grouping areas, such as areas covered by Workforce Development Boards. They noted that, under WIOA, states have discretion to define regions and are encouraged to take an integrated approach to account for a range of different factors, starting with LMAs, but then also considering funding streams and service delivery.

While the Department appreciates that States consider administrative needs, the availability of work programs and employment and training services, and other factors in considering when and where to request a waiver, the Department interprets the Act to plainly mean that the Department's authority to grant waivers is limited to areas with unemployment rates of over 10 percent or areas that demonstrate lack of sufficient jobs. The Department is not compelled by arguments that E&T services or other work program availability should be factored in when defining which areas have high unemployment or lack sufficient jobs. However, the Department also notes that States still maintain the ability to choose which areas to request. If the State wants to choose areas to request, among those that qualify, based on E&T services or other work programs, the State is free to do so.

Commenters also suggested that the Department allow grouping consistent with Bureau of Economic Analysis (BEA) economic areas. Commenters pointed out that these areas were listed as an example of an area for grouping in past Department guidance. The Department appreciates these suggestions but has evaluated BEA economic areas and determined that they are no longer appropriate for grouping areas for ABAWD waiver requests, as BEA is no longer producing or publishing this data.

Commuting Zones

Some commenters urged the Department to consider using Commuting Zones (CZs) as another, possibly more accurate, metric for evaluating labor market conditions within a local area and grouping substate areas for waivers. Some commenters pointed out that, while many LMAs encompass a single county, very few CZs do. Other commenters asserted that the USDA Economic Research Service (ERS) created CZs to better reflect commuting patterns in rural areas. One commenter pointed to research by ERS examining the relationship between labor market area conditions and length of SNAP participation spell, which found that using the CZ definition had the largest estimated effects among several labor market definitions. Other commenters argued that the Department should consider replacing LMAs with CZs because it would result in the application of the work requirement in more areas. One commenter stated that limiting grouping to either LMAs or CZs would be a vast improvement over current rules. Another commenter argued that CZs face the same limitation as LMAs in that they are based on commuting patterns of the general public and do not account for other factors specific to ABAWDs.

While the Department appreciates the suggestions to consider using CZs, the Department is not adopting this alternative proposal. While CZs were originally developed by USDA ERS, the list of CZs is no longer published by a government agency. This is in contrast to the LMA list, which is still published by DOL. Though university researchers published data similar to USDA ERS's CZs following the 2010 Census, the Department believes the basis for approval of waivers must be sound data and evidence that primarily relies on data from BLS or BLS-cooperating agencies. For these reasons, the Department views the use of LMAs for ABAWD waivers as vastly superior to CZs, and does not think it prudent to include CZs as a substitute for LMAs nor as an additional means by which to group substate areas.

Establishing Strict Definition of Waiver ''Area''

The Act states that ''the Secretary may waive the applicability of [the time limit] to any group of individuals in the State if the Secretary makes a determination that the area in which the individuals reside . . . has an unemployment rate of over 10 percent; or . . . does not have a sufficient number of jobs to provide employment for the individuals.'' Current regulations generally allow States to define ''the area in which the individuals reside.'' That is, the current regulation at § 273.24(f)(6) provides the following: ''States may define areas to be covered by waivers. We encourage State agencies to submit data and analyses that correspond to the defined area. If corresponding data does not exist, State agencies should submit data that corresponds as closely to the area as possible.''

In response to the proposed rule's restriction on the combining of data to group substate areas, one commenter suggested that the Department should instead define ''area'' as a jurisdiction, such as a county, and then adopt a two-step approach to approving waivers. During this two-step process, the Department would first determine whether the requested jurisdiction would meet any of the waiver criteria, and, if it does, the Department should also determine whether the commuting zone surrounding the jurisdiction would also meet the waiver criteria. Unless the waiver criteria is met in both steps, both for the jurisdiction in which the individual resides and for the larger CZ, the waiver would not be granted.

The Department does not believe that defining ''area'' in this way and adding this two-step process would be consistent with section 6(o)(4) of the Act. The Act gives the Secretary authority to waive an ''area in which the individuals reside,'' if the area ''has an unemployment rate of over 10 percent'' or ''does not have a sufficient number of jobs to provide employment for the individuals.'' Including the two step process suggested by the commenter would actually result in many individual jurisdictions, defined as ''areas,'' being denied waivers even if the area demonstrates an unemployment rate of over 10 percent or a lack of

sufficient jobs based on robust, reliable BLS data. This is because an additional area (*e.g.,* the commuting zone) would also need to demonstrate an unemployment rate of over 10 percent or a lack of sufficient jobs. In other words, two areas (the jurisdiction and the commuting zone) would need to meet the criteria in the Act for a waiver to be approved, which the Department believes is inconsistent with the Act.

In response to the proposed rule's restriction on the combining of data to group substate areas, some commenters also argued that States should not have the option to request varying levels of jurisdictions within the same waiver and that States should not be able to choose when to apply for a combined area using the LMA definition and when to apply for a single-jurisdiction waiver. Commenters argued that areas should not qualify for waivers if there are available jobs within a reasonable commuting distance. Commenters also argued that ABAWD time limit waiver policy should not stifle geographic mobility by reinforcing perverse incentives for working-age individuals to remain in an economically depressed area to receive SNAP benefits for an unlimited period of time without working or engaging in work training. In addition, commenters asserted that ''area'' should be defined to ensure the maximum number of people possible are moved off of SNAP and into the workforce, where they can improve their lives, families, and communities. Commenters provided data indicating that not allowing States to waive the ABAWD time limit unless the LMA qualifies for the waiver would result in a broader application of the time limit.

The Department agrees with the comments described in the preceding paragraph. Therefore, the Department is expanding upon the proposed rule's restriction on the combining of data to group substate areas to explicitly define the statutory phrase ''an area in which the individuals reside'' to mean an area considered to be an LMA, as defined by OMB/DOL. The Department is also including the intrastate part of an interstate LMA, an Indian reservation area, and a U.S. Territory in this new waiver area definition, as explained later in this section. In general, this means that the final rule will only allow for waivers covering LMAs; not individual jurisdictions within LMAs, such as counties or county equivalents, and not for any State-defined groupings of substate areas. Thus, this change effectively replaces the proposed amendatory text of § 273.24(f)(4) and (5) of the proposed rule, which had proposed restricting Statewide waivers and the combining of data to group substate areas (grouping).

The Department is making this change in the final rule because it is concerned about the potential for misuse by States if States have the choice to obtain waivers for LMAs or individual jurisdictions, such as counties and county equivalents. For example, if a State has the choice to obtain waivers for LMAs or for individual counties, and a given LMA does not qualify but a county within it does qualify, the State could waive the county without consideration for the job availability in its surrounding LMA. Consistent with the aforementioned comments, the Department does not think providing this type of choice is appropriate in the context of ABAWD time limit waivers. The Department is therefore establishing a strict definition of waiver area because it believes that individual jurisdictions, such as counties or county equivalents, should not receive waivers if there are jobs available in a nearby jurisdiction, within a reasonable commuting distance. LMAs, as listed by DOL, represent the best available government definition of an area for defining a reasonable commuting distance.

The Department also believes that generally restricting waivers to qualifying LMAs will result in a broader application of the time limit, encourage geographic mobility among ABAWDs, and reduce dependence on government benefits. In other words, the Department is implementing a clear regulatory definition of ''area'' for waiver purposes because it expects unemployed ABAWDs to proactively pursue any and all work and/or work training opportunities within reasonable commuting distance of their homes. In that same vein, the Department expects States to support ABAWDs in their efforts to find work and meet the work requirement by expanding access to work programs and other supportive services for ABAWDs.

Some commenters pointed out that many LMAs cross State lines, while individual States are responsible for requesting waivers for areas within each State. Commenters noted that the proposed rule did not explain what would happen in these circumstances. In the final rule, the Department is choosing to require that waiver approval be based on data from the entire interstate LMA, not data from the part of the LMA within the State. In other words, a State with an interstate LMA may request and be approved for the portion of the LMA that falls within its jurisdiction as long as the entire interstate LMA qualifies. The Department believes this requirement is consistent with the rationale that areas should not qualify for waivers if there are available jobs within a reasonable commuting distance, and is consistent with the restriction on waiving individual jurisdictions within LMAs. Therefore, the Department is specifically including the intrastate part of an interstate LMA in its strict definition of an area.

The Department sees fit to point out that if an entire State is encompassed by one larger interstate LMA, then the State may request and be approved for a statewide waiver if the entire interstate LMA qualifies. Currently, the only example of this situation would be the District of Columbia, which is encompassed by one larger interstate LMA.

Based on the Department's decision to strictly define waiver area as an LMA (or the intrastate part of an interstate LMA, a reservation area, or a U.S. Territory), the Department also sees fit to clarify a few potential points of confusion about LMA data availability. In the proposed rule, the Department proposed that the practice of grouping be restricted to only LMAs by amending 273.24(f)(5) to stipulate that the State agency ''may only combine data from individual areas that are collectively considered to be Labor Market Area by DOL.'' However, in the proposed rule the Department did not reference the fact that BLS publishes directly corresponding, representative unemployment data for all LMAs, just as it does for counties, county equivalents, and a limited number of other areas.[9] To clarify, because corresponding LMA data is available, States would not need to use unemployment data and labor force data from individual areas within an LMA (*e.g.,* for multi-county LMAs) to calculate an unemployment rate representative of the LMA. In other words, under the final rule's strict definition of waiver area, States requesting waivers for an LMA would not be required to combine data. Therefore, the Department has revised the amendatory text in the final rule to better reflect that directly corresponding, representative BLS unemployment data is currently available for LMAs. If such corresponding data were to become unavailable in the future, States may combine the data of the individual areas within the LMA (*e.g.,* for multi-county LMAs) to calculate an unemployment rate representative of the LMA. The Department is addressing the potential

[9] For more information on the available BLS data, please visit *https://www.bls.gov/lau/laugeo.htm.*

scenario in the amendatory text so that if corresponding data were to become temporarily or permanently unavailable in the future for any LMA, that States would continue to be able to exercise their option to request and support waivers for any LMA.

As noted in a preceding paragraph, the final rule also includes Indian reservation areas and U.S. Territories in the strict definition of waiver area. This means that though other individual jurisdictions (*e.g.,* counties or county-equivalents within a larger LMA) are not allowable waiver areas, reservation areas and U.S. Territories are allowable waiver areas, consistent with longstanding policy. The U.S. Government has a unique legal relationship with Indian tribal governments that differentiates reservation areas from other areas within the United States. Agencies have been instructed by Executive Order 13175 to respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments. As such, the Department recognizes that reservation areas have unique circumstances and do not fit neatly within the LMA definition. In addition, U.S. Territories participating in SNAP, including Guam and the U.S. Virgin Islands, do not have Labor Market Areas and would therefore have no basis for qualifying for a waiver if they were not explicitly included in the strict definition of an area. Therefore, the Department is recognizing these areas as potential waiver areas in the amendatory text. The Department sees fit, however, to also explain that while reservation areas could be waived independently, they may be also be waived as part of one or more LMAs that they are geographically located within, without the need for the State to request to waive that reservation area independently.

The Department is adopting these changes to establish a strict definition of waiver area, to include an LMA, the intrastate part of an interstate LMA, a reservation area, or a U.S. Territory, at § 273.24(f)(4).

Restricting Statewide Waivers

The Department proposed eliminating statewide waiver approvals requested on the basis of statewide data averages when substate data averages are available through BLS, except for those waivers based upon a State's qualification for extended unemployment benefits, as determined by DOL's Unemployment Insurance Service.

A few commenters supported this proposal. One commenter, in particular, stated that while remaining sensitive to the administrative burden placed on State agencies, the Department should strive to approve waivers for distinct economic regions, as State boundaries often encompass multiple labor markets with significant variation in economic conditions.

As discussed previously in the *Core Standards: Eliminating the Extended Unemployment Qualification Standard* section, the Department agrees with this comment and notes that statewide data may mask tight labor markets in some substate areas. Additionally, as discussed in the immediately preceding section, *Restricting the Combining of Data to Group Substate Areas and Establishing a Strict Definition of Waiver ''Area'',* the Department is choosing to codify a strict definition of waiver ''area'' that will also effectively restrict statewide waivers.

In addition, as discussed in the *Core Standards: Eliminating the Extended Unemployment Benefits Qualification Standard* section, the Department is modifying its proposals to remove the extended unemployment benefits criterion from the core standards that was included at § 273.24(f)(2)(iii) in the proposed rule and to eliminate the proposed exception for extended unemployment benefits from the restriction on statewide waivers that was included at § 273.24(f)(4) in the proposed rule. These changes will effectively eliminate all statewide waivers based on statewide data, except for U.S. Territories, as explained in preceding sections. Consistent with the general rationale for restricting statewide waivers, the Department believes this change will ensure that waivers of the ABAWD time limit are more appropriately targeted to those particular areas that have unemployment rates over 10 percent or lack sufficient jobs. However, the Department sees fit to point out a particular nuance on the restriction of statewide waivers. That is, while this change generally eliminates statewide waivers based on statewide data, it would be possible for all LMAs in a State to qualify for waivers provided that each requested LMA separately meets the standards for approval. Similarly, it would be possible for a single LMA's boundaries to match or encompass a State's boundaries, in which case a waiver for the LMA would effectively waive the entire State. The Department does not see the potential for such scenarios to be problematic because they would not contradict the strict definition of waiver area in that the waiver area would still consist of one or more individually qualifying LMAs.

Many commenters expressed opposition to the proposed restriction of statewide waivers. A few of these commenters argued that this proposal is arbitrary and capricious because it departs from USDA's longstanding position without reasoned support. In particular, these commenters argued that the Department fails to identify data or evidence that justifies a restriction on statewide waivers. A commenter also provided text from the House Committee on Budget report (H. Rept. 104–651) from June 1996, when it reported out its original version of PRWORA, which stated, ''The committee understands that there may be instances in which high unemployment rates in all or part of a State or other specified circumstances may limit the jobs available for able-bodied food stamp participants between 18 and 50 years with no dependents.'' Another commenter provided text from the House Committee on Agriculture materials when it marked up the Food Stamp Reform and Commodity Distribution Act in March 1995, which eventually was incorporated into PRWORA and was the basis for what is now section 6(o) of the Act. These materials stated, ''The new work requirement could be waived by the Secretary, for some or all individuals within a State or part of a State, if, on a State's request, the Secretary finds that the area has an unemployment rate of over 10 percent, or the area does not have a sufficient number of jobs to provide employment to those subject to the new requirement (but, the Secretary must report to Congress on the basis on which the waiver decision was made).''

Commenters also challenged the Department's rationale that statewide unemployment figures may include areas in which unemployment rates are relatively low and that eliminating statewide waivers will help target areas in which unemployment rates are high. These commenters asserted that this proposal is arbitrary because variation in unemployment rates exists at all geographic levels. One commenter also asserted that the proposed rule's stated rationale ignores the statistical principle of weighted averages. This commenter said that, in order for an entire State to qualify under current rules, unemployment rates in the State must be generally high across the State, particularly in the most populous areas of the state. Commenters said that statewide waivers are appropriate when

the areas being impacted by economic forces are fluid and the State can demonstrate an overall lack of sufficient jobs.

The Department is not compelled by commenters' suggestions that the elimination of statewide waivers is arbitrary. The Department believes this change will ensure that waivers of the ABAWD time limit are more appropriately targeted to those particular areas that have unemployment rates over 10 percent or lack sufficient jobs, as required by the Act. Moreover, as pointed out in a preceding paragraph, it would be possible for all LMAs in a State to qualify for waivers provided that each requested LMA meets the standards for approval, or for a single LMA's boundaries to match or encompass a State's boundaries.

Some commenters, including a State agency, expressed disagreement with the idea that an entire State should not be treated as a large ''economically tied'' area. The State agency argued that residents of a State are economically tied together in that they share the same State minimum wage laws, labor regulations, occupational licensing requirements, and income tax rates.

Several commenters stated that this proposal would limit State flexibility and would increase administrative complexities and burdens. Another commenter argued that there is no evidence of States abusing statewide waivers. One commenter pointed to data showing that the number of statewide waivers has been decreasing as the economy has improved, indicating that there is no need for this provision.

The Department has observed that statewide waivers have resulted in the waiving of substate areas that do not have unemployment rates over 10 percent nor lack sufficient jobs. In these cases, the statewide averages mask tight labor markets in some substate areas, just as they may mask slack labor markets in other substate areas. For example, two recent statewide waiver requests included multiple substate areas with individual unemployment rates of under 4 percent. Under current regulations, these statewide waiver requests qualify because they are based on the statewide averages that meet the current standards for approval. In the Department's view, informed by over 20 years of operational experience, it is more appropriate, precise, and accurate to base ABAWD time limit waiver approvals on robust, reliable substate BLS data when it is available. Moreover, as explained in the preceding section *Establishing a Strict Definition of Waiver* ''*Area,*'' the Department is including LMAs, intrastate portions of interstate LMAs, U.S. Territories, and reservation areas in its strict definition of waiver area which are generally based on substate (and sometimes include interstate) data.

The Department is modifying the proposal to restrict statewide waivers because it is no longer explicitly restricting statewide waivers, as was included at § 273.24(f)(4) in the proposed rule. Instead, the Department is effectively restricting statewide waivers by removing the extended unemployment benefits criterion from the core standards that was included at § 273.24(f)(2)(iii) in the proposed rule, and by including a strict definition of waiver area limited to an LMA, the intrastate part of an interstate LMAs, and a reservation area or a U.S. Territory at § 273.24(f)(4).

Duration of Waiver Approvals and Timeliness of Data

Limiting a Waiver's Duration to One Year or Less

The Department proposed to limit a waiver's duration to one year and continue to allow a waiver for a shorter period at a State's request. This proposal was included in paragraph § 273.24(f)(6) in the proposed rule. Commenters stated that requiring annual waiver requests during very poor economic conditions was unnecessary, burdensome, and wasteful, and that it could cause delays in waiver implementation. Another commenter stated that two-year waivers had historically been used in narrow, appropriate circumstances because two-year waivers already have burdensome data requirements that ensure that they are not implemented in inappropriate circumstances.

The Department is maintaining this provision as proposed. In the final rule, this provision is included in paragraph § 273.24(f)(5). The Department believes that a 1-year waiver term allows sufficient predictability for States to plan and implement the waiver. At the same time, a 1-year waiver term ensures that the waiver request reflects recent economic conditions.

Timeliness of Data

The Department proposed that waivers based on the 20 percent standard would not be approved beyond the fiscal year in which the waiver is implemented. This provision was included in paragraph § 273.24(f)(6) in the proposed rule. This proposal is connected to the existing regulation that these waivers must be supported by data from a 24-month period no less recent than what DOL used in its current fiscal year Labor Surplus Area (LSA) designation. When these waivers start late in the fiscal year, the data period used by the State may meet current regulatory requirements for waivers starting in that fiscal year, but it also may be relatively outdated support for a full 12-month approval period that spans into the next fiscal year. This is because when the waiver approval crosses fiscal years, the data supporting the waiver may, in fact, be older than the data used by DOL for LSAs for the more recent fiscal year. By proposing to limit the duration of these waivers to the current fiscal year, the Department sought to stop States from using older data to waive more areas than justified by more recent data used by DOL.

Commenters, including State agencies, suggested that this proposal would be administratively burdensome. One State agency argued that the proposed change would be inefficient, as its E&T programs and its own fiscal year calendar is different than the Federal fiscal year calendar. A State agency also requested that it retain its right to request waivers for durations exceeding the current fiscal year if it has compelling reasons.

Based on these comments, the Department is modifying this provision to preserve State flexibility and to allow qualifying 20 percent standard waivers to be implemented for 12-month periods that may cross fiscal years. At the same time, the modification also addresses the Department's concerns about the timeliness of data. Instead of limiting the implementation of 20 percent standard waivers to the fiscal year, as proposed, the modification will require that States always use data as recent as DOL uses to determine LSAs for a given fiscal year, no matter the month in which the waiver would start. States will maintain the discretion to set their own waiver schedule, but only if they support their request with qualifying, recent data. The modification is modeled after DOL's data reference period for LSAs and explained in detail in the following paragraphs.

In determining which areas qualify as LSAs for each fiscal year, DOL reviews areas' unemployment rates for the 2 preceding calendar years (the LSA data reference period). If an area qualifies, it is an LSA for the 12-month duration of the coming fiscal year, which starts in October and runs through September of the following year. Put simply, there are 21 months from the last month of the LSA data reference period through the last month in which the LSA designation is effective. For example, for an LSA designation of October 2020 through September 2021, the data from

the previous 2 calendar years is from January 2018 through December 2019. The number of months from December 2019 (the last month of the LSA data reference period) through September 2021 (the last month in which the LSA designation is effective) is 21 months.

Similarly, for the 20 percent standard data to be considered recent, the Department is requiring that there be no more than 21 months from the last month of the data reference period through the last month in which the waiver would be effective. Below are examples of how the policy will work in practice.

Example 1: The State has requested a 12-month waiver for October 2020 through September 2021. The State provided a 24-month data period from June 2018 through May 2020 showing that the requested areas meet the 20 percent standard. The waiver is approvable as requested, since the number of months from the end of May 2020 through the end of September 2021 is 16 months and does not exceed 21 months.

Example 2: The State has requested a 12-month waiver for January 2020 through December 2020. The State provided a 24-month data period from April 2017 through March 2019 showing that the requested areas meet the 20 percent standard. The waiver is approvable, since the number of months from the end of March 2019 through the end of December 2020 equals 21 months and does not exceed 21 months.

In modifying this provision to preserve State flexibility, the Department also sees fit to explain the potential for a State to request a waiver for less than 1 year and still support that request using the 20 percent standard data. In this potential scenario, the Department would follow the same requirement that there be no more than 21 months from the last month of the data reference period through the last month in which the waiver would be effective—but the waiver would not be approvable for a 1-year period.

For example, the State requested a 6-month waiver for June 2020 through December 2020. The State provided a 24-month data period from April 2017 through March 2019 showing that the requested areas meet the 20 percent standard. The waiver is approvable, since the number of months from the end of March 2019 through the end of December 2020 equals 21 months and does not exceed 21 months. The Department is adopting this change in the core standards at § 273.24(f)(2)(ii) and is including the revised provision regarding approval periods for waivers based on the 20 percent standard in paragraph § 273.24(f)(5).

Areas With Limited Data or Evidence

The Department proposed that waiver requests for areas for which standard BLS data or a BLS cooperating agency data is limited or unavailable, such as a reservation area or U.S. Territory, are not required to conform to the criteria for approval that is required of other areas. This provision was included in paragraph § 273.24(f)(7) in the proposed rule.

One State agency asked that the U.S. Territories and reservation areas be specifically exempted from the core standards, rather than listed as examples of areas in which standard BLS data or data from a BLS cooperating agency may be limited or unavailable, citing its unique economic circumstances.

The Department is adopting the provision mostly as proposed with two exceptions. The first exception is that the Department is not including the proposed language describing the potential for the combining of data within this subparagraph of the amendatory text. The Department has determined that language to be unnecessary. The second exception that the Department has added is that the data or evidence provided by the State must be ''recent.'' The Department is making this change for consistency with the general requirement that the data or evidence used to support a waiver request be reflective of the current economic circumstances in the area.

In the final rule, this provision is included in paragraph § 273.24(f)(6). As previously described, the Department is including a low and declining employment-to-population ratio, a lack of jobs in declining occupations or industries, or an academic study or other publication(s) as criteria for areas with limited data or evidence at § 273.24(f)(6).

Other Changes to Waivers

Eliminating the Labor Surplus Area (LSA) Waiver Criterion

Current regulations at § 273.24(f) include the LSA designation by DOL as a basis of ABAWD time limit waiver approval. As stated earlier, the Department proposed to eliminate the LSA designation as a basis of waiver approval as the LSA unemployment rate floor of 6 percent is inconsistent with the 7 percent unemployment rate that was proposed for the 20 percent standard.

Commenters, including States, stated opposition to eliminating the LSA designation as a basis for waiver approval. Some commenters pointed out that the LSA designation criteria is a long-accepted Federal standard for job insufficiency, developed by experts at DOL, and relied upon by Federal and State governments. Commenters also provided language from the Conference Report that accompanied the 2018 Farm Bill, in which the managers ''acknowledge that waivers from the ABAWD time limit are necessary in times of recession and in areas with labor surpluses or higher rates of unemployment.''

Commenters argued that LSAs target specific areas of job insufficiency. Commenters pointed to previous guidance provided by the Department in December 1996, which stated, ''Labor surplus areas are classified on the basis of civil jurisdictions rather than on a metropolitan area or labor market area basis. By classifying labor surplus areas in this way, specific localities with high unemployment rather than all civil jurisdictions within a metropolitan area, (not all of which may suffer from the same degree of unemployment) can be identified. This feature also makes the classification potentially useful to identify areas for which to seek waivers.''

Commenters argued that eliminating the LSA designation criterion would increase administrative burden on States and the Department. Commenters stated that the LSA designation criterion is one of the least burdensome ways for States to submit a request and for the Department to evaluate a request, as the list of areas is simply published by DOL. These commenters argued that increasing the administrative burden in this way is inconsistent with the fact that the Department asked for public input in 2018 on how to simplify the waiver process.

Commenters also argued that eliminating LSA designation as a basis for waiver approval would hinder the ability of SNAP to respond to severe setbacks in local economies because the LSA classification procedures also provide for the designation of LSAs under exceptional circumstance criteria. These procedures provide for LSA classification when an area experiences a significant increase in unemployment which is not temporary or seasonal, and which was not reflected in the data for the 2-year reference period. The current criteria for an LSA exceptional circumstance classification are: An area's unemployment rate is at least the LSA qualifying rate of 20 percent above the national average and 6 percent for each of the three most recent months; a projected unemployment rate of at least

the LSA qualifying rate for each of the next 12 months; and documentation (a list of the areas with the average unemployment rate of the three most recent months) that the exceptional circumstance event has already occurred. In order for an area to be classified as a LSA under the exceptional circumstance criteria, the State workforce agency must submit a petition requesting such classification to ETA.

The Department did not receive any comments that specifically stated support for eliminating LSA designation as a waiver criterion.

While the Department appreciates the comments received in opposition to eliminating LSA designation as a waiver criterion, the Department is choosing to eliminate this criterion, as proposed. As discussed in the preceding sections, the final rule is establishing a strict definition of waiver ''area'' to include an LMA, the intrastate part of an interstate LMA, a reservation area, or a U.S. Territory. LMAs and LSAs are often geographically inconsistent. Therefore, including LSA designation as a waiver criterion would be inconsistent with the final rule's definition of an area. The Department believes that States should not be able to pick and choose when to use the LMA definition and when to apply for a single-jurisdiction waiver. The Department also believes that areas should not qualify for waivers if there are available jobs within a reasonable commuting distance.

Eliminating Waiver Implementation Prior to Approval

The Department proposed removing the current provision at § 273.24(f)(4), which allows a State to implement an ABAWD waiver as soon as the State submits the waiver request, provided the State certifies that the requested area has a most recent 12-month unemployment rate over 10 percent; or the area has been designated a Labor Surplus Area by DOL for the current fiscal year. As a result of the removal of this provision, States would no longer have the discretion to implement a waiver prior to requesting and receiving FNS approval.

One commenter stated that the proposed change would hinder States' ability to respond to sudden economic changes. In response to this comment, the Department notes that the current regulations at § 273.24(f)(4) require States to provide either 12-months of data demonstrating the requested area has a most recent unemployment rate above 10 percent or evidence that the requested area has been designated an LSA for the current fiscal year, which is generally based on 24-months of data from the preceding 2 calendar years. Given that sudden economic changes take time to impact an area's 12-month or 24-month average, the Department does not find the current regulations at § 273.24(f)(4) particularly relevant to responding to sudden economic changes. Moreover, when the Department proposed § 273.24(f)(4) in 1999, it made no mention of this particular provision in terms of the responding to sudden economic changes, but did so in detail with regard to other proposed provisions.[10]

Several commenters stated opposition to the proposal on the grounds that it would increase administrative burden and cause uncertainty for States. For example, commenters asserted that the Department's rationale for the proposal is unclear and that the proposal runs contrary to the proposed rule's stated purpose of improving certainty and consistency in the waiver process. One commenter recommended allowing automatic implementation for the proposed core standards and for the exceptional circumstance standard to encourage efficiency and reduce unnecessary review processes.

The Department agrees that it is sometimes appropriate to balance flexibility with accountability in the interest of easing administrative burden, when doing so is effective and necessary. The Department also recognizes that, when it proposed § 273.24(f)(4) in 1999, it explained that it did so in the interest of making the waiver request process ''as simple as possible,'' while also noting that ''FNS must be able to reexamine the basis for waivers in those areas.'' However, based on the Department's over 20 years of operational experience, this flexibility has been used on an exceedingly rare basis and has not proven to be particularly necessary or effective at simplifying the waiver request process. Because the Department has been committed to responding to waiver requests prior to the State's requested implementation date, and has met this commitment consistently, it does not see a need to allow implementation prior to approval.

Other commenters stated that the proposal's application process limitations would harmfully restrict States' ability to implement waivers, as States need to take several steps to prepare to implement the time limit, including to identify and notify individuals subject to the time limit, develop policies and guidance to support implementation, train workers, ready computer systems, and potentially develop slots in work programs. In response to these comments, the Department sees fit to underscore the fact that ABAWD time limit waivers are temporary (generally 12 months or less) and only waive the 3-month participation time limit for ABAWDs. These waivers do not waive States' responsibility to identify ABAWDs (screen household members for the exceptions from the time limit at § 273.24(c)) or to measure and track the 36-month period. In short, States must maintain their administrative capacity to implement the 3 in 36-month time limit for ABAWDs continuously, and waiver implementation prior to approval is irrelevant to that administrative requirement.

The Department carefully reviews all State waiver requests, which includes independently obtaining and validating the data and evidence presented by the State in support of all requested areas to determine if the areas meet the standards for approval. For example, it is not uncommon for FNS to identify discrepancies or inaccuracies in the data presented by the waiver requesting State. In some cases, these issues result in FNS denying the waiver request or only partially approving the waiver request because not all areas meet the standards for approval.

For the reasons noted in the preceding paragraphs, the Department is maintaining the proposed change to eliminate waiver implementation prior to approval.

Eliminating the Historical Seasonal Unemployment Waiver Criterion

The Department proposed removing the criterion of a historical seasonal unemployment rate over 10 percent as a basis for approval. The Department stated that historical seasonal unemployment is not an appropriate measure because it does not demonstrate a prolonged lack of jobs and does not indicate early signs of a declining labor market. The Department also noted that it has not approved a waiver under this criterion in more than two decades.

Some commenters stated opposition to this provision. Some of these commenters argued that seasonal unemployment was an issue that SNAP was designed to address and that the time limit should be able to be waived during the time period of high seasonal

[10] Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Proposed Rule, 64 FR 70920 (December 17, 1999). Available at: *https://www.federalregister.gov/documents/1999/12/17/99-32527/food-stamp-program-personalresponsibility-provisions-of-the-personalresponsibility-and-work*

unemployment, so that seasonal workers are not unfairly punished for not being able to find work in the off-season. Another commenter argued that the proposed rule improperly considers the duration of the unavailability of jobs, and argues that this is contrary to the Act. This commenter stated that the intent of the current historical seasonal unemployment criteria, according to Departmental guidance, was to align the period covered by the waiver to the period when unemployment is high, and that the proposed rule would designate an arbitrary unemployment duration requirement without proper justification. Other commenters suggested that the mere fact that the historical seasonal unemployment criterion has not been utilized is not sufficient to justify the removal of the provision and that States would be more likely to use the criterion in the future if other criteria were removed, as proposed.

Despite these comments, the Department is maintaining the elimination of the historical seasonal unemployment criterion as proposed. The Department believes that the historical seasonal unemployment criterion was not appropriate, as an area could receive a waiver for up to 12 months, even though it only demonstrated a few months of high unemployment per year. The Department is also relying on the fact that States have not utilized this metric in more than 20 years, through many economic changes. The Department believes this provides important evidence that this is not a necessary metric for waiver approval.

Requiring That Waiver Requests Be Supported by the Chief Executive Officer of the State

The Department proposed clarifying that any State agency's waiver request must ''be endorsed by the State's governor.'' Those who commented on this provision opposed it. Some commenters argued that the proposal is inconsistent with the 2018 Farm Bill, which requires that any State agency's waiver request have only ''the support of the chief executive officer of the State.'' Other commenters expressed concerns over the proposed rule's use of the word ''endorsed,'' which they suggested implies that a signature is required. Commenters opined that this provision would lengthen the waiver request process and require unnecessary administrative steps for States and potentially Tribal governments. Commenters also noted that the House-passed version of the Farm Bill provided that the waiver request must have the ''approval'' of the chief executive officer of the State. These commenters argued that the language was changed from ''approval'' in the House-passed bill to ''support'' in the final enacted law to indicate that the chief executive officer is not required to personally sign the waiver request. These commenters also pointed to the Conference Report that accompanied the 2018 Farm Bill,[11] which states, in particular, ''nor should the language result in any additional paperwork or administrative steps under the waiver process.'' Additionally, while the proposed rule used the title ''Governor,'' the 2018 Farm Bill used the title ''chief executive officer.'' Chief executive officer is the equivalent of a Governor but better captures all States and State agencies. For example, the chief executive officer in Washington, DC is the Mayor.

The Department finds these comments compelling. Based on these comments, the Department is adjusting the proposed language in § 273.24(f)(1) to state, ''with the support of the chief executive officer of the State,'' in order to more closely match the language from the 2018 Farm Bill. The Department also agrees that the language should refer to the chief executive officer rather than the Governor, to be inclusive of all the States, Washington, DC, and the U.S. Territories.

On the other hand, the Conference Report did express ''concerns that have been raised by some Members that State agencies have not fully communicated to the chief executive their intent to request a waiver under section 6(o).'' In order to avoid these concerns in the future, the Department is requiring State agencies to indicate that the request has the support of the chief executive officer in whatever method they see fit.

Commenters also argued that this provision should not be included in the rulemaking due to the language in the Conference Report that states, ''It is not the Managers' intent that USDA undertake any new rulemaking in order to facilitate support for requests from State agencies.'' Other commenters stated that this provision is unnecessary because Governors appoint department directors and cabinet members for the purpose of delegating control over certain areas of government, and requiring Governors to become involved in something as specific as SNAP ABAWD time limit waiver requests interferes with the ability of State governments to function efficiently and productively. However, since the 2018 Farm Bill requires that ABAWD time limit waiver requests have the support of the chief executive officer of the State, the Department does not believe there is discretion to dismiss this statutory requirement and thinks it appropriate to codify the requirement.

Implementation Date for Waiver Changes

The Department proposed that the changes to the waiver standards, once finalized, would go into effect on October 1, 2019, and stated that all waivers in effect on October 1, 2019, or thereafter, would need to be approvable according to the new rule at that time, and any approved waiver that does not meet the criteria established in the new rule would be terminated on October 1, 2019. States would be able to request new waivers if the State's waiver is expected to be terminated.

Commenters who commented on this provision opposed it. Commenters, including several States, opposed this implementation date because it did not provide States with enough time to implement the provision successfully. Commenters said that this timeline would provide States with an unrealistic, impractical, and inadequate amount of time to understand the final rule, send a request to amend their current waivers, and have that request reviewed by the Department. Commenters suggested that this implementation date would lead to errors, confusion, and potential violation of individuals' procedural due process rights. In addition, commenters argued that implementing the provisions so quickly would result in significant administrative costs. Several commenters expressed concern that the Department did not acknowledge the additional burden it would place on States to devote resources to quickly analyzing data for new requests and implementing the time limit in new areas. These commenters argued that the October 1, 2019, implementation date would not provide sufficient time for the State to coordinate with counties and provide adequate notice so that

[11] The Conference Report states, ''The Managers intend to maintain the practice that bestows authority on the State agency responsible for administering SNAP to determine when and how waiver requests for ABAWDs are submitted. In response to concerns that have been raised by some Members that State agencies have not fully communicated to the chief executive their intent to request a waiver under section 6(o), the Managers have included a provision to encourage communication between the State agency and the chief executive officer of the State. The Managers agree that State agencies should have the support of these officials in their application for waiver, ensuring maximum State coordination. It is not the Managers' intent that USDA undertake any new rulemaking in order to facilitate support for requests from State agencies, nor should the language result in any additional paperwork or administrative steps under the waiver process.''

individuals properly understand the ABAWD time limit. Commenters stated that forcing such a large, complex change so quickly will make it difficult for States to plan sufficiently and provide appropriate oversight and training for counties.

In addition, commenters argued that this timeline does not give adequate time for E&T providers and community based organizations to prepare for the impacts of the waiver changes. Some commenters asserted that the proposed implementation date demonstrates that the Administration does not fully understand the significant barriers that many people face and the significant investment it would take to engage every unemployed and underemployed ABAWDs in meaningful work activities.

Although those who commented on this provision generally agreed that the proposed implementation date was too soon to ensure successful implementation of the provisions, commenters offered several suggestions on how the date could be modified. Some commenters recommended that the final rule should not be implemented any sooner than October 1, 2020. Other commenters recommended that, at a minimum, the Department should honor any currently approved waiver's expiration date and not end the waiver pre-maturely. In addition, some Tribes requested that the Department delay implementation for at least one calendar year, in order to allow the Department enough time to more properly and accurately address the economic ramifications of the government shutdown that occurred from December 22, 2018, until January 25, 2019, which particularly impacted Tribes, and conduct meaningful consultation with Tribal leaders on this rule.

In response to these comments, the Department has modified the implementation dates for the final rule. Regarding waivers of the ABAWD time limit, the Department recognizes that States will need some time after the publication of the final rule to analyze data, request new waivers, train certain staff, inform ABAWDs of the rules, and otherwise prepare to implement the ABAWD work requirement in an effective manner. However, the Department also notes that it has provided ongoing guidance to States that States must continue to track ABAWDs, even when a waiver is in place. The Department also believes the changes to ABAWD waivers should happen as soon as possible to bring to an end current waiver practices by States.

Therefore, the Department is modifying the implementation date in the final rule regarding the final rule's changes to § 273.24(f), which concern the ABAWD waiver approval standards. The implementation date will be April 1, 2020. Waivers beginning before April 1, 2020, will be evaluated under the current regulatory standards for waivers, but these waivers will not be approved beyond March 31, 2020. Waivers that are currently in place will not be in effect beyond March 31, 2020, or their current expiration date, whichever occurs sooner. If a State chooses to submit a new waiver request after the publication of this rule, the new waiver request would need to meet the new standards in order to be approvable beyond March 31, 2020. As of April 1, 2020, State agencies must have received a new waiver approval under the new standards set at § 273.24(f) by this final rule in order to waive the time limit. Waivers approved under the previous standards will not be in effect. For areas not waived, the State must administer the ABAWD time limit as appropriate.

The Department believes that the implementation period will provide enough time for States to pose questions about the final rule and for the Department to provide clarifying guidance to the States. During the implementation period, States with existing waivers will also have the opportunity to request new waivers based on the approval standards of the final rule.

The final rule's changes to § 273.24(h), which involve changes to discretionary exemptions, will be implemented on October 1, 2020, as described in another section below.

Limiting the ''Carryover'' of ABAWD Discretionary Exemptions

Prior to enactment of the 2018 Farm Bill, section 6(o)(6) of the Food and Nutrition Act provided that each State agency be allotted exemptions from the ABAWD time limit equal to 15 percent of covered individuals. These were generally referred to as 15 percent exemptions and were codified in the regulations at § 273.24(g) and (h). The 2018 Farm Bill amended section 6(o)(6) of the Act to reduce the amount of exemptions from 15 percent to 12 percent, starting in fiscal year 2020. (The Department intends to codify this change in the regulations through a future rulemaking, *Employment and Training Opportunities in the Supplemental Nutrition Assistance Program, RIN: 0584–AE68.*) In the proposed rule, the Department referred to these as ''percentage exemptions'' as a way to avoid confusion as the calculation transitioned from 15 percent to 12 percent. In this final rule, the Department has chosen to refer to these exemptions as ''discretionary'' exemptions. The Department believes this term better describes these exemptions because States have discretion on whether to use these exemptions. This is in contrast to the list of ''exceptions'' in section 6(o)(3) of the Act and § 273.24(c), which are not discretionary. States must exempt individuals from the ABAWD time limit if the individual meets at least one of those listed exceptions. The Department intends to make the regulatory change to replace the name ''15 percent exemptions'' with ''discretionary exemptions'' through the above referenced future rulemaking (RIN: 0584–AE68).

The Department proposed to end the unlimited carryover and accumulation of ABAWD discretionary exemptions at § 273.24(h). The regulation's current interpretation of Section 6(o)(6)(G) of the Act, which requires the adjustment of exemptions, allows any unused exemptions to carry over and accumulate from one year to the next, indefinitely. As a result, States have accumulated extremely high amounts of unused discretionary exemptions that well exceed the number allotted to each State for the fiscal year. For example, in FY 2019, States earned approximately 1.3 million exemptions, but had about 7.4 million exemptions available for use in total due to the carryover of unused exemptions from previous fiscal years. The Department views the indefinite carryover and accumulation of such significant amounts of unused exemptions to be an unintended outcome of the current regulations. In the Department's view, the indefinite carryover and accumulation of unused exemptions is inconsistent with Congress' decision to limit the number of exemptions available to States in a given fiscal year, as expressed by sections 6(o)(6)(C), (D), and (E) of the Act.

The Department proposed changing the adjustment calculation to no longer allow for unlimited carryover from all preceding years. Instead, each State agency's carryover adjustment would be based on the number of exemptions earned in the preceding fiscal year minus the number of exemptions used in the preceding fiscal year. In addition, the Department proposed that the carryover adjustment would apply only to the fiscal year in which the adjustment is made.

Many commenters stated their opposition to the proposal to end the unlimited carryover and accumulation

of discretionary exemptions. Several commenters argued that this proposal was out of line with Congressional intent and pointed to the Conference Committee Report that accompanied the 2018 Farm Bill, which states that ''States will maintain the ability to exempt up to 12 percent of their SNAP population subject to ABAWD work requirements, down from 15 percent, and continue to accrue exemptions and retain any carryover exemptions from previous years, consistent with current law.''

Commenters also raised concerns over the complexity associated with the new calculation, the difficulty in planning based on variation from year to year, the likelihood of increased errors, and the likelihood of increased overuse resulting in legal liability.

Other commenters asserted that this proposed change would punish States for being judicious administrators of their exemptions. One commenter stated that there is no economic rationale for imposing a ''use it or lose it'' provision. The commenter reasoned that, under the current system, States have the flexibility to target the use of exemptions to people in the greatest need. Another commenter stated that implementing a ''use it or lose it'' system in regard to the carryover of ABAWD exemptions may actually incentivize States to use exemptions at a higher rate, something which seems inconsistent with the stipulated goal of reducing waste.

A few commenters stated that the proposal would cause retroactive harm to States by removing already earned exemptions and penalizing States for usage of earned exemptions in the fiscal year before the rule is finalized or implemented.

Some commenters stated that the proposal would negatively impact the ability of States to respond to unknown, future recessions and other economic hardships. Commenters, including States, argued that the rule is too focused on current national economic conditions and that States often use discretionary exemptions to respond to quickly deteriorating economic conditions, the deterioration of a major local industry or employer, or other similar situations where areas do not yet qualify for waivers.

Several commenters stated that discretionary exemptions are used to help individuals achieve self-sufficiency and to deal with changing policies. Some of these commenters, including counties, stated that some States have structured the use of exemptions so that they can be used to encourage individuals to engage in employment and training activities. For example, exemptions could be used for individuals who are engaged in employment and training but who do not reach 80 hours a month. Commenters noted that some States also use them for people participating in ''non-qualifying education or training activities'' when such training is in the best interest of specific clients. One State agency commented that the proposal would limit a State's ability to respond to new circumstances and policies, such as E&T vendor transitions, in addition to also using these exemptions in specific situations, such as the first month of a certification period if an ABAWD applies on the first day of the month.

Commenters also argued that discretionary exemptions should not be restricted because they are used to help people remain food secure when these individuals have barriers to work that are not listed in the specific exception list at § 273.24(c). As indicated in the comments, these individuals include domestic violence victims, youth leaving foster care, people leaving incarceration, veterans, homeless individuals, rural residents with no transportation, certain students, those suffering from addiction in waiting lines for treatment, those transitioning into the new requirements, those facing employment discrimination or temporary change in work hours, and those who can work but lack credentials for white-collar jobs but cannot do physical labor.

One State recommended modifying the proposal to permanently grandfather current discretionary exemptions, allow new exemptions to be carried over for 3 years, and not penalize States when they use the carried-over exemptions.

In response to these comments, the Department is adopting a modification to the proposal at § 273.24(h) that will limit carryover and allow States to carry over only one year's worth of exemptions from previous years. Specifically, the modification will limit or cap the amount that could be carried over to 12 percent of the covered individuals in the State for the preceding fiscal year. The modification, as described in the following paragraphs, will provide States with more time to use exemptions but will not allow the States to indefinitely accumulate discretionary exemptions.

The modification will address several of the concerns expressed by commenters. It will allow unused exemptions to carry over, but will still achieve the Department's goal to limit that carryover to 12 percent of covered individuals consistent with the rationale explained earlier in this section and the proposed rule. In addition, the modification will be less complex than what was in the proposed rule. Under the modification, States will face less variation from year to year, and States will know in advance the number of exemptions they could use for the fiscal year. Although States will continue to be liable for overuse of discretionary exemptions, the Department does not believe that this rule will increase the likelihood of errors or legal liability, as they will be able to plan in advance. The rule will give States some flexibility to ''save up'' a limited number of exemptions and carry them over into a future year in order to deal with potential unforeseen sharp economic declines or other quickly changing circumstances. The Department agrees that these comments demonstrate the importance of discretionary exemptions, but does not believe they provide compelling evidence that these exemptions should be carried over indefinitely.

The Department also sought comments on how to best handle the State agencies' existing accumulated discretionary exemptions, which in some cases have been carried over and accumulated for many years. As stated previously, some commenters said that States should retain these existing exemptions and that removing them would punish States for demonstrating restraint in the past. The final rule will not allow States to retain their existing accumulated discretionary exemptions past the end of FY 2020. As explained earlier, the Department views the accumulation of unused exemptions over several years to be inappropriate and inconsistent with the Act.

As proposed, the Department is also taking the opportunity to correct a cross-reference in § 273.24(h)(1). The corrected language cross-references § 273.24(g)(3), instead of (g)(2). The Department is making this change because it is more accurate and precise to cross-reference to § 273.24(g)(3), given that the caseload adjustments apply to the number of exemptions estimated as earned for each State for each fiscal year. The Department did not receive any comments on this proposed action. The Department also notes that it intends to change the reference to ''15 percent'' in § 273.24(g)(3) through the previously referenced future rulemaking (RIN: 0584–AE68), in order to codify the statutory change from 15 percent to 12 percent made in the 2018 Farm Bill.

The Department did not propose an implementation date with regard to the provision to restrict the carryover of ABAWD discretionary exemptions but

sought comments on when this provision should be implemented. The Department also noted that, under the proposed rule, the adjusted number of exemptions was based on the preceding fiscal year, and the change in regulatory text will, therefore, impact a State's ability to use exemptions in the fiscal year preceding the fiscal year that the provision goes into effect.

One State recommended implementing these changes in October 2020. This State suggested that many States utilize their exemptions over broad sections of population and that States may need to make significant changes to ensure they do not overuse exemptions. As discussed previously, other commenters stated that the Department should ensure that this provision does not have a retroactive impact.

Based on these comments, the final rule is adopting an implementation date of October 1, 2020, for this provision. The Department agrees that it is prudent to implement changes to discretionary exemptions during the next scheduled adjustment in Fiscal Year (FY) 2021, rather than to make changes during this fiscal year, which is already underway. Implementing this change during this fiscal year could make it difficult for States to properly plan their exemption use for this fiscal year and avoid liability status, as they have already begun using exemptions this fiscal year. States will not be adversely affected for actions taken before the rule is finalized, as the changes to carryover will not go into effect until FY 2021. Unlike the proposed rule, which could have sent a State into liability status based solely on the amount of exemptions earned and used in the previous year, the modification in the final rule provides States with one year to offset any overuse, consistent with current policy.

Under the final rule, the Department will continue to provide States with their estimated number of exemptions earned for each upcoming fiscal year as data becomes available, typically in September. The Department will also continue to provide States with the exemption adjustments as soon as updated caseload data is available and States have provided final data on exemptions from the preceding fiscal year, typically in January.

In addition, in the final rule, the Department has decided it prudent to codify its exemptions overuse policy, which was set by FNS through its November 8, 2007, policy memorandum *Overuse of the 15 Percent Able-Bodied Adults Without Dependents (ABAWD) Exemptions by States Agencies.* As referenced in an earlier paragraph of this section and in the proposed rule, this policy allows a State one year to ''offset'' a negative exemption balance using the new exemptions estimated for the State by FNS for the subsequent fiscal year. If the negative exemption balance is not fully offset, FNS will hold the State liable for the remaining negative balance. The Department is codifying this policy at § 273.24(h)(2)(ii).The four examples below show how the rule's adjustment calculation will work in practice based on no exemption use, varied exemption use, maximum exemption use, and exemption overuse.

Example 1, No Exemption Use

Example 1 shows how the adjustment calculation will work for a State that uses zero exemptions, and how it will limit the carryover of unused discretionary exemptions. In this example, the State had a balance of 50 exemptions for FY 2020 (row A). The State used no exemptions in FY 2020 (row B). The State had a potential carryover of 50 exemptions for FY 2021 (row C), but the State is limited to 12 percent of the covered individuals in the State estimated by FNS for FY 2020 (row D), which is equal to the number of exemptions earned for FY 2020. In this example, we assume the State earned 10 exemptions in FY 2020. The carryover of 10 exemptions (row D) is then added to the 10 earned for FY 2021 (row E) to obtain the State's total balance of 20 exemptions after adjustment for FY 2021 (row F). The State has a positive balance and does not have any overuse liability for that year. In FY 2022, FY 2023, and FY 2024, the calculation is the same and results are the same each year. The number of exemptions available to the State remains the same every year as it is earning the same amount and using zero exemptions each year. The State does not accumulate exemptions indefinitely, even though it is not using exemptions. Whereas the State would have a balance of 90 total exemptions after adjustment for FY 2024 under the current regulations, the State will have a balance of 20 total exemptions after adjustment for FY 2024 under the final rule.

EXAMPLE 1

	Fiscal year (FY)	2021	2022	2023	2024
A	Balance for prior FY	50	20	20	20
B	(−) Used in prior FY	0	0	0	0
C	(=) Potential carryover for current FY	50	20	20	20
D	(=) Actual carryover cap for current FY	10	10	10	10
E	(+) Earned exemptions for current FY	10	10	10	10
F	(=) Balance for current FY	20	20	20	20
G	Liability for overuse? (Yes or No)	No	No	No	No

Example 2, Varied Exemption Use and Earnings

Example 2 shows how the adjustment calculation will work for a State that uses and earns different amounts of exemptions each fiscal year. In this example, the State again had a balance of 50 exemptions for prior fiscal year (FY) of 2020 (row A). However, this time, the State used 30 exemptions in FY 2020 (row B). The State had a potential carryover of 20 exemptions for FY 2021 (row C), but the State is limited to the number of exemptions earned for FY 2020. In this example, we assume the State earned 10 exemptions in FY 2020. The carryover of 10 exemptions (row D) is then added to the 30 earned for FY 2021 (row E) to obtain the State's total balance of 40 exemptions after adjustment for FY 2021 (row F). The State has a positive balance and does not have any overuse liability for that year. For FY 2022, the State has a potential carryover of negative 10 exemptions because it used 50 exemptions in the prior year (row B) but only had a balance of 40 exemptions to use (row A). The State earned 35 exemptions for FY 2022, so the 35 earned exemptions offset the negative 10 exemptions, resulting in a balance of 25 exemptions for FY 2022. In FY 2022, the State uses exactly 25 exemptions, so they have no carryover for FY 2023.

EXAMPLE 2

	Fiscal year (FY)	2021	2022	2023	2024
A	Balance for prior FY	50	40	25	35
B	(−) Used in prior FY	30	50	25	20
C	(=) Potential carryover for current FY	20	−10	0	15
D	(=) Actual carryover cap for current FY	10	−10	0	15
E	(+) Earned exemptions for current FY	30	35	35	30
F	(=) Balance for current FY	40	25	35	45
G	Liability for overuse? (Yes or No)	No	No	No	No

Example 3, Maximum Exemption Use

Example 3 shows how the adjustment calculation will work for a State that uses its entire balance of exemptions every year, but does not overuse. In this example, the State again had a balance of 50 exemptions for prior fiscal year (FY) of 2020 (row A). In this example, the State used 50 exemptions in FY 2020 (row B). The State had a potential carryover of 0 exemptions for FY 2021 (row C), and therefore has no carryover for FY 2021 (row D). The State earned 10 exemptions for FY 2021 (row E). Since there is no carryover for FY 2021, the State's total balance is equal to the 10 that they earned for that year (row F). The State has a positive balance and does not have any overuse liability for that year. In FY 2022 and FY 2023, the State again uses all the exemptions it earns and has no carryover for the following year. For each of these years and FY 2024, the State earns 10 exemptions (row E) and has a balance of 10 exemptions (row F).

EXAMPLE 3

	Fiscal year (FY)	2021	2022	2023	2024
A	Balance for prior FY	50	10	10	10
B	(−) Used in prior FY	50	10	10	10
C	(=) Potential carryover for current FY	0	0	0	0
D	(=) Actual carryover cap for current	0	0	0	0
E	(+) Earned exemptions for current FY	10	10	10	10
F	(=) Balance for current FY	10	10	10	10
G	Liability for overuse? (Yes or No)	No	No	No	No

Example 4, Exemption Overuse

Example 4 shows how the adjustment calculation will work for a State that overuses exemptions. We again assume the State had a balance of 50 exemptions for prior fiscal year (FY) of 2020 (row A). In this example, the State used 60 exemptions in FY 2020 (row B). The State had a potential carryover of negative 10 exemptions for FY 2021 (row C), and therefore has negative 10 carryover for FY 2021 (row D). The State earned 10 exemptions for FY 2021 (row E), which offset the negative 10 carryover, and the State's total balance is zero for that year (row F). The State does not have any overuse liability for FY 2021 (row G). Even though the State had a balance of zero for FY 2021 (row F), the State used 20 exemptions in FY 2021 (row B). As a result, the State had a potential carryover of negative 20 exemptions for FY 2022 (row C), and therefore has negative 20 carryover for FY 2022 (row D). The State only earned 10 exemptions for FY 2022 (row E). The State's overuse results in a negative balance for FY 2022 (row F). Consistent with current policy, States will have 1 year to offset any overuse. In this case, the State will not go into liability status in FY 2022, but it will go into liability status in FY 2023 because the 10 exemptions earned for FY 2023 do not fully offset its overuse in FY 2022. Consistent with longstanding policy, the Department will consider the exemption overuse an overissuance.

EXAMPLE 4

	Fiscal year (FY)	2021	2022	2023	2024
A	Balance for prior FY	50	0	−10	−5
B	(−) Used in prior FY	60	20	5	0
C	(=) Potential carryover for current FY	−10	−20	−15	−5
D	(=) Actual carryover cap for current FY	−10	−20	−15	−5
E	(+) Earned exemptions for current FY	10	10	10	10
F	(=) Balance for current FY	0	−10	−5	5
G	Liability for overuse? (Yes or No)	No	No	Yes	No

Comments on the Rationale for the Rule

The Department's overall rationale for the proposed rule was that reducing the number of waivers and discretionary exemptions would improve economic outcomes, promote self-sufficiency, and encourage greater engagement in meaningful work activities among ABAWDs. The Department believes these goals are consistent with the stated goals of Congress when enacting PRWORA and with the principles the President outlined in E.O. 13828. In addition, the Department noted several times in the proposed rule that, based on its operational experience, the Department saw several areas of opportunity for the regulations to be amended to safeguard against the misapplication of waivers.

Some commenters supported the proposed rule as a way to encourage people to become self-sufficient. These commenters argued that applying the ABAWD time limit in more places and to more individuals would be effective in promoting self-sufficiency and beneficial to unemployed individuals. These commenters asserted that waivers are trapping people in poverty and long-term government dependency. Other comments argued that applying the ABAWD time limit in more places would help foster stronger communities. Some commenters argued that reducing the number of waived areas would reduce the number of SNAP beneficiaries, which the commenters felt is too high during current times of low national unemployment. Commenters suggested that the current regulations disincentivize economic independence and waste taxpayer money on people who should not qualify for waivers. Commenters argued that reducing the number of waived areas would encourage more people to fill open jobs and participate in employment and training programs.

Several of these commenters also argued that the current regulations need to be updated and that the rule as proposed would address waiver misuse and abuse. Commenters suggested it would address issues of States manipulating their unemployment data to receive waivers. Commenters argued that the current regulations go against the purpose of the waivers, which is to provide extended aid only for individuals who reside in areas with little economic opportunity.

The majority of commenters disagreed with the overall rationale for the proposed rule that reducing the number of waivers and discretionary exemptions would promote self-sufficiency for ABAWDs. These commenters were very critical of the Department's assertion that a broader application of time limits on SNAP eligibility would help adults find work. Commenters cited multiple recent academic studies and analyses which found that work rates for ABAWDs are generally similar in areas with and without waivers, supporting the notion that the proposed rule would not increase work. Commenters referred to studies commissioned by the Department in four States that found that, while a significant percentage of ABAWDs who left SNAP after the implementation of the time limit in the late 1990s were employed, their earnings and incomes were low and their poverty rates were high. Commenters pointed out that one of the main conclusions of these studies was that self-sufficiency was unlikely for many of those who left SNAP. While each of the studies in the four States was different and did not generally compare employment outcomes in waived areas against unwaived areas, commenters pointed to the study in South Carolina, which found that outcomes for ABAWDs who left SNAP in counties waived from the ABAWD time limit were similar to outcomes of ABAWDs leaving the program in unwaived counties. Commenters also cited numerous studies on TANF and Medicaid to support the assertion that work requirements harm program recipients while producing few lasting gains in employment. Commenters also cited a recent study finding that counties that lost waivers saw significant declines in ABAWD caseloads in SNAP, without any evidence of improvement in individual economic outcomes or well-being, when compared to economically similar counties with waivers. Several other commenters cited a study which found that ABAWD work requirements increased work participation by only 2 percent while decreasing SNAP participation by 8–10 percent.

Commenters cited recent research on SNAP work requirements that found that a majority of individuals exposed to these requirements were already attached to the labor force and were working part of the year, but many would be unable to consistently meet the ABAWD work requirement due to volatility in the low-wage labor market. One commenter provided research based on SNAP and unemployment insurance data during the Great Recession suggesting that ABAWDs who access SNAP are low-income workers who rely on SNAP while working and when they experience a spell of unemployment but they are not accessing SNAP while unemployed by some artifact of moral hazard. Other commenters cited research indicating that one of the most significant barriers inhibiting SNAP recipients from meeting work requirements is a lack of long-term employment opportunities that provide stable hours above the 80-hour-per-month threshold. Commenters referred to research finding that volatile hours and unstable employment are particularly common in the kind of low-paying jobs that employ the largest numbers of working-class people who are likely to receive SNAP. Commenters said that work documentation requirements are unduly burdensome for workers with unpredictable hours or multiple jobs. Some of these commenters argued that the proposed rule would lead to more ''churn'' because working SNAP participants who lose eligibility due to administrative hurdles would need to reapply, increasing administrative costs for the program.

Commenters argued that, as States began to implement the time limit after the passage of PRWORA in 1996, concern grew about its impact on people who are willing to work but could not find work, and that concern resulted in Congress passing legislation in 1997 to authorize 15 percent exemptions and increase funding for employment and training programs. Commenters argued that the combination of 15 percent exemptions, E&T slots, and waivers was seen as a way to mitigate the impact of the time limit on people who want to work but who could not find jobs.

Commenters also stressed the importance of SNAP and cited research indicating that receipt of SNAP improves health outcomes, and that work requirements harm health and productivity. Commenters cited studies indicating that access to SNAP benefits helps people find and maintain work. Commenters pointed to research studies, including those by the Department, indicating that the increased receipt of SNAP benefits stimulated local economic activity and increased employment during the Great Recession. Commenters also argued that the value of SNAP benefits is too small to disincentivize individual ABAWDs from finding work. Commenters argued that, even without work requirements, the SNAP benefit structure is already designed to incentivize work through the earned income deduction and gradual benefit phase-out as earned income increases.

In addition, commenters asserted that the proposed rule did nothing to expand E&T programs for ABAWDs or decrease unemployment barriers for this population. Commenters expressed concern that the proposed rule could result in increased poverty and food insecurity for ABAWDs newly subject to the time limit who are unable to meet work requirements, which commenters felt contradicts the objectives of the E.O. 13828, cited by the Department. Commenters noted that there are significant limitations on SNAP E&T availability and accessibility.

The Department appreciates these comments but believes that, as explained earlier in the *Background on this Rulemaking* section of this final rule, in passing PRWORA, Congress intended to promote work by requiring ABAWDs to work or participate in a work program as a condition of eligibility. While the Department appreciates the studies provided by the

commenters and the concerns expressed related to the rationale provided in the proposed rule, this does not change the statutory work requirements established by Congress. The policy changes made by this final rule are based on the Department's goal to promote work by expanding the application of the ABAWD time limit, in line with the intent of Congress when passing PRWORA. The Department also believes that, as stated in E.O. 13828, assistance programs, such as SNAP, need to make reforms to increase self-sufficiency, well-being, and economic mobility. Many of the changes in the final rule are based on the Department's more than 20 years of operational experience. Through this experience, the Department has learned that the current regulations lack certain important limitations and safeguards to prevent the misapplication of ABAWD waivers and the accumulation of unused ABAWD discretionary exemptions, as illustrated by the numerous practical examples included in the proposed rule and this final rule. Therefore, the Department is putting limitations and safeguards into regulation that will address these weaknesses. Moreover, the Department believes that those who can work should work and that SNAP recipients should be expected to seek work whenever possible. While the Department acknowledges that the rule does not in and of itself provide ABAWDs with additional job opportunities, the Department expects States agencies to do what they can to increase the employability of ABAWDs, and help them find and gain work. The Department believes that the Department, and other partners, share the responsibility to ensure that SNAP participants can achieve self-sufficiency and better their lives.

Comments Expressing General Opposition to Work Requirements

Many commenters expressed general opposition to work requirements and the ABAWD time limit. The Department is not responding in detail to these comments in the final rule as they are considered outside the scope of the rule because they did not provide feedback on provisions that were proposed for revisions as part of this rulemaking. Moreover, the ABAWD time limit and work requirement are statutory provisions and therefore cannot be removed through the rulemaking process.

Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

As required by Executive Order 12866, a Regulatory Impact Analysis (RIA) was developed for this final rule. It follows this rule as an appendix. The following summarizes the conclusions of the regulatory impact analysis:

The Department has estimated the net reduction in Federal SNAP spending associated with the final rule to be approximately $109 million in fiscal year (FY) 2020 and $5.48 billion over the five years 2020–2024. This savings represents a reduction in federal transfers (SNAP benefit payments), offset by a small increase in the federal share of State administrative costs; the reduction in transfers represents a 1.8 percent decrease in projected SNAP benefit spending over this time period. In addition, the Department estimates a small increase ($1.4 million) in State costs related to administrative burden for verifying work hours and exemptions and sending notices. ABAWD households will also face additional burden associated with verifying their circumstances and reading notices, at a cost of less than $1 million.

Under current authority, the Department estimates that less than half of ABAWDs live in areas that are not covered by a waiver and thus face the ABAWD time limit. Under the revised waiver criteria the Department estimates that about 88 percent of ABAWDs will live in such areas. Of those newly subject to the time limit, the Department estimates that 688,000 individuals (in FY 2021) will not meet the work requirement or be otherwise exempt.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

This final rule will not have an impact on small entities because the rule primarily impacts State agencies. As part of the requirements, State agencies will have to update their procedures to incorporate the new criteria for approval associated with requesting waivers of ABAWD time limit. Small entities, such as smaller retailers, will not be subject to any new requirements. However, retailers in geographic areas that lose the time limit wavier would likely see a drop in the amount of SNAP benefits redeemed at stores when these provisions are finalized, although impacts on small retailers are not expected to be disproportionate compared to impact on large entities. As of FY 2017, approximately 76 percent of authorized SNAP retailers (about 200,000 retailers) were small groceries, convenience stores, combination grocery stores, and specialty stores, store types that are likely to fall under the Small Business Administration gross sales threshold to qualify as a small business for Federal Government programs. While these stores make up the majority of authorized retailers, collectively they redeem less than 15 percent of all SNAP benefits.

The final rule is expected to reduce SNAP benefit payments by an average of about $1.1 billion per year. The rule is estimated to result in approximately 77 percent of counties losing their current time limit waiver. Assuming SNAP-authorized retailers are proportionately represented in these areas, this would equate to about a $177 loss of revenue per small store on average per month ($1.1 billion × 15%)/(77,420 stores/12 months). In 2017, the average small store redeemed more than $3,300 in SNAP each month; the potential loss of benefits represents about 5 percent of their SNAP redemptions and only a small portion of their gross sales. Based on 2017 redemption data, a 1.8 percent reduction in SNAP redemptions represented between 0.01 and 0.7 percent of these stores' gross sales.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has designated this as a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process. This final rule is considered an E.O. 13771 regulatory action. The Department estimates that it will impose $0.16 million in annualized costs at a 7% discount rate, discounted to a 2016 equivalent, over a perpetual time horizon.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at *http://www.bea.gov/iTable*) in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance under Number 10.551. For the reasons set forth in Department of Agriculture Programs and Activities Excluded from Executive Order 12372 (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, imposes substantial direct compliance costs on State and local government, and is not required by statute, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of this rule on State and local governments and has determined that this rule has federalism implications. However, this rule does not impose substantial or direct compliance costs on State and local governments, nor does it preempt State or local law. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed the final rule, in accordance with the Department Regulation 4300–004, Civil Rights Impact Analysis, to identify and address any major civil rights impacts the final rule might have on minorities, women, and persons with disabilities. A comprehensive Civil Rights Impact Analysis (CRIA) was conducted on the final rule, including an analysis of participant data and provisions contained in the final rule. The CRIA outlines outreach and mitigation strategies to lessen any possible civil rights impacts. The CRIA concludes by stating while the Department believes that a reduction in the number of ABAWD waivers granted to States will affect potential SNAP program participants in all groups who are unable to meet the ABAWD work requirements, and have the potential for impacting certain protected groups due to factors affecting rates of employment of members of these groups, the Department finds that the implementation of mitigation strategies and monitoring by the FNS Civil Rights Division and FNS SNAP may lessen these impacts. If deemed necessary, the FNS Civil Rights Division will propose further rule changes to alleviate impacts that may result from the implementation of the final rule.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects 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. FNS briefed Tribes on this rule at the February 14th, 2019 listening session; Tribes were subsequently provided the opportunity for consultation on the issue but FNS received no feedback. If a tribe requests consultation in the future, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this final rule contains information collections that are subject to review and approval by the Office of Management and Budget; therefore, the Department submitted the proposed rule for public comment regarding changes in the information collection burden that would result from adoption of the proposals in this final rule.

These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, the Department will publish a separate action in the **Federal Register** announcing OMB approval.

Title: Supplemental Nutrition Assistance Program Waiver of Section 6(o) of the Food and Nutrition Act.

Form Number: N/A.

OMB Number: 0584–0479.

Expiration Date: July 31, 2020.

Type of Request: Revision of a currently approved collection.

Abstract: This rule revises the conditions under which USDA would waive, when requested by State agencies, the able-bodied adult without dependents (ABAWD) time limit in areas that have an unemployment rate of over 10 percent or a lack of sufficient jobs. In addition, the rule limits carryover of ABAWD discretionary exemptions. In the proposed rule, the Department proposed to revise the existing information collection OMB Control #0584–0479 (expiration date July 31, 2021) by adjusting the burden hours associated with submitting a waiver request. Commenters to the proposed rule noted that the rulemaking will increase the administrative burden for State agencies. The Department has addressed these concerns by including the burden for additional activities in the burden estimates.

The final rule includes an adjustment to the estimated burden for the submission of ABAWD waiver requests by State agencies, the burden created by the requirement to obtain and indicate the support of the State's chief executive office, and the one-time burden for State agencies and SNAP households associated with noticing and verification.

There is no new recordkeeping burden required for this new information collection request. The recordkeeping burden for State agencies for application processing is currently covered under the approved information collection burden, OMB Control #0584–0064 (expiration date: 7/31/2020).

First Year (One-Time Burden)

The reduction of areas waived because of this final rule will subject more individuals to the ABAWD time limit. FNS estimates implementation of the final rule will create a one-time burden of 170,229 hours for State agencies and SNAP households. The burden is a result of the requirement to submit a second waiver requests in a 12-month period, verifying work hours, and issuing notices of adverse action. The revised burden estimates in the final rule also include the burden to SNAP households for receiving notices of adverse action and verifying work hours.

State Agencies

The ABAWD waiver request process includes collection of data, analysis of data, and preparing and submitting a request. Based on the experience of FNS during calendar year 2018, FNS projects that 36 out of 53 State agencies will submit requests for a waiver of the time limit for ABAWD recipients based on a high unemployment rate or lack of sufficient number of jobs. State agencies typically only submit one waiver request in each 12-month period; however, the implementation timeline for the final rule will require State agencies that wish to continue waivers for FY 2020 to submit an additional waiver request. This initial waiver request based on the revised regulations will require one or more individuals in the State agency to understand the changes, train individuals who develop waiver requests, and develop the waiver request. FNS estimates a response time of 28.5 hours for each waiver request based on labor market data, which require detailed analysis of labor markets within the State. FNS is adding 120 hours for each State to reflect the time associated with understanding the new regulations and preparing the initial waiver based on the revised regulations. This represents an additional one-time burden of 5,346 hours for State agencies collectively.

The final rule will also newly subject an estimated 1,087,000 ABAWDs to the time limit. The Department estimates the vast majority, approximately 688,000, will not meet the work requirement. As a result, it is estimated that State agencies will have to issue Notice of Adverse Action (NOAAs) to those 688,000 ABAWDs who do not meet the work requirement. While the issuance of NOAAs is currently approved under OMB #0584–0064, it is estimated these 688,000 NOAAs will be considered a one-time activity upon implementation of this final rule. FNS used existing estimates from the approved OMB #0584–0064 as a basis to determine it would take each State agency approximately4 minutes to issue a NOAA. In general FNS used the existing collection as a starting point but has reestimated in instances where those estimates were not adequate. Therefore, FNS estimates 45,867 hours for this one-time activity.

FNS also estimates 399,000 will meet the work requirement or be exempt from the time limit. As a result, State agencies will have to verify work hours and exemptions for 399,000 ABAWDs that meet the work requirement or are exempt. FNS used existing estimates from the approved OMB #0584–0064 as a basis to determine the verification of work hours and exemptions. The current burden estimates a 3 minute burden. FNS increased this estimate to 5 minutes for each verification because it did not adequately capture the time needed to ensure the verifications that are provided area sufficient. While the activities related to verification are currently approved under OMB #0584–0064, it is estimated these 399,000 verifications will be considered a one-time activity upon implementation of this final rule. Therefore, FNS estimates 33,250 one-time burden hours for State agency verification of work hours and exemptions. These two activities collectively account for 79,116 hours. The total start up burden for State agencies, including the additional waiver request submission, will result in 84,463 burden hours.

Households

The 1,087,000 ABAWDs newly subjected to the time limit will face a one-time burden as well. FNS estimates 688,000 ABAWDS will not meet the work requirement and receive a NOAA. While the issuance of NOAAs is currently approved under OMB #0584–0064, it is estimated the reading of these 688,000 NOAAs will be considered a one-time activity upon implementation of this final rule. FNS estimates it would take each household 4 minutes to read a NOAA. Therefore, FNS estimates 45,867 burden hours for SNAP households for this one-time activity.

FNS estimates 399,000 will meet the work requirement. ABAWDs meeting the work requirement will have to respond to State agency request for verification of work hours. FNS used existing estimates from the approved OMB #0584–0064 as a basis to determine the response to State agency request for verification of work hours and exemptions will take the SNAP household approximately 6 minutes for each verification. While the activities related to household response to request for State agency verification are currently approved under OMB #0584–0064, it is estimated these 399,000 verifications will be considered a one-time activity upon implementation of this final rule. Therefore, FNS estimates 39,900 one-time burden hours for household verification of work hours and exemptions. These two startup burdens will result in an increase of 85,767 hours for SNAP households.

OMB No. 0584–0479	Requirement and citation	Estimated number respondents	Response annually per respondent	Total annual responses	Hours per response	Annual burden hours	Previous submission total hours	Differences due to program changes	Differences due to adjustment	Hourly wage rate	Estimated cost to respondents
Affected Public: State Agencies											
Start-Up	7 CFR 2(f)(1)&(2)—Additional one-time verification of hours worked and exemptions for ABAWDs newly subject to the work requirement.	36	11,083	399,000	0.08	33,250	0	33,250	0	$32.01	$1,064,332.50
	7 CFR 273.13(a)—One-time Issuance of Notice of Adverse Action to ABAWDs who do not meet the work requirement.	36	19,111	688,000	0.07	45,867	0	45,867	0	32.01	1,468,192.00
	7 CFR 273.24(f)—One-time Submission of waiver request based on labor market data.	36	1	36	148.5	5,346	0	5,346	0	32.01/45.45	229,897.97
	7 CFR 273.24 (f)—One-time Submission of waiver request based on Labor Surplus Area designation.	0	0	0	0	0	0	0	0	32.01/45.45	0.00
Ongoing	7 CFR 273.24(f)—Submission of waiver request based on labor market data.	36	1	36	28.5	1,026	1190	−164	0	32.01/45.45	33,570.82
	7 CFR 273.24 (f)—Submission of waiver request based on Labor Surplus Area designation.	0	0	0	0	0	8	−8	0	32.01/45.45	0.00
Reporting Totals		36	.....	1,087,072	0.08	85,489	1198	84,291	0	.....	2,795,993.30
Affected Public: Households											
Start-Up	7 CFR 2(f)(1)&(2)—One Time—respond to verification of hours worked.	399,000	1	399,000	0.1	39,900	0	39,900	0	7.25	289,275.00
	7 CFR 273.13(a)—One-time Review of Notice of Adverse Action.	688,000	1	688,000	0.07	45867	0	45,867	0	7.25	332,533.33
Reporting Totals		1,087,000	.....	1,087,000	0.08	85,767	0	85,767	0	.....	621,808.33
Total Reporting Burden		1,087,036	.....	2,174,072	0.08	171,255	1198	170,057	0	.....	3,417,801.63

Ongoing Burden

The ABAWD waiver request process includes collection of data, analysis of data, and preparing and submitting a request. The final rule establishes clear limitations under which waivers can be approved; generally, State agencies will only be able to receive waiver approval for areas defined as Labor Market Areas (LMAs). The final rule establishes clear core standards and eliminates the ability for States to group areas. The ability to group areas required States greater flexibility and resulted in more options for waiver requests. The core standards provide a simpler basis for requests. As a result, the Department has estimated a reduction in burden hours for State agencies to submit waiver requests.

Based on the experience of FNS during calendar year 2018, FNS projects that 36 out of 53 State agencies would submit requests for a waiver of the time limit for ABAWD recipients based on a high unemployment rate or lack of sufficient jobs.

In the currently approved information collection for OMB Control No.0584–0479, FNS estimates it takes 35 hours for each State agency to submit a waiver request. FNS assumed 34 States would request waivers using labor market data and two States would request waivers under the Labor Surplus Area delineation.

OMB No. 0584–0479	Requirement and citation	Estimated number respondents	Response annually per respondent	Total annual responses	Hours per response	Annual burden hours	Previous submission total hours	Differences due to program changes	Differences due to adjustment	Hourly wage rate	Estimated cost to respondents
Affected Public: State Agencies											
Reporting Burden.	7 CFR 273.24(f)—Submission of waiver request based on labor market data.	36	1	36	28.5	1,026	1,190	−164	0	$32.01/$45.45	$16,785.41
	7 CFR 273.24 (f)—Submission of waiver request based on Labor Surplus Area designation.	0	0	0	0	0	8	−8	0	0	0
State Agency Totals		36	.....	.....	.....	1,026	1198	−172	0	.....	16,785.41
Total Reporting Burden		.....	.....	.....	.....	.....	.....	−172	.....	.....	16,785.41

FNS now expects 36 States to request waivers using labor market data since the Labor Surplus Area delineation is no longer a basis for approval. State agencies that previously used the Labor Surplus Area delineation as a criterion for waiver requests will face an increased burden for waiver requests. FNS estimated in the proposed rule the time for a State agency to submit a waiver request based on labor market data would be reduced to 28 hours. The

final rule maintains this reduction and also adds .5 hours per response to incorporate the requirement to obtain and indicate the support of the chief executive of the State agency. This results in a total annual burden of 1,026 hours for State agencies to submit an ABAWD waiver request. Once merged with OMB Control #0584–0479 upon approval, this will result in a reduction of 172 annual burden hours, for a total of 1,026 hours.

Affected public: State agencies, SNAP households.

Estimated number of respondents: 36 State Agencies, 1,087,000 individuals.

Regulation Section: 7 CFR 272.24.

Estimated total annual responses: First year 2,174,036; Ongoing 36.

Estimated annual burden hours: First year 170,229 hours; Ongoing 1,026 hours.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 273

Able-bodied adults without dependents, Administrative practice and procedures, Employment, Indian Reservations, Time limit, U.S. Territories, Waivers, Work requirements.

Accordingly, 7 CFR part 273 is amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 2. In § 273.24, revise paragraph (f) to read as follows:

§ 273.24 Time Limit for able-bodied adults.

* * * * *

(f) *Waivers*—(1) *General.* The State agency, with the support of the chief executive officer of the State, may request FNS approval to temporarily waive the time limit for a group of individuals in the State in the area in which the individuals reside. To be considered for approval, the request must be supported by corresponding data or evidence demonstrating that the requested area:

(i) Has an unemployment rate of over 10 percent; or

(ii) Does not have a sufficient number of jobs to provide employment for the individuals.

(2) *Core standards.* FNS will approve waiver requests under paragraphs (f)(1)(i) and (ii) of this section that are supported by any one of the following:

(i) Data from the Bureau of Labor Statistics (BLS) or a BLS-cooperating agency that shows an area has a recent 12-month average unemployment rate over 10 percent; or

(ii) Data from the BLS or a BLS-cooperating agency that shows an area has a 24-month average unemployment rate 20 percent or more above the national rate for a recent 24-month period, but in no case may the 24-month average unemployment rate of the requested area be less than 6 percent. In order for the 24-month data period to be considered recent, the number of months from the end of the last month of the 24-month data period through the last month that the waiver would be effective must not exceed 21 months.

(3) *Other data and evidence in an exceptional circumstance.* FNS may approve waiver requests that are supported by data or evidence other than those listed under paragraph (f)(2) of this section if the request demonstrates an exceptional circumstance in an area. The request must demonstrate that the exceptional circumstance has caused a lack of sufficient jobs or an unemployment rate over 10 percent, for example data from the BLS or a BLS-cooperating agency that shows an area has a most recent three-month average unemployment rate over 10 percent. In addition, the request must demonstrate that the impact of the exceptional circumstance is ongoing at the time of the request. Supporting unemployment data provided by the State must rely on standard BLS data or methods.

(4) *Definition of area.* For the purposes of this paragraph, ''area'' means:

(i) An area considered a Labor Market Area (LMA) by DOL. The State agency must support a waiver for an LMA using corresponding LMA data from the BLS. If such corresponding data is unavailable, the State agency may obtain corresponding data by combining data from sub-LMA areas that are collectively considered to be a LMA by DOL;

(ii) The intrastate part of an interstate LMA. Intrastate parts of interstate LMAs may qualify for waivers based on data from the entire interstate LMA. If the State Agency's geographic boundaries are entirely within one interstate LMA, such as the District of Columbia, the entire State may qualify for a waiver based on data from the entire interstate LMA;

(iii) A reservation area or a U.S. Territory. Each of these is considered to be an area for the purposes of waivers.

(5) *Duration of waiver approvals.* In general, FNS will approve waivers for one year. FNS may approve waivers for a shorter period at the State agency's request. Waivers under paragraph (f)(2)(ii) of this section will be approved in accordance with paragraph (f)(2)(ii).

(6) *Areas with limited data or evidence.* Waiver requests for an area for which standard BLS data or data from a BLS-cooperating agency is limited or unavailable, such as a reservation area or U.S. Territory, are not required to conform to the criteria for approval under paragraphs (f)(2), (3), and (5) of this section. The supporting data or evidence provided by the State must be recent and must correspond to the requested area.

(i) FNS may approve waivers for these areas if the requests are supported by sufficient data or evidence, such as:

(A) Estimated unemployment rate based on available data from BLS and the U.S. Census Bureau;

(B) A low and declining employment-to-population ratio;

(C) A lack of jobs in declining occupations or industries; or

(D) An academic study or other publication describing the area as lacking a sufficient number of jobs to provide employment for its residents.

(ii) [Reserved]

* * * * *

■ 3. Effective October 1, 2020, § 273.24 is further amended by revising paragraph (h) to read as follows:

§ 273.24 Time Limit for able-bodied adults.

* * * * *

(h) *Adjustments.* FNS will make adjustments as follows:

(1) *Caseload adjustments.* FNS will adjust the number of exemptions estimated for a State agency under paragraph (g)(3) of this section during a fiscal year if the number of SNAP participants in the State varies from the State's caseload by more than 10 percent, as estimated by FNS.

(2) *Exemption adjustments.* During each fiscal year, FNS will adjust the number of exemptions available to a State agency based on the number of exemptions in effect in the State for the preceding fiscal year. In doing so, FNS will determine the State's exemption balance for the fiscal year (the total number of exemptions available to the State for the fiscal year).

(i) If the State agency did not use all of its exemption balance for the

preceding fiscal year, FNS will add to the State agency's exemption balance a portion of the unused exemptions not to exceed 12 percent of the covered individuals in the State estimated by FNS for the preceding fiscal year.

(ii) If the State agency used more than its exemption balance for the preceding fiscal year, FNS will decrease the State agency's exemption balance by the corresponding number. If this decrease results in a negative exemption balance, the State agency must offset the negative balance using the new exemptions estimated by FNS for the subsequent fiscal year. If the negative exemption balance is not fully offset, FNS will hold the State liable for the remaining negative balance.

* * * * *

Dated: November 25, 2019.

Stephen L. Censky,

Deputy Secretary, U.S. Department of Agriculture.

[FR Doc. 2019–26044 Filed 12–4–19; 8:45 am]

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