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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### 7 CFR Part 1752

**[RUS–19–Telecom–0021]**

**RIN 0572–AC41**

## Special Servicing of Telecommunications Programs Loans for Financially Distressed Borrowers

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The Rural Utilities Service (RUS), a Rural Development agency of the United States Department of Agriculture (USDA), hereinafter referred to as ''RUS'' or ''the Agency'', is issuing a final rule with request for comments to outline the general policies for servicing actions associated with financially distressed borrowers from the Telecommunications Infrastructure Loan Program, Rural Broadband Program, Distance Learning and Telemedicine Program, Broadband Initiatives Program, and Rural e-Connectivity Pilot Program. This rule will ensure recipients comply with any revised terms in repayment on loans and ensures serving actions are handled by RUS consistently across programs.

**DATES:** *Effective date:* This final rule is effective February 25, 2020.

*Comment date:* Comments are due by April 27, 2020.

**ADDRESSES:** Comments may be submitted on this rule by the following method:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Rural Utilities Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select RUS–19–Telecom-0021 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

• *Other Information:* Additional information about RUS and its programs is available on the internet at *https://www.usda.gov/topics/rural.*

**FOR FURTHER INFORMATION CONTACT:** For general inquiries, contact Laurel Leverrier, Acting Assistant Administrator Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture (USDA), email: *laurel.leverrier@usda.gov,* telephone: (202) 720–3416.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866, Regulatory Impact Analysis

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866. In accordance with Executive Order 12866, a Regulatory Impact Analysis was completed, outlining the costs and benefits of implementing this program in rural America. The complete analysis is available in Docket RUS–19–Telecom-0021 on *Regulations.gov*. The following is a summary discussion of the Analysis:

RUS is publishing this rulemaking action to codify a new servicing regulation which outlines policies for servicing actions associated with distressed borrowers from the Telecommunications Infrastructure Loan Program, Rural Broadband Program, Distance Learning and Telemedicine Program, Broadband Initiatives Program, and Rural e-Connectivity Pilot Program (collectively referred to as the ''RUS Telecommunications Programs''). The challenges in providing high-quality, but high-cost, telecommunications services to sparsely populated and remote rural areas are well known. Historically, most RUS Telecommunications Program borrowers have operated in a highly regulated industry with predictable revenue streams, which served to mitigate the risks associated with these loans. As technologies and services evolve, new competitors and alternative technology packages are changing the industry. Due to these recent changes in the telecommunications industry and regulatory environment, this rulemaking will ensure recipients comply with any revised terms in repayment on loans and ensures serving actions are handled by RUS consistently across the RUS Telecommunications Programs.

The new regulation is consistent with the Administration's efforts to streamline Government functions, improve the efficiency and effectiveness of Government activities, and strive to be more borrower-friendly. The new regulation will ensure consistency and appropriateness of the Agency's actions when borrowers default on their debts. Specifically, it will:

(1) Ensure that RUS, under its own authority, will quickly address servicing actions for its RUS Telecommunications Programs;

(2) Ensure servicing actions are handled by RUS consistently across all RUS Telecommunications Programs;

(3) Maximize Risk Management of the loan portfolio;

(4) Improve the Agency's capacity to identify, address, and provide guidance to distressed Borrowers in the early stages of distress;

(5) Result in more timely responses by setting forth clear standards for identifying and mitigating material defaults;

(6) Improve the probability of repayment, and reduce legal costs on its borrowers and improve overall customer service;

(7) Ensure that servicing recipients comply with any revised terms in repayment on loans.

(8) Provide efficient recovery of debt which may mitigate negative impacts on program subsidy rates; and

(9) Reduces duplication of staff effort and costs of duplicative labor between federal Agencies.

### Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

### Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the

Executive order. In addition, all state and local laws and regulations that conflict with this rule will be preempted. No retroactive effect will be given to this rule.

**Executive Order 12372, Intergovernmental Consultation**

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. See the final rule related notice entitled, ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

**Regulatory Flexibility Act Certification**

RUS certifies that this rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications program provides loans to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

**Environmental Impact Statement**

This rule has been examined under Agency environmental regulations at 7 CFR part 1970. The Administrator has determined that this is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement is not required.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance (CFDA) number assigned to the RUS Telecommunications Programs are as follows: 10.752, Rural e-Connectivity Pilot Program; 10.851, Rural Telephone Loans and Loan Guarantees; 10.855, Distance Learning and Telemedicine Loans and Grants; 10.863 Community Connect Grant Program and 10.886, Rural Broadband Access Loans and Loan Guarantees. The Catalog is available on the internet at *https://beta.sam.gov/.* The Government Publishing Office (GPO) prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202–512–1800 or toll free at 866–512–1800, or access GPO's online bookstore at *https://bookstore.gpo.gov.*

**Unfunded Mandates**

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for state, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

**E-Government Act Compliance**

RUS is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

**Executive Order 13132, Federalism**

The policies contained in this rule do not have any 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. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

**Executive Order 13175, Consultation and Coordination With Indian Tribal Governments**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' 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. Rural Development, a mission area for which RUS is an agency, has assessed the impact of this rule on Indian tribes. Given that no tribal entity has requested servicing actions in the past, and the limited impact this rule could have on such entities should they request such a servicing action, the agency has determined that to the best of our knowledge, this rule does not, have tribal implications that require tribal consultation under E.O. 13175. If a tribe would like to engage in consultation with Rural Development on this rule, please contact Rural Development's Native American Coordinator at (720) 544–2911 or *AIAN@wdc.usda.gov.*

**Civil Rights Impact Analysis**

Rural Development, a mission area for which RUS is an agency, has reviewed this rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After review and analysis of the rule and available data, it has been determined that based on the analysis of the program purpose, application submission and eligibility criteria, issuance of this final rule will neither adversely nor disproportionately impact very low, low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their race, color, national origin, sex, age, disability, or marital or familial status.

**Paperwork Reduction Act and Recordkeeping Requirements**

The Information Collection and Recordkeeping requirements contained in this rule have been approved by an emergency clearance under OMB Control Number 0572–0153. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which the Agency intends to request approval from the Office of Management and Budget (OMB). RUS invites comments on any aspect of this collection of information including suggestions for reducing the burden. Comments may be submitted regarding this information collection by the following method:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Rural Utilities Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select RUS–19–Telecom-0021 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. Comments on this information collection must be received by April 27, 2020.

Comments are invited on (a) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (b) ways to enhance the quality, utility, and clarity of the information to be collected; and (c) ways to minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques on other forms and information technology.

*Title:* Special Servicing of Telecommunications Programs Loans for Financially Distressed Borrowers.

*OMB Control Number:* 0572–0153.

*Type of Request:* New.

*Abstract:* The RUS Telecommunications Programs provides loan funding to build and expand broadband service into unserved and underserved rural communities, along with very limited funding to support the costs to acquire equipment to provide distance learning and telemedicine service. While each program has its own regulation, which outlines general program policies and requirements, types of assistance, and the requirements for advance of funds, there is no regulation currently in place to address how RUS will handle servicing actions associated with distressed loans. The information collected from borrowers that need servicing assistance, as required by this new servicing regulation, will give RUS greater authority to address servicing actions and will streamline and expedite servicing actions, improve the government's recovery on such loans, and improve overall customer service. Examples of information that will be collected by the Agency from the borrower include, but are not limited to, a request and explanation for servicing action, various financial, subscriber and organizational information, as well as other documents and information that may be relevant as determined by RUS.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 5 hours per responses.

*Estimated Number of Respondents:* 5.

*Estimated Number of Total Annual Responses per Respondents:* 137.

*Estimated Total Annual Burden on Respondents:* 694.50 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Regulatory Division Team 2, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 1522, Washington, DC 20250. Phone: 202–720–7853.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**Background**

The Agency improves the quality of life in rural America by providing investment capital for deployment of rural telecommunications infrastructure. To achieve the goal of increasing economic opportunity in rural America, the Agency finances infrastructure that enables access to a seamless, nationwide telecommunications network. With access to the same advanced telecommunications networks as its urban counterparts—especially those designed to accommodate distance learning, telework, and telemedicine —rural America will eventually see improving educational opportunities, health care, economies, safety and security, and ultimately higher employment. The Telecommunications Infrastructure Loan Program, Rural Broadband Program, Distance Learning and Telemedicine Program, Broadband Initiatives Program and ReConnect Program (hereinafter collectively referred to as the ''RUS Telecommunications Programs'') provide loan funding to build and expand broadband and telecommunications services in rural communities.

The RUS Telecommunications Programs currently take servicing actions on approximately 10–12 projects each year. While each program has its own regulation, which outlines general program policies and requirements, types of assistance, and the requirements for advance of funds, there is no regulation currently in place to address how RUS will handle special servicing actions associated with financially distressed loans. At present, when a Borrower is financially distressed, the Agency must rely on the authority of the Department of Justice (DOJ) for many of these actions. This servicing regulation will be located in 7 CFR part 1752 and will give RUS greater authority to address servicing actions directly, without the additional transactions costs associated with coordinating with DOJ. RUS will still work closely with DOJ on cases involving foreclosure or bankruptcy, but this rule will enable RUS to resolve many servicing actions without having to involve DOJ. This will streamline and expedite servicing actions, improve the Government's recovery on such loans, and improve overall customer service. Since most RUS Telecommunications Program borrowers are utilities, faster resolution of servicing actions will ensure that rural Americans continue to receive service.

**Regulation Objective**

This rule outlines the general policies and procedures for servicing actions associated with the RUS Telecommunications Programs Borrowers in financial distress. The agency views this rule as narrowly applying to loan servicing procedures within RUS. It will ensure recipients comply with the established objectives and requirements for loans, repaying loans on schedule or within the revised terms as agreed to by the Agency, and act in accordance with any necessary agreements. The rule will also ensure that servicing actions are handled by the Agency in a consistent approach across all RUS Telecommunications Programs, as well as protect the financial interest of the Agency. To implement these changes, RUS is publishing this action as a final rule with request for comments.

To help inform RUS on the effects of the new regulation, RUS is taking this opportunity to request public comment on the regulation.

- How can RUS improve the review of servicing requests, including the documentation needed to request a servicing action, to avoid placing unnecessary burden or duplicative requirements on borrowers?
- Are there other servicing options that the agency has not addressed in the rulemaking?
- Given the amount of debt and complexity of borrower's other debt arrangements, what is an appropriate amount of time to be given to respond to agency requests, understanding that the Government has a responsibility to address the default timely?

**Conclusion**

RUS already acts to address servicing needs as they arise but, in many cases, must rely on DOJ since the Telecommunications Programs lack their own servicing regulations. RUS believes that a stand-alone regulation will minimize the programs' reliance on DOJ and the regulatory change will give RUS the authority to quickly address servicing actions without having to involve DOJ, which will simplify the process and reduce the burden and costs on Borrowers. This regulation will maximize the ability of the Borrowers to use and understand the available servicing tools under the applicable program. It will also ensure Borrowers comply with the established objectives and requirements for loans, repay loans

on schedule, and act in accordance with any necessary agreements. Additionally, this regulation will ensure serving actions are handled consistently, and protect the financial interest of the Agency.

**List of Subjects in 7 CFR Part 1752**

Broadband, Community development, Grant programs-education, Grant programs-health, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone, Telecommunications.

Accordingly, for reasons set forth in the preamble, chapter XVII, title 7, the Code of Federal Regulations is amended by adding part 1752 to read as follows:

## PART 1752—SERVICING OF TELECOMMUNICATIONS PROGRAMS

Sec.

1752.1 Purpose.
1752.2 Objectives.
1752.3 Definitions.
1752.4 Availability of forms, bulletins, and procedures.
1752.5 Monetary default by Borrower.
1752.6 Request for special servicing action.
1752.7 Civil rights and requirements.
1752.8—1752.10 [Reserved]
1752.11 Consent to additional, unsecured debt.
1752.12 Parity lien.
1752.13 Reamortization of or rescheduling of the debt payments.
1752.14 Deferment of principal and/or interest payments.
1752.15 Interest rate adjustments.
1752.16 Transfer of collateral and assumption of debt.
1752.17 Sale or exchange of loan collateral.
1752.18 Sale of the note.
1752.19 Debt settlement.
1752.20—1752.24 [Reserved]
1752.25 Special terms.
1752.26 No rights to special servicing actions.
1752.27 Confidentiality of borrower information.
1752.28 Interest accrual.
1752.29 Communications laws.
1752.30 Information collection and reporting requirements.
1752.31 Authorized signatories.

**Authority:** 7 U.S.C. 1981(b)(4), 7 U.S.C. 901 *et seq.* and 7 U.S.C. 950aaa *et seq.*

### § 1752.1 Purpose.

This part prescribes the policies and procedures for loan and grant servicing for financial assistance made under the Rural Utilities Service (RUS) Telecommunications Infrastructure Loan Program, Rural Broadband Program, Distance Learning and Telemedicine Program, Broadband Initiatives Program, and the Rural e-Connectivity Pilot Program (in this part collectively referred to as the ''RUS Telecommunications Programs'').

### § 1752.2 Objectives.

The purpose of loan and grant servicing functions is to assist recipients to meet the objectives of loans and grants, repay loans on schedule, comply with agreements and protect RUS' financial interests. The provisions of this part will ensure recipients comply with any revised terms in repayment on loans and ensures serving actions are handled consistently by the Agency.

### § 1752.3 Definitions.

The terms and conditions provided in this section are applicable to this part only. All financial terms not defined in this section shall have the commonly-accepted meaning under Generally Accepted Accounting Principles.

*Acceleration.* A written notice informing the Borrower that the total unpaid principal and interest is due and payable immediately.

*Administrator.* Administrator of the Rural Utilities Service.

*Agency.* The Rural Utilities Service, an agency of the United States Department of Agriculture's Rural Development mission area.

*Assumption of debt.* Agreement by one party to legally bind itself to repay the debt of the RUS borrower.

*Borrower.* Recipient of loan funding under a RUS Telecommunications Program.

*Broadband system.* The telecommunications or broadband network financed with RUS loan and/or grant funding or maintained by the Borrower and contained as part of the collateral to the loan.

*Cancellation.* Final discharge of debt with a release of liability.

*Charge-off.* Write-off of a debt and termination of servicing activity without release of liability. A charge-off is a decision by the Agency to remove debt from Agency receivables, however, future payments may be received.

*Collateral.* Means the assets, equipment and/or revenues pledged as security for the loan as defined in the loan documents.

*Disposition of facility.* Relinquishing control of a facility to another entity.

*Loan Documents.* All associated loan agreements, loan and security agreements, loan/grant agreements, mortgages, and promissory notes, as applicable.

*Liquidation.* Satisfaction of a debt through the sale of a Borrower's assets and cancellation of liabilities.

*Parity lien.* A lien having an equal lien position to another lender's lien on a Borrower's asset.

*Rural Utilities Service (RUS).* An agency of the United States Department of Agriculture's Rural Development mission area.

*Settlement.* Compromise, adjustment, cancellation, or charge-off of a debt owed to the Agency. The term ''settlement'' is used to refer to any of these actions, whether individually or collectively.

*Unliquidated obligations.* Obligated loan funds that have not been advanced.

*Voluntary conveyance.* A method by which title to security is voluntarily transferred to the Federal Government.

### § 1752.4 Availability of forms, bulletins, and procedures.

Forms, bulletins, and procedures referenced in this part are available online at *https://www.rd.usda.gov/publications/regulations-guidelines.*

### § 1752.5 Monetary default by Borrower.

A defaulting Borrower's primary responsibility is to expeditiously bring the delinquent account current. If a monetary default exceeds 60 days, RUS will attempt to discuss the situation with the Borrower and make the Borrower aware of options that may be available. In considering options, the prospects for providing a permanent cure without adversely affecting the risk to the Agency is the paramount objective. RUS will also work with entities that are not in monetary default but whose financial position is such that, without RUS action, a monetary default is imminent within the next 24 months, as evidenced by a financial forecast provided by the Borrower. RUS receives quarterly financial reports and annual audits from borrowers and actively monitors the borrower's Times Interest Earned Ratio (TIER), Current Ration, Debt Service Coverage Ratio, and Net Worth.

### § 1752.6 Request for special servicing action.

(a) Special servicing actions include, but are not limited to, one or more of the following:

(1) Consent to additional, unsecured debt;

(2) Parity lien;

(3) Reamortization or rescheduling of debt payments;

(4) Deferment of principal and/or interest;

(5) Interest rate adjustment;

(6) Transfer of collateral and assumption of debt;

(7) Sale or exchange of loan collateral;

(8) Sale of the note; and

(9) Debt settlement.

(b) In order for the Agency to consider one or more of the curative actions cited in paragraph (a) of this section, the Borrower must submit a written request to RUS.

(1) The written request must contain the following items:

(i) A detailed explanation of the request and why it is needed.

(ii) Most recent audited financial statements for the Borrower.

(iii) Borrower's Pro Forma 5-year financial forecast, which includes an Income Statement, Balance Sheet, and Statement of Cash Flows, 2 years of historical data, current year data and a 5-year forecast, with detailed supporting assumptions. Additionally, in order to request assistance under this paragraph (b)(1)(iii), the Borrower must make a showing that the account is delinquent and cannot be brought current within one year, or that the Borrower will become delinquent within 24 months, as demonstrated in the Pro Forma.

(iv) Existing and projected subscriber numbers and service tiers, along with pricing for each tier. Additionally, for companies receiving support from the Federal Communications Commission, a detailed forecast of the support revenue, certified by a cost consultant, must be included.

(v) Current organizational chart for the Borrower, related entities, and affiliated companies, as well as information relating to ownership interest in the Borrower and its related entities.

(vi) A complete list of all collateral and steps the Borrower is taking to preserve the collateral.

(2) The Agency may request the additional documents in paragraphs (b)(2)(i) through (iv) of this section after reviewing the Borrower's servicing request:

(i) An appraisal in order to determine the adequacy of loan security or repayment ability;

(ii) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense;

(iii) A legal opinion regarding RUS' interests in the impacted collateral and supporting evidence, in the form of Uniform Commercial Code Statements and filed Mortgages, that RUS maintains a first lien position on all assets of the Borrower, or such collateral as mandated by the Loan Documents; and

(iv) Such other documents that may be relevant in individual cases, as determined by RUS.

(3) When submitting a request for a servicing action, the distressed Borrower must consent to the following during the request and for the duration of the servicing action:

(i) *On-site visit.* A Management Analysis Profile (MAP) visit of the Borrower's entire operation;

(ii) *RUS priority payment.* Borrowers must agree that no other creditors will be paid without RUS consent, if RUS is not receiving full principal and interest payments;

(iii) *Additional reporting and monitoring.* Throughout the term of the servicing action(s), RUS will require increased frequency and/or additional details to the reporting and monitoring required under the terms of the Loan Documents; and

(iv) *Additional controls and limitations.* RUS may require additional controls and limitations such as segregation of accounts, RUS review of expenditures, etc.

(c) False information provided by a Borrower, or by entities acting on behalf of the Borrower, will give rise to the immediate termination of any servicing action(s).

### § 1752.7 Civil rights and requirements.

(a) *Equal opportunity and nondiscrimination.* The Agency will ensure that equal opportunity and nondiscriminatory requirements are met in accordance with the Equal Credit Opportunity Act and 7 CFR part 15. In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

(b) *Civil rights compliance.* Recipients of Federal assistance under this part must comply with the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. Prior to determining eligibility of any servicing action under this part, the Agency will determine that the Borrower is in compliance with all civil rights requirements of the latest Civil Rights Compliance Review conducted by the Agency.

(c) *Discrimination complaints.* Persons believing they have been subjected to discrimination prohibited by this section may file a complaint personally, or by an authorized representative with USDA, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250. A complaint must be filed no later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated officials of USDA or the Agency.

### §§ 1752.8—1752.10 [Reserved]

### § 1752.11 Consent to additional, unsecured debt.

(a) An additional, unsecured loan from another lender to the Borrower may be approved subject to the conditions set forth in this section. In order to request assistance under this section, the Borrower must make a showing that the additional debt will cure any existing or projected delinquency. Additionally, the following requirements must be met, as determined by RUS:

(1) The additional debt will not disadvantage RUS's standing or lien on any of the collateral already pledged to RUS;

(2) The additional debt will not adversely impact the continued financial viability of the Borrower or the Borrower's ability to carry out the purposes of the RUS loan;

(3) The debt is needed to resolve short-term, negative cashflow problems; and

(4) The Borrower is in good standing with the Agency or will become so with the additional debt.

(b) In the case where all assets of the Borrower are not secured by the Government's debt, the Borrower may request additional debt that is secured by collateral that is not subject to the Government's security interest.

### § 1752.12 Parity lien.

A Borrower's request for parity may be approved subject to the conditions set forth in this section. In order to request assistance under this section, the Borrower must make a showing that the amount of new debt is at least equal to the amount of the collateral being added and will cure any existing or projected delinquency. The following factors will be considered in assessing whether the request is in the Government's best interest:

(a) The value of the added assets compared with the amount of new debt to be secured;

(b) The value of the assets already pledged under the Loan Documents, and any effects of the proposed transaction on the value of those assets;

(c) The ratio of the total outstanding debt secured under the Loan Documents to the value of all assets pledged as security under the Loan Documents;

(d) The Borrower's ability to repay its debt owed to the Government;

(e) The overall financial viability of the Borrower; and

(f) That the Borrower is in good standing with the Agency or will become so with the parity lien; and

(g) Such other conditions as may be imposed by the Agency on a case-by-case basis, as determined by RUS.

**§ 1752.13 Reamortization of or rescheduling of the debt payments.**

A reamortization or rescheduling of debt payments may be approved subject to the conditions set forth in this section. In order to request a reamortization or rescheduling of debt payments, the Borrower must make a showing that the Borrower does not have access to other sources of capital or alternatives for resolving the delinquency, and that the reamortization or rescheduling of debt payment will cure any existing or projected delinquency. Reamortizations or rescheduling of debt will be limited to 10 years beyond the original maturity date. Additionally, the following requirements must be met, as determined by RUS:

(a) The Borrower has cooperated with RUS in exploring alternative servicing options and has acted in good faith with regard to eliminating the delinquency and complying with its loan agreements and Agency regulations;

(b) Any management deficiencies identified by RUS have been corrected or the Borrower has submitted a plan acceptable to RUS to correct any deficiencies;

(c) The Borrower has presented a budget which clearly indicates that it is able to meet the proposed payment schedule and the reamortization or rescheduling of debt payments will ensure the continued financial viability of the Borrower;

(d) The Agency will consider the useful life of the facilities along with the level of debt service payments that the Borrower can contribute when determining the appropriate term to place on any reamortized loan; and

(e) Such other conditions as may be imposed by the Agency on a case-by-case basis, as determined by RUS.

**§ 1752.14 Deferment of principal and/or interest payments.**

A deferment of principal and/or interest payments which will continue the original purpose of the loan may be approved subject to the conditions set forth in this section.

(a) *Principal-only deferrals.* In order to request a principal deferral, the Borrower must make a showing that at the end of the deferment period the Borrower's financial position has improved and the Borrower is able to make full principal and interest payments, curing any delinquency or projected delinquency. Deferments of principal will be limited to no more than 36 months. Additionally, the following requirements must be met, as determined by RUS:

(1) Any management deficiencies identified by RUS have been corrected or the Borrower has submitted a plan acceptable to RUS to correct any deficiencies;

(2) The Borrower has presented a budget which clearly indicates that it is able to meet the new proposed payment schedule and after the end of the deferral period is able to resume making full principal and interest payments while maintaining a positive cashflow position;

(3) Unless authorized by prior RUS written consent, the Borrower will only use funds otherwise due and payable under the RUS Note for the benefit of the broadband system. Such expenditures include, but are not limited to, costs to complete any necessary construction of the Project, costs to connect additional subscribers, marketing and sales costs, and other such costs that are necessary to maximize the value of the broadband system; and

(4) The Borrower will comply with such other conditions as may be imposed by the Agency on a case-by-cases basis, as determined by RUS.

(b) *Principal and interest deferrals.* A principal and interest deferral shall only be approved when the Borrower has demonstrated that it is the only option for the Agency to avoid foreclosure and is in the best interest of the Government to avoid a substantial loss to the Government. Additionally, principal and interest deferrals may be approved if the Borrower and RUS have agreed to a public sale of the broadband system and such a deferral is needed to provide time to complete the sale of the broadband system. Principal and interest deferrals will be limited to no more than 24 months, unless extended by the Agency for good cause and full cooperation of the Borrower. Additionally, the following requirements must be met, as determined by RUS:

(1) The Borrower has cooperated with RUS in exploring alternative servicing options and has acted in good faith with regard to eliminating the delinquency and complying with its Loan Documents and Agency regulations;

(2) Any management deficiencies identified by RUS have been corrected or the Borrower has submitted a plan acceptable to RUS to correct any deficiencies; and

(3) Unless authorized by prior RUS written consent, the Borrower will only use funds otherwise due and payable under the RUS Note for the benefit of the broadband system. Such expenditures include, but are not limited to, costs to execute a sale of the broadband system, costs to complete any necessary construction of the Project, costs to connect additional subscribers, marketing and sales costs, and other such costs that are necessary to maximize the value of the broadband system for an eventual sale;

(4) In cases when the Borrower and RUS have agreed to a public sale of the broadband system, the Borrower agrees that within 30 days of the execution of the deferral agreement, the Borrower will develop a process and timeline for the sale of the broadband system, in form and substance satisfactory to RUS, and will continually execute on those plans in order to effectuate a public sale of the broadband system; and

(5) The Borrower will comply with such other conditions as may be imposed by the Agency on a case-by-cases basis, as determined by RUS.

**§ 1752.15 Interest rate adjustments.**

Interest rate reductions may be approved subject to the conditions set forth in this section. In order to request an interest rate reduction, the Borrower must make a showing that the Borrower does not have access to other sources of capital or alternatives to resolve the delinquency, and the interest rate adjustment will cure any existing or projected delinquency. Additionally, the following requirements must be met, as determined by RUS:

(a) The Borrower has cooperated with RUS in exploring alternative servicing options and has acted in good faith with regard to eliminating the delinquency and complying with its loan agreements and Agency regulations;

(b) Any management deficiencies identified by RUS have been corrected or the Borrower has submitted a plan acceptable to RUS to correct any deficiencies;

(c) The Borrower has presented a budget which clearly indicates that it is able to meet the proposed payment schedule and the interest rate reduction will improve the financial viability of the Borrower;

(d) The Borrower has agreed to not maintain cash or cash reserves beyond what is reasonable at the time of interest rate adjustment to meet debt service, operating, and reserve requirements; and

(e) The Borrower will comply with such other conditions as may be

imposed by the Agency on a case-by-cases basis, as determined by RUS.

### § 1752.16 Transfer of collateral and assumption of debt.

A transfer of collateral and assumption of debt may be approved subject to the conditions set forth in this section. In order to request assistance under this section, the Borrower must make a showing that the transfer of collateral and assumption of debt will improve the likelihood that the government will be repaid and maximize the Agency's recovery on such loans. Such actions will be subject to the following requirements:

(a) The transfer will not be disadvantageous to the Government, as determined by RUS;

(b) The Agency has concurred to plans for disposition of funds in any reserve account, including project construction bank accounts;

(c) The transferee will assume all of the Borrower's responsibilities regarding the loan(s) and will accept the original loan conditions, as well as any others that may be imposed by the Agency;

(d) There must be no lien, judgement, or similar claims of other parties against the loan collateral being transferred, and once transferred, such collateral may not be subject to the lien, judgement, or similar claims of other parties of the transferee;

(e) Title to all assets must be conveyed to the transferee; and

(f) The Borrower will comply with such other conditions as may be imposed by the Agency on a case-by-case basis, as determined by RUS.

### § 1752.17 Sale or exchange of loan collateral.

A cash sale of all or a portion of a Borrower's assets or an exchange of security property for Borrowers in a distressed situation may be approved subject to the conditions set forth in this section. In order to request assistance under this section, the Borrower must make a showing that the sale or exchange of collateral is in the best interest of the Government to avoid a substantial loss to the Government. Additionally, the following requirements must be met, as determined by RUS:

(a) If a sale of all of the assets, that the consideration is for the full amount of the debt or the present fair market value as determined by an independent appraiser that has been approved by RUS, and which addresses any conditions of the appraisal as may be imposed by RUS; and

(b) If the sale is for a portion of the assets, that the remaining property is adequate security for the loan and that the transaction will not adversely affect the Agency's security position; and provided that any proceeds remaining after paying reasonable and necessary selling expenses, as approved by the Agency in advance, are to be used for the following purposes:

(1) Repayment of the RUS debt, and other non-RUS debt if secured by a parity lien with the Agency; and/or

(2) Improvement of the broadband network or other facilities of the Borrower, including customer premise equipment and other equipment needed to upgrade the broadband network, if necessary to improve the Borrower's ability to repay the loan; and

(c) Any grant assets in the sale of collateral that were financed with Agency grants must follow the disposition rules as stated in the Loan Documents or Grant/Loan Documents.

### § 1752.18 Sale of the note.

In the event of one or more incidents of default by the Borrower that cannot or will not be cured within a reasonable period of time, the Agency may sell the note. A decision to sell the note may be made when the Agency determines that the monetary default cannot be cured through the other actions as outlined in this part, or it has been determined that it is in the best interest of the Agency. The decision to sell the note should be made as soon as possible when one or more of the following exist:

(a) A loan is 90 days behind on any scheduled payment and the Agency and Borrower have not been able to cure the delinquency through actions such as those contained in this part;

(b) It is determined that delaying sale of the note will jeopardize full recovery on the loan; or

(c) The Borrower is uncooperative in resolving the delinquency or the Agency has reason to believe the Borrower is not acting in good faith, and it would improve the position of the Agency to sell the note immediately.

### § 1752.19 Debt settlement.

Debts will not be settled directly by the Agency if:

(a) Referral to the Office of Inspector General and/or to Office of General Counsel is contemplated or pending because of suspected criminal violation;

(b) Civil action to protect the interest of the Government is contemplated or pending;

(c) An investigation for suspected fiscal irregularity is contemplated or pending;

(d) The Borrower is uncooperative in resolving the delinquency or the Agency has reason to believe the Borrower is not acting in good faith; or

(e) The debt has been referred to the Department of Justice, such as in bankruptcy proceedings.

### §§ 1752.20–1752.24 [Reserved]

### § 1752.25 Special terms.

If the Administrator determines the servicing actions in this part would not protect the Government's interest due to unique circumstances of the debtor, the Agency reserves the right to negotiate special terms to maximize the Government's recovery on the debt.

### § 1752.26 No rights to special servicing actions.

Nothing in this part should be assumed guaranteed as a right to the Borrower for any of the special servicing actions noted in this part.

### § 1752.27 Confidentiality of borrower information.

Borrowers are encouraged to identify and label any confidential and proprietary information contained in their applications. The Agency will protect confidential and proprietary information from public disclosure to the fullest extent authorized by applicable law, including the Freedom of Information Act, as amended (5 U.S.C. 552), the Trade Secrets Act, as amended (18 U.S.C. 1905), the Economic Espionage Act of 1996 (18 U.S.C. 1831 *et seq.*), and Communications Assistance for Law Enforcement Act (CALEA) (47 U.S.C. 1001 *et seq.*).

### § 1752.28 Interest accrual.

(a) The Agency may determine to stop accruing interest if the account has remained delinquent for a period of 18 months or more, and the Agency has determined, in its sole discretion, that it will not recover the full outstanding principal balance on the loan.

(b) Notwithstanding paragraph (a) of this section, the Administrator may waive the accrual of interest on any outstanding delinquent debt, if in the sole determination of the Administrator, such waiver facilitates and maximizes the Government's recovery of the debt, such as under a voluntary foreclosure by the Borrower.

### § 1752.29 Communications laws.

Borrowers must comply with all applicable Federal and state communications laws and regulations, including, for example, the Communications Act of 1934, as amended (47 U.S.C. 151 *et seq.*), the Telecommunications Act of 1996, as amended (Pub. L. 104–104, 110 Stat. 56 (1996), and CALEA. For further information see *http://www.fcc.gov.*

**§ 1752.30 Information collection and reporting requirements.**

Copies of all forms and instructions referenced in this part may be obtained from RUS. Data furnished by Borrowers will be used to determine eligibility for certain servicing actions. Furnishing the data is voluntary; however, the failure to provide data could result in a servicing action being denied or the Agency taking adverse action against the Borrower to collect funds. The collection of information is vital to RUS to ensure compliance with the provisions of this part. The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572–0153.

**§ 1752.31 Authorized signatories.**

Only the RUS Administrator can bind the Government to the expenditure of funds. Notwithstanding anything contained in this part, however, any settlement resulting in the reduction of $500,000 or more in payment to the Government, inclusive of attorney's fees, shall be approved by the Under Secretary for Rural Development, or higher.

**Chad Rupe,**

*Administrator, Rural Utilities Service.*

[FR Doc. 2020–01891 Filed 2–24–20; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Parts 160, 161, and 162

**[Docket No. APHIS–2017–0065]**

**RIN 0579–AE40**

### National Veterinary Accreditation Program

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations governing the National Veterinary Accreditation Program by clarifying the veterinary programs for which accredited veterinarians are authorized to perform duties under the Animal Health Protection Act. We are also adding and revising certain definitions and terms used in the regulations. These changes will update the program regulations.

**DATES:** Effective March 26, 2020.

**FOR FURTHER INFORMATION CONTACT:** Dr. Todd Behre, Coordinator, National Veterinary Accreditation Program; National Animal Disease Traceability and Veterinary Accreditation Center, APHIS Veterinary Services; (518) 281–2157; *todd.h.behre@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

Under the Animal Health Protection Act, or AHPA (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture is authorized to protect the health of U.S. livestock by preventing the introduction and interstate spread of diseases and pests of livestock and by eradicating such diseases from the United States when feasible. The Secretary may also establish a veterinary accreditation program consistent with the AHPA, which includes standards of conduct for accredited veterinarians. The administration of this program, known as the National Veterinary Accreditation Program (NVAP), has been delegated to the Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS). The NVAP allows private practitioners, once accredited by APHIS, to assist Federal veterinarians with performing certain tasks to control and prevent the spread of animal diseases throughout the United States and internationally. Title 9 of the Code of Federal Regulations (CFR), chapter I, subchapter J (parts 160 through 162, referred to below as the regulations), contains regulations for accreditation of veterinarians and suspension or revocation of accreditation.

On March 8, 2019, we published in the **Federal Register** (84 FR 8476–8479, Docket No. APHIS–2017–0065) a proposal [1] to amend the regulations governing the NVAP. We proposed to clarify the veterinary programs for which accredited veterinarians are authorized to perform duties under the AHPA and update certain definitions. We solicited comments concerning our proposal for 60 days ending May 7, 2019. We received five comments by that date. The comments were from veterinarians, State departments of agriculture, and a national veterinary medical association. The comments are discussed below.

#### General

A commenter, an accredited veterinarian, expressed concern about administrative obstacles associated with performing NVAP-related tasks. The commenter stated that these obstacles are caused by States and asked that APHIS help reduce the amount of ''red tape'' that accredited veterinarians experience by encouraging reciprocity agreements between States and taking other actions to reduce burden.

While APHIS works to minimize burden whenever practicable, we note that veterinary licensing requirements are controlled by, and specific to, individual States and vary according to the predominant animal industries and diseases of concern in a State, as well as each State's separate reporting and oversight requirements.

#### Definitions

In § 160.1, we proposed to revise the definition for *Category I animals* to clarify which animals fall under that category and revise the definition for *Category II animals* to read ''all animals.'' As we noted in the proposed rule, veterinarians accredited to work on Category II animals are authorized to perform duties on animals listed in both categories.

A commenter recommended that we revise the definition of *Category I animals* by adding ''Select animals, excluding . . .'' and removing ''All animals, except. . . .'' The commenter reasoned that the words ''All animals'' should be used exclusively for *Category II animals* because the definition actually includes all animals.

We acknowledge the commenter's reasoning but are making no changes to the proposed definitions. APHIS has been using the updated definitions in online training modules with no confusion observed as to which animals are included in each of the categories.

We also proposed to replace the term *Veterinarian-in-Charge* with *Program official* in §§ 160.1, 161.2(a), 161.4, 161.6(c), 162.11, and 162.12. We proposed this change to provide flexibility to cover changes to official titles in VS.

A commenter representing a national veterinary medical association stated that the current term *Veterinarian-in-Charge* should not be replaced with the proposed term *Program official.* The commenter noted that, unlike *Veterinarian-in-Charge,* the title of *Program official* could conceivably be held by a non-veterinarian who lacks the knowledge and training required of a veterinarian to competently assess or oversee animal health. The commenter cited a historical correspondence in APHIS–VS between job titles and job descriptions and stated that a non-veterinarian should not be in a position to provide oversight of Federal or other accredited veterinarians.

We agree with the commenter that officials designated to oversee

[1] To view the proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0065.*

veterinarians and perform official veterinary duties on behalf of APHIS should be veterinarians and that titles should generally reflect that fact. Accordingly, in § 160.1 and throughout subchapter J, we will not replace *Veterinarian-in-Charge* with *Program official* as proposed. Instead, we will remove all instances of *Veterinarian-in-Charge* and replace them with *Veterinary Official.* This change preserves the role of the veterinarian while allowing APHIS some flexibility in the duties of veterinarians holding the title. We will define *Veterinary Official* as the APHIS veterinarian who is assigned by the Administrator to supervise and perform the official work of APHIS in a State or group of States.

**Accreditation Requirements**

Among the requirements for NVAP accreditation, § 161.1(e)(2) states in part that the veterinarian must be licensed or legally able to practice veterinary medicine in the State in which the veterinarian wishes to perform accredited duties. We proposed adding to this requirement that an unlicensed veterinarian is legally able to practice veterinary medicine in a State provided that the veterinarian is granted written permission to do so by that State's veterinary licensing authority.

Two commenters raised concerns about our proposal to require written permission from the State to confirm that an unlicensed veterinarian is legally able to practice veterinary medicine in that State.

One of these commenters asked how APHIS would consider the status of an unlicensed laboratory animal veterinarian employed by a drug company when the company at which the veterinarian works is located in a State that excludes veterinarians who work on animals for their employer from the statutory definition of ''practice of veterinary medicine.'' The commenter stated that while a laboratory animal veterinarian is legally able to practice veterinary medicine at that company without a license, that person cannot get a letter from the State veterinary board allowing him or her to legally practice without a license because the State does not consider that veterinarian to be practicing veterinary medicine. The commenter recommended that APHIS accept a citation of the State statute exempting the lab veterinarian from licensing requirements in lieu of the State's written evidence permitting the veterinarian to legally practice veterinary medicine in that State without a license.

The other commenter, representing a State department of agriculture, similarly questioned the need to provide written permission as evidence of being legally able to practice veterinary medicine in her State. The commenter noted that regulations in her State provide several written exemptions from licensure requirements for veterinarians, including those employed by schools, institutions, foundations, business corporations, or associations. According to the commenter, veterinarians working under one of these exemptions can practice without a license under certain conditions. Although these exemptions are authorized by State law, the commenter noted that there is no individual authorization of veterinarians by the State's veterinary licensing authority. Instead, the State maintains records of veterinarians within a database that is accessible to APHIS–VS. The commenter considered this record to serve the same purpose as the written permission requirement but noted that the proposed requirement, as written, would not be considered sufficient to allow unlicensed, exempted veterinarians in the State to continue to be accredited. The commenter recommended that APHIS remove the written permission requirement from proposed §§ 161.1(e)(2) and 161.2(b), where it occurs in the same context.

As both of these commenters have indicated, there are State-specific regulations and practices that may not be compatible with our proposed requirement that the State provide written permission confirming that an unlicensed veterinarian is legally able to practice in that State. However, it is clear to us that the States discussed by the commenters have exemption provisions in place for unlicensed veterinarians to legally practice under certain conditions, and that there are different means by which APHIS can confirm an individual's status for the purposes of accreditation. Given these considerations, we are providing an additional means by which it can be shown that an unlicensed veterinarian is legally able to practice veterinary medicine in a State. While we are retaining written permission from the State as one means, APHIS' determination of a person's legal status to practice veterinary medicine in a State may also be obtained through reference to State statutes providing veterinary services for a veterinary employer such as a cooperative, corporation, laboratory, school, or other institution recognized by the State authority but not involving contact with animals owned by the public. We are revising §§ 161.1(e)(2) and 161.2(b) to include this option.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document. None of the changes to these regulations imposes new requirements.

**Executive Orders 12866 and 13771 and Regulatory Flexibility Act**

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

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 on the *Regulations.gov* website (see footnote 1 in this document for a link to *Regulations.gov*) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The mission of the NVAP is to provide accredited veterinarians with the information they need to ensure the health of U.S. livestock, poultry, and other animal populations and to protect the public's health and well-being. APHIS is amending the regulations governing the NVAP by adding, updating, or clarifying certain definitions and terminology in 9 CFR parts 160, 161, and 162 that pertain to veterinary accreditation. The amendments do not impose new regulatory requirements.

About 70,000 of the approximately 108,000 veterinarians in the United States are accredited by APHIS. According to the Small Business Administration, entities that provide veterinary services (classified under NAICS 541940) are considered to be small if they have $7,500,000 or less in annual receipts. Therefore, virtually all veterinarians are considered small entities. However, this rule will not impose new or additional burdens on APHIS accredited veterinarians or those veterinarians seeking accreditation. No economic impact is anticipated, as this is a purely administrative action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this final 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.

**Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

**Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements included in this rule are approved by the Office of Management and Budget (OMB) under OMB control number 0579–0297.

**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 final rule, please contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

**List of Subjects in 9 CFR Parts 160, 161, and 162**

Administrative practice and procedure, Reporting and recordkeeping requirements, Veterinarians.

Accordingly, we are amending 9 CFR parts 160, 161, and 162 as follows:

## PART 160—DEFINITION OF TERMS

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

**Authority:** 7 U.S.C. 8301–8317; 15 U.S.C. 1828; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 160.1 is amended as follows:

■ a. By adding, in alphabetical order, a definition for *Accreditation;*

■ b. In the definition of *Accredited veterinarian,* by removing ''B, C, and D'' and adding ''B, C, D, and G'' in its place;

■ c. By adding, in alphabetical order, a definition for *Authorization;*

■ d. By revising the definitions of *Category I animals, Category II animals,* and *Official certificate, form, record, report, tag, band, or other identification;*

■ e. By removing the definition of *Veterinarian-in-Charge;* and

■ f. By adding, in alphabetical order, a definition for *Veterinary Official.*

The additions and revisions read as follows:

**§ 160.1 Definitions.**

* * * * *

*Accreditation.* The action of the Administrator initially approving a veterinarian in accordance with the provisions of part 161 of this subchapter to perform functions specified in subchapters B, C, D, and G of this chapter, in one State.

* * * * *

*Authorization.* The action of the Administrator approving an accredited veterinarian in accordance with the provisions of part 161 of this subchapter to perform functions specified in subchapters B, C, D, and G of this chapter, in a State or States other than the State in which the veterinarian was initially accredited.

*Category I animals.* All animals except: Food and fiber species, horses, birds, farm-raised aquatic animals, all other livestock species, and zoo animals that can transmit exotic animal diseases to livestock.

*Category II animals.* All animals.

* * * * *

*Official certificate, document, seal, form, record, report, tag, band, or other identification.* Any certificate, document, seal, form, record, report, tag, band, or other identification, prescribed by statute or regulations, or prescribed by a State form approved by the Administrator, for use by an accredited veterinarian performing official functions under this subchapter.

* * * * *

*Veterinary Official.* The APHIS veterinarian who is assigned by the Administrator to supervise and perform the official work of APHIS in a State or group of States.

## PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

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

**Authority:** 7 U.S.C. 8301–8317; 15 U.S.C. 1828; 7 CFR 2.22, 2.80, and 371.4.

■ 4. Section 161.1 is amended as follows:

■ a. By revising paragraph (e)(2);

■ b. In paragraph (e)(4) introductory text by removing the word ''core''; and

■ c. In paragraph (g)(2)(xi) by removing ''B, C, and D'' and adding ''B, C, D, and G'' in its place.

The revision reads as follows:

**§ 161.1 Statement of purpose; requirements and application procedures for accreditation.**

* * * * *

(e) * * *

(2) The veterinarian is licensed to practice veterinary medicine in the State in which the veterinarian wishes to perform accredited duties. An unlicensed veterinarian is legally able to practice veterinary medicine in a State provided that the veterinarian is granted written authorization by that State's veterinary licensing authority or given legal authority through State statute to provide veterinary services for a veterinary employer (such as a cooperative, corporation, laboratory, or other institution recognized by the State authority but not involving contact with animals owned by the public, or a college or school of veterinary medicine). Such authorizations may limit accredited duties to specific geographical areas and/or activities within the State. APHIS will confirm the licensing or legal status of the applicant by contacting the State board of veterinary medical examiners or any similar State organization that maintains records of veterinarians licensed or otherwise legally able to practice in a State;

* * * * *

■ 5. Section 161.2 is amended as follows:

■ a. By revising the section heading;

■ b. In paragraph (a) by removing the words ''new State'' each time they occur and adding the words ''additional State'' in their place and removing the words ''Veterinarian-in-Charge'' each time they occur and adding the words ''Veterinary Official'' in their place;

■ c. By revising paragraph (b); and

■ d. In paragraph (c) by removing the words ''new State'' and adding the words ''additional State'' in their place.

The revisions read as follows:

**§ 161.2 Performance of accredited duties in additional States.**

* * * * *

(b) An accredited veterinarian may not perform accredited duties in a State in which the accredited veterinarian is not licensed or otherwise permitted by the State's veterinary licensing authority to practice veterinary medicine in that State without a license.

* * * * *

**§ 161.4 [Amended]**

■ 6. Section 161.4 is amended by removing the words ''Veterinarian-in-Charge'' each time they occur and adding the words ''Veterinary Official'' in their place.

**§ 161.6 [Amended]**

■ 7. Section 161.6 is amended by removing the words ''Veterinarian-in-Charge'' each time they occur and adding the words ''Veterinary Official'' in their place.

**§ 161.7 [Amended]**

■ 8. In § 161.7, paragraph (a) is amended by removing ''B, C, and D'' and adding ''B, C, D, and G'' in its place.

## PART 162—RULES OF PRACTICE GOVERNING REVOCATION OR SUSPENSION OF VETERINARIANS' ACCREDITATION

■ 9. The authority citation for part 162 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 15 U.S.C. 1828; 7 CFR 2.22, 2.80, and 371.4.

**§§ 162.11, 162.12, and 162.13 [Amended]**

■ 10. Sections 162.11, 162.12, and 162.13 are amended by removing the words ''Veterinarian-in-Charge'' each time they occur and adding the words ''Veterinary Official'' in their place.

Done in Washington, DC, this *19th* day of *February 2020.*

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2020–03718 Filed 2–24–20; 8:45 am]

**BILLING CODE 3410–34–P**

## CONSUMER PRODUCT SAFETY COMMISSION

**[Docket No. CPSC–2011–0019]**

**16 CFR Part 1224**

## Revisions to Safety Standard for Portable Bed Rails

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Direct final rule.

**SUMMARY:** In February 2012, the U.S. Consumer Product Safety Commission (CPSC) issued a consumer product safety standard for portable bed rails. The standard incorporated by reference the applicable ASTM voluntary standard. We are publishing this direct final rule revising the CPSC's mandatory standard for portable bed rails to incorporate by reference the most recent version of the applicable ASTM standard.

**DATES:** The rule is effective on May 20, 2020, unless we receive significant adverse comment by March 26, 2020. If we receive timely significant adverse comments, we will publish notification in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of May 20, 2020.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC–2011–0019, by any of the following methods:

*Electronic Submissions:* Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

*Written Submissions:* Submit written submissions in the following way: Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

*Instructions:* All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit electronically confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information please submit it according to the instructions for written submissions.

*Docket:* For access to the docket to read background documents or comments received, go to: *www.regulations.gov,* and insert the docket number, CPSC–2011–0019, into the ''Search'' box, and follow the prompts.

**FOR FURTHER INFORMATION CONTACT:** Justin Jirgl, Compliance Officer, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814–4408; telephone: 301–504–7814; email: *jjirgl@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:**

## A. Background

*1. Statutory Authority*

Section 104(b)(1)(B) of the Consumer Product Safety Improvement Act (CPSIA), also known as the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires these standards to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product.

The CPSIA also sets forth a process for updating CPSC's durable infant or toddler standards when the voluntary standard upon which the CPSC standard was based is changed. Section 104(b)(4)(B) of the CPSIA provides that if an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. In addition, the revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the **Federal Register**) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.

*2. The Portable Bed Rails Standard*

On February 29, 2012, the Commission published a final rule issuing a mandatory standard for portable bed rails that incorporated by reference the standard in effect at that time, ASTM F2085–12, *Standard Consumer Specification for Portable Bed Rails.* 77 FR 12182. The ASTM standard for portable bed rails, ASTM F2085, *Standard Consumer Safety Specification for Portable Bed Rails,* applies to portable bed rails intended to be installed on an adult bed to prevent children from falling out of bed. These bed rails are intended for children who can get in and out of an adult bed unassisted (typically from 2 to 5 years of age). The standard was codified in the Commission's regulations at 16 CFR part 1224. Since publication of ASTM F2085–12, the current mandatory standard, ASTM has published one revision to ASTM F2085. ASTM F2085–19 was approved and published in November 2019. ASTM officially notified the Commission of this revision on November 22, 2019. The rule is incorporating ASTM F2085–19 as the mandatory standard.

## B. Revisions to the ASTM Standard

Under section 104(b)(4)(B) of the CPSIA, unless the Commission determines that ASTM's revision of a voluntary standard that is a CPSC mandatory standard ''does not improve the safety of the consumer product covered by the standard,'' the revised voluntary standard becomes the new mandatory standard. As discussed below, the Commission determines that the changes made in ASTM F2085–19 are neutral with respect to the safety of portable bed rails. Therefore, the Commission will allow the revised voluntary standard to become effective as a mandatory consumer product safety standard under the statute, effective May 20, 2020.

*Differences Between 16 CFR Part 1224 and ASTM F2085–19*

1. Reapproval Ballot

ASTM has published only one revision since the 2012 version. However, in May 2019, ASTM passed a reapproval ballot that made minor editorial revisions. This reapproved standard, ASTM F2085–12R19, included the following changes:

- In section, 1.7 ''safety and health'' was changed to ''safety, health, and environmental.''
- Section 1.8 was added, stating that ASTM developed the standard in accordance with principles recognized by the World Trade Organization.
- Title of D3359 was updated from ''Test Methods for Measure Adhesion by Tape Test'' to ''Test Methods for Rating Adhesion by Tape Test.''
- In subsection 9.3, ''san'' was changed to ''sans'' (for ''sans serif'').

These changes all constitute minor editorial changes that do not have any impact on the safety of portable bedrails.

2. ASTM F2085–19

In November 2019, ASTM revised ASTM F2085–12R19. The resulting standard, ASTM F2085–19, includes the revisions listed above, as well as the changes below:

*Non-substantive changes*

- Two of the footnotes that were in Section 7, which provide explanatory information, such as how to measure thickness and the definition of the ''indentation load,'' have been moved to Notes within the text. Notes and footnotes are both considered to be nonmandatory text, for information only. ASTM's form and style guidelines say that the distinction is that footnotes are meant only for availability information (references, sources of supply) while notes are meant to provide additional (nonmandatory) information. Therefore, the ASTM editor moved the footnotes.
- Changes to unit expressions to bring the standard into accordance with ASTM form and style guidelines. For example, the revision added a repeater unit when expressing a range—1 in. to 2 in., instead of 1 to 2 in.

All of the non-substantive changes made in ASTM F2085–19 are neutral regarding safety for portable bed rails because they are editorial in nature.

*Substantive change*

The revisions that resulted in ASTM F2085–19 made one substantive change. This change affects test platform 2, which is a standard, twin size, innerspring, thick mattress covered by a sheet. The mattress was chosen to assess the influence of mattress thickness on bedrail performance. The sheet simulates common use patterns. ASTM F2085–12 specified the fiber content of the sheet as a white, 50/50 cotton/polyester blend. Reports from test labs have indicated difficulty sourcing a sheet that is marketed as a 50/50 blend and can be verified to be a 50/50 blend. Test labs requested that the sheet content change to 60/40 cotton/polyester, a blend more consistent with twin sheets on the consumer market, and therefore, easier to source. Before ASTM balloted this change, Engineering Sciences consulted with staff of the Laboratory Sciences Division of Mechanical Engineering (LSM), regarding the availability of 50/50 blend sheets. LSM staff concurred with the difficulty of sourcing a 50/50 blend sheet and reported no objections to the change.

CPSC does not anticipate that the change will affect safety. LSM staff notes that the standard continues to specify the thread count of the sheet as 100 to 300 threads per inch, and staff assesses the thread count range contributes more to friction than the specified change in fiber content. LSM staff has not observed any differences in testing qualitatively. Thus, staff believes that changing the sheet source from a 50/50 blend to a 60/40 blend would not

affect how a technician performs the test or alter the results of the testing. Therefore, we conclude that this change is neutral regarding safety while increasing the ease of sourcing the test materials.

**C. Incorporation by Reference**

The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to the final rule, ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, section A of this preamble summarizes the major provisions of the ASTM F2085–19 standard that the Commission incorporates by reference into 16 CFR part 1224. The standard is reasonably available to interested parties, and interested parties may purchase a copy of the standard from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; phone: 610–832–9585; *www.astm.org.* A copy of the standard can also be inspected at CPSC's Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923.

**D. Certification**

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. As noted, standards issued under section 104(b)(1)(B) of the CPSIA are ''consumer product safety standards.'' Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because portable bed rails are children's products, samples of these products must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA, the phthalates prohibitions in section 108 of the CPSIA and 16 CFR part 1307, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in section 104(d) of the CPSIA.

**E. Notice of Requirements**

In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission has previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing portable bed rails (77 FR 31102, May 24, 2012). The NOR provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing portable bed rails to 16 CFR part 1224. The NORs for all mandatory standards for durable infant or toddler products are listed in the Commission's rule, ''Requirements Pertaining to Third Party Conformity Assessment Bodies,'' codified at 16 CFR part 1112.

The revision to the test platform 2 provision (Section 7.1.2.1) changes the fiber content and color of the sheet covering the mattress, but does not require a new test or any changes to the test methodology. Testing laboratories that are currently CPSC-accepted, have demonstrated competence for testing in accordance with ASTM F2085–12, and will have the competence to source a new sheet and conduct the testing to the new standard under the revised standard ASTM F2085–19. Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F2085–12 to be capable of testing to ASTM F2085–19 as well. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected in the normal course of renewing their accreditation to update the scope of the testing laboratories' accreditation to reflect the revised standard.

**F. Direct Final Rule Process**

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA) generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds that notice and public procedure are ''impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). The Commission concludes that when the Commission updates a reference to an ASTM standard that the Commission has incorporated by reference under section 104(b) of the CPSIA, notice and comment are not necessary.

Under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM revises a standard that the Commission has previously incorporated by reference as a Commission standard for a durable infant or toddler product under section 104(b)(1)(b) of the CPSIA, that revision will become the new CPSC standard, unless the Commission determines that ASTM's revision does not improve the safety of the product. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC's standard by operation of law. The Commission is allowing ASTM F2085–19 to become CPSC's new standard. The purpose of this direct final rule is merely to update the reference in the Code of Federal Regulations (CFR) so that it reflects accurately the version of the standard that takes effect by statute. The rule updates the reference in the CFR, but under the terms of the CPSIA, ASTM F2085–19 takes effect as the new CPSC standard for portable bedrails, even if the Commission did not issue this rule. Thus, public comment will not impact the substantive changes to the standard or the effect of the revised standard as a consumer product safety standard under section 104(b) of the CPSIA. Under these circumstances, notice and comment are not necessary. In Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgating rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (August 18, 1995). ACUS recommended that agencies use the direct final rule process when they act under the ''unnecessary'' prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule because we do not expect any significant adverse comments.

Unless we receive a significant adverse comment within 30 days, the rule will become effective on May 20, 2020. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be one where the commenter explains why the rule would be inappropriate, including an assertion challenging the rule's underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change. As noted, this rule merely

updates a reference in the CFR to reflect a change that occurs by statute.

Should the Commission receive a significant adverse comment, the Commission would withdraw this direct final rule. Depending on the comments and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

**G. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) generally requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As explained, the Commission has determined that notice and comment are not necessary for this direct final rule. Thus, the RFA does not apply. We also note the limited nature of this document, which merely updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

**H. Paperwork Reduction Act**

The standard for portable bed rails contains information-collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The revisions made no changes to that section of the standard. Thus, the revisions will have no effect on the information-collection requirements related to the standard.

**I. Environmental Considerations**

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement where they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

**J. Preemption**

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA deems rules issued there under ''consumer product safety rules.'' Therefore, once a rule issued under section 104 of the CPSIA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

**K. Effective Date**

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standard organization revises a standard upon which a consumer product safety standard was based, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the **Federal Register**. The Commission has not set a different effective date. Thus, in accordance with this provision, this rule takes effect 180 days after we received notification from ASTM of revision to this standard. As discussed in the preceding section, this is a direct final rule. Unless we receive a significant adverse comment within 30 days, the rule will become effective on May 20, 2020.

**L. The Congressional Review Act**

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a ''major rule.'' Pursuant to the CRA, this rule does not qualify as a ''major rule,'' as defined in 5 U.S.C. 804(2). To comply with the CRA, the Office of the General Counsel will submit the required information to each House of Congress and the Comptroller General.

**List of Subjects in 16 CFR Part 1224**

Consumer protection, Imports, Incorporation by reference, Infants and children, Law enforcement, Safety, Toys.

For the reasons stated above, the Commission amends 16 CFR part 1224 as follows:

## PART 1224—SAFETY STANDARD FOR PORTABLE BED RAILS

■ 1. Revise the authority citation for part 1224 to read as follows:

**Authority:** Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (15 U.S.C. 2056a); Sec 3, Pub. L. 112–28, 125 Stat. 273.

■ 2. Revise § 1224.2 to read as follows:

**§ 1224.2 Requirements for portable bed rails.**

Each portable bed rail as defined in ASTM F2805–19, *Standard Consumer Safety Specification for Portable Bed Rails,* approved on November 1, 2019, must comply with all applicable provisions of ASTM F2805–19. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959 USA; phone: 610–832–9585; *www.astm.org.* You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

**Alberta E. Mills,**

*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. 2020–03106 Filed 2–24–20; 8:45 am]

**BILLING CODE 6355–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**17 CFR Parts 211, 231, and 241**

**[Release Nos. 33–10751; 34–88094; FR–87]**

## Commission Guidance on Management's Discussion and Analysis of Financial Condition and Results of Operations

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Guidance.

**SUMMARY:** We are providing guidance on key performance indicators and metrics in Management's Discussion and Analysis of Financial Condition and Results of Operations (''MD&A'').

**DATES:** Effective February 25, 2020.

**FOR FURTHER INFORMATION CONTACT:** Questions about specific filings should

be directed to staff members responsible for reviewing the documents the company files with the Commission. For general questions about this release, contact Angie Kim, Special Counsel, at (202) 551–3430, Office of Rulemaking, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:**

## I. Guidance on Key Performance Indicators and Metrics

We are providing guidance on disclosure of key performance indicators and metrics in MD&A (the ''Guidance'').[1] Item 303(a) of Regulation S–K requires disclosure of information not specifically referenced in the item that the company believes is necessary to an understanding of its financial condition, changes in financial condition and results of operations.[2] The item also requires discussion and analysis of other statistical data that in the company's judgment enhances a reader's understanding of MD&A.[3]

When proposing the current MD&A framework, the Commission noted that ''[f]or each business, there is a limited set of critical variables which presents the pulse of the business.'' [4] The Commission previously has emphasized that, when preparing MD&A, ''companies should consider whether disclosure of all key variables and other factors that management uses to manage the business would be material to investors, and therefore required.'' [5] The Commission also previously stated that companies should identify and address those key variables and other qualitative and quantitative factors that are peculiar to and necessary for an understanding and evaluation of the individual company.[6] Such information could constitute key performance indicators and other metrics.

Some companies also disclose non-financial and financial metrics when describing the performance or the status of their business. Those metrics can vary significantly from company to company and industry to industry, depending on various facts and circumstances. For example, some of these metrics relate to external or macro-economic matters, some are company or industry specific, and some are a combination of external and internal information. Some companies voluntarily disclose specialized, company-specific sales metrics, such as same store sales or revenue per subscriber. Some companies also voluntarily disclose environmental metrics, including metrics regarding the observed effect of prior events on their operations.

We remind companies that, when including metrics in their disclosure, they should consider existing MD&A requirements [7] and the need to include such further material information, if any, as may be necessary in order to make the presentation of the metric, in light of the circumstances under which it is presented, not misleading.[8] In this regard, a company should first consider the extent to which an existing regulatory disclosure framework applies, such as Generally Accepted Accounting Standards (''GAAP'') [9] or, for ''non-GAAP measures,'' Regulation G or Item 10 of Regulation S–K.[10] In addition, the company should consider what additional information may be

[1] MD&A is required by Item 303 of Regulation S–K (Management's Discussion & Analysis of Financial Condition and Results of Operations) [17 CFR 229.303], Item 5 of Form 20–F (Operating and Financial Review and Prospects) [17 CFR 249.220f], and Item 9 of Form 1–A [17 CFR 239.90].

While this release refers primarily to Item 303 of Regulation S–K, it also is intended to apply to MD&A drafted pursuant to Item 5 of Form 20–F and Item 9 of Form 1–A. The disclosure requirements for Item 5 of Form 20–F (Operating and Financial Review and Prospects) are substantively comparable to the MD&A requirements under Item 303 of Regulation S–K. *See* International Disclosure Standards, Release No. 33–7745 (Sept. 28, 1999) [64 FR 53900 (Oct. 5, 1999)], at 53904. The disclosure requirements for Item 9 of Form 1–A are also similar to the MD&A requirements under Item 303. *See* Amendments for Small and Additional Issues Exemptions Under the Securities Act (Regulation A), Release No. 33–9741 (Mar. 25, 2015) [80 FR 21805 (Apr. 20, 2015)], at 21830. Companies, including foreign private issuers, smaller reporting companies, and issuers relying on Regulation A, should consider this guidance based on their particular facts and circumstances.

[2] Item 303(a) of Regulation S–K [17 CFR 229.303(a)]. Concurrent with this Guidance we are proposing changes to Item 303. *See* Management's Discussion & Analysis, Selected Financial Data, and Supplementary Financial Information, Release No. 33–10750 (Jan. 30, 2020) (the ''Companion Proposing Release''). In the Companion Proposing Release, we propose adding a new Item 303(a) to state the purposes of MD&A. Current Item 303(a) is proposed to be Item 303(b).

[3] *See, e.g.,* Instruction 1 to Item 303(a) of Regulation S–K [17 CFR 229.303(a)]. In the Companion Proposing Release, we propose incorporating a portion of the substance of Instruction 1 into proposed Item 303(a).

[4] *See* Proposed Amendments to Annual Report Form; Integration of Securities Act Disclosure Systems, Release No. 33–6176, (Jan. 15, 1980) [45 FR 5972 (Jan. 24, 1980)], at 5979–5980.

[5] *See* Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operation, Release No. 33–8350 (Dec. 19, 2003) [68 FR 75056 (Dec. 29, 2003)], at 75060. Information is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision. *See TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438 (1976) (''TSC Industries'') at 449 (further explaining that information is material if there is a substantial likelihood that disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ''total mix'' of information available). The definitions of ''material'' in Rule 12b–2 of the Exchange Act and Rule 405 of the Securities Act, are consistent with *TSC Industries.*

[6] *Id.* (quoting Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, Release No. 33–6835 (May 18, 1989) [54 FR 22427 (May 24, 1989)], which quotes Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33–6349 (Sept. 28, 1981) [*not published in the* ***Federal Register***]).

[7] *See* footnotes 2 and 3 above and corresponding text. The company should provide a narrative that enables investors to see a company ''through the eyes of management,'' so these metrics should not deviate materially from metrics used to manage operations or make strategic decisions.

[8] *See* Rule 408(a) [17 CFR 230.408(a)] and Rule 12b–20 [17 CFR 240.12b–20].

[9] This would include subsets of line items presented on the face or in the footnotes to the financial statements and ratios or statistical measures calculated using exclusively measures calculated or disclosed pursuant to GAAP. Here, we use the term GAAP to refer to the *FASB Accounting Standards Codification* or other comprehensive bases of accounting used in primary financial statements filed with the Commission.

[10] *See* Regulation G [17 CFR 244.100–244.102]. *See also* Item 10(e) of Regulation S–K. [17 CFR 229.10(e)]. Item 10(e)(4) of Regulation S–K states that, for purposes of Item 10(e), non-GAAP financial measures exclude operating and other statistical measures; and ratios or statistical measures calculated using exclusively one or both of (i) financial measures calculated in accordance with GAAP, and (ii) operating measures or other measures that are not non-GAAP financial measures. The Commission has stated that operating and other statistical measures such as unit sales, numbers of employees, numbers of subscribers, or numbers of advertisers are not non-GAAP financial measures. *See* Conditions for Use of Non-GAAP Financial Measures, Release No. 33–8176 (Jan. 22, 2003) [68 FR 4819 (Jan. 30, 2003)].

necessary to provide adequate context for an investor to understand the metric presented.[11] We would generally expect, based on the facts and circumstances, the following disclosures to accompany the metric:

- A clear definition of the metric and how it is calculated;
- A statement indicating the reasons why the metric provides useful information to investors; and
- A statement indicating how management uses the metric in managing or monitoring the performance of the business.

The company should also consider whether there are estimates or assumptions underlying the metric or its calculation, and whether disclosure of such items is necessary for the metric not to be materially misleading.

If a company changes the method by which it calculates or presents the metric from one period to another or otherwise, the company should consider the need to disclose, to the extent material: (1) The differences in the way the metric is calculated or presented compared to prior periods, (2) the reasons for such changes, (3) the effects of any such change on the amounts or other information being disclosed and on amounts or other information previously reported, and (4) such other differences in methodology and results that would reasonably be expected to be relevant to an understanding of the company's performance or prospects. Depending on the significance of the change(s) in methodology and results, the company should consider whether it is necessary to recast prior metrics to conform to the current presentation and place the current disclosure in an appropriate context.

Additionally, we remind companies of the requirement to maintain effective disclosure controls and procedures.[12] Effective controls and procedures are important when disclosing material key performance indicators or metrics that are derived from the company's own information. When key performance indicators and metrics are material to an investment or voting decision, the company should consider whether it has effective controls and procedures in place to process information related to the disclosure of such items to ensure consistency as well as accuracy.[13]

## II. Codification Update

The ''Codification of Financial Reporting Policies'' announced in Financial Reporting Release 1 (April 15, 1982) [47 FR 21028] is updated by adding new Section 501.16, captioned ''Additional Guidance on Key Performance Indicators and Metrics'' to the Financial Reporting Codification and under that caption including the text in Section I of this release.

The Codification is a separate publication of the Commission. It will not be published in the **Federal Register** or Code of Federal Regulations.

## III. Other Matters

Pursuant to the Congressional Review Act,[14] the Office of Information and Regulatory Affairs has designated this guidance as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 17 CFR Parts 211, 231, and 241

Securities.

### Amendments to the Code of Federal Regulations

For the reasons set forth above, the Commission is amending title 17, chapter II, of the Code of Federal Regulations as set forth below:

## PART 211—INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS

■ 1. The authority citation for part 211 continues to read as follows:

**Authority:** 15 U.S.C. 77g, 15 U.S.C. 77s(a),15 U.S.C. 77aa(25) and (26), 15 U.S.C. 78c(b), 17 CFR 78l(b) and 13(b), 17 CFR 78m(b) and 15 U.S.C. 80a–8, 30(e) 15 U.S.C. 80a–29(e), 15 U.S.C. 80a–30, and 15 U.S.C. 80a–37(a).

■ 2. The table in subpart A is amended by adding an entry for Release No. 87 at the end of the table to read as follows:

### Subpart A—Financial Reporting Releases

| Subject | Release No. | Date | Fed. Reg. Vol. and page |
|---|---|---|---|
| * * * * * * * | | | |
| Commission Guidance on Management's Discussion and Analysis of Financial Condition and Results of Operations. | 87 | January 30, 2020 ..... | [insert FR citation of publication]. |

[11] Examples of metrics to which this Guidance is intended to apply include, but are not limited to: Operating margin; same store sales; sales per square foot; total customers/subscribers; average revenue per user; daily/monthly active users/usage; active customers; net customer additions; total impressions; number of memberships; traffic growth; comparable customer transactions increase; voluntary and/or involuntary employee turnover rate; percentage breakdown of workforce (*e.g.,* active workforce covered under collective bargaining agreements); total energy consumed; and data security measures (*e.g.,* number of data breaches or number of account holders affected by data breaches).

[12] *See* Rule 13a–15 and Rule 15d–15 [17 CFR 240.13a–15 and 17 CFR 240.15d–15]. Pursuant to Exchange Act Rules 13a–15 and 15d–15, a company's principal executive officer and principal financial officer must make certifications regarding the maintenance and effectiveness of disclosure controls and procedures. These rules define ''disclosure controls and procedures'' as those controls and procedures designed to ensure that information required to be disclosed by the company in the reports that it files or submits under the Exchange Act is (1) ''recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms,'' and (2) ''accumulated and communicated to the company's management . . . as appropriate to allow timely decisions regarding required disclosure.''

[13] *See id.* As we have stated before, a company's disclosure controls and procedures should not be limited to disclosure specifically required, but should also ensure timely collection and evaluation of ''information potentially subject to [required] disclosure,'' ''information that is relevant to an assessment of the need to disclose developments and risks that pertain to the [company's] businesses,'' and ''information that must be evaluated in the context of the disclosure requirement of Exchange Act Rule 12b–20.'' Certification of Disclosure in Companies' Quarterly and Annual Reports, Release No. 33–8124 (Aug. 28, 2002) [67 FR 57275 (Sept. 9, 2002)].

[14] 5 U.S.C. 801 *et seq.*

## PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 3. The authority citation for part 231 is added to read as follows:

**Authority:** 15 U.S.C. 77a *et seq.*

■ 4. Part 231 is amended by adding an entry for Release No. 33–10751 at the end of the table to read as follows:

| Subject | Release No. | Date | Fed. Reg. Vol. and page |
|---|---|---|---|
| * * * | * | * | * * |
| Commission Guidance on Management's Discussion and Analysis of Financial Condition and Results of Operations. | 33–10751 | January 30, 2020 | [insert FR citation of publication]. |

## PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 5. The authority citation for part 241 continues to read as follows:

**Authority:** 15 U.S.C. 78a *et seq.*

■ 6. Part 241 is amended by adding an entry for Release No. 34–88094 at the end of the table to read as follows:

| Subject | Release No. | Date | Fed. Reg. Vol. and page |
|---|---|---|---|
| * * * | * | * | * * |
| Commission Guidance on Management's Discussion and Analysis of Financial Condition and Results of Operations. | 34–88094 | January 30, 2020 | [insert FR citation of publication]. |

By the Commission.

Dated: January 30, 2020.

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2020–02296 Filed 2–24–20; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Parts 2 and 38

**[Docket No. RM05–5–025; Docket No. RM05–5–026; Docket No. RM05–5–027; Order No. 676–I]**

## Standards for Business Practices and Communication Protocols for Public Utilities

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is revising its regulations to incorporate by reference, with certain enumerated exceptions, the latest version (Version 003.2) of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) as mandatory enforceable requirements. The Commission is adopting this latest version instead of WEQ Version 003.1, which was the subject of an earlier notice of proposed rulemaking. The Commission declines to adopt the proposal to remove the incorporation by reference of the WEQ–006 Manual Time Error Correction Business Practice Standards as adopted by NAESB.

**DATES:** *Effective date:* This rule is effective April 27, 2020.

*Compliance dates:* Public utilities must make a compliance filing to comply with the requirements of this final rule through eTariff no later than May 26, 2020. The Commission will set an effective date for the proposed tariff changes in the order(s) on the compliance filings, but no earlier than July 27, 2020.

*Incorporation by reference:* The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of April 27, 2020.

**FOR FURTHER INFORMATION CONTACT:**

Michael P. Lee (technical issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6548

Michael A. Chase (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6205

**SUPPLEMENTARY INFORMATION:**

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1. The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Federal Power Act (FPA) [1] to incorporate by reference into its regulations as mandatory enforceable requirements, with certain enumerated exceptions, the latest version (Version 003.2) of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB), filed with the Commission as a package on December 8, 2017 (December 8 Filing), and includes minor clarifications and updates submitted by NAESB on June 5, 2019, and July 23, 2019.

2. The WEQ Version 003.2 Standards build upon the standards included in the WEQ Version 003.1 Standards and include, in their entirety, the modifications submitted to the Commission in WEQ Version 003.1, which were the subject of an earlier notice of proposed rulemaking, with the addition of certain revisions and corrections.[2]

3. In this final rule, the Commission will not adopt the NOPR proposal to incorporate by reference NAESB's latest version of the WEQ–006 Manual Time Error Correction Business Practice Standards. Version 003.2 of NAESB's WEQ–006 Manual Time Error Correction Business Practice Standards proposes to retire the Time Error Correction Business Practice Standard, which have been the subject of a separate notice of proposed rulemaking.[3] As explained below, the proposal to retire the Manual Time Error Correction Business Practice Standard has not been adequately supported by NAESB.

4. Additionally, this final rule updates NAESB's Smart Grid Standards (set out in Standards WEQ–018 and WEQ–019) that the Commission listed for informational purposes in Part 2 of the Commission's Regulations, to match the latest iteration of those standards. These revisions update earlier versions of the WEQ–018 and WEQ–019 Standards that the Commission previously listed in Part 2 of our regulations as non-mandatory guidance at 18 CFR 2.27 in Order No. 676–H.[4]

5. Finally, the Commission is incorporating by reference the WEQ–022 Electric Industry Registry (EIR) Business Practice Standards, but declines to incorporate by reference in its entirety the WEQ–023 Modeling Business Practice Standards. In WEQ Version 003.1, NAESB developed these two new suites of standards in coordination with the North American Electric Reliability Corporation (NERC).[5] These two proposals would establish: (1) NAESB EIR business practice standards that replace the NERC Transmission System Information Networks (TSIN) as the tool to be used by wholesale electric markets to conduct electronic transactions via electronic tagging (e-Tags); and (2) Modeling Business Practice Standards to support and complement NERC's proposed retirement of its ''MOD A'' Reliability Standards.[6] In this final rule, the Commission is incorporating by reference the WEQ–023 standards that were moved from the WEQ–001 Standards by the changes made to WEQ Version 003.1. The Commission declines to adopt the remaining WEQ–023 Modeling Business Practice Standards as they are the subject of a separate proceeding.

## I. Background

6. NAESB is a non-profit standards development organization established in January 2002 that serves as an industry forum for the development and promotion of business practice standards that promote a seamless marketplace for wholesale and retail natural gas and electricity. Since 1995, NAESB and its predecessor, the Gas Industry Standards Board, have been accredited members of the American National Standards Institute (ANSI), complying with ANSI's requirements that its standards reflect a consensus of the affected industries.

7. NAESB's standards include business practices intended to standardize and streamline the transactional processes of the natural gas and electric industries, as well as communication protocols and related standards designed to improve the efficiency of communication within each industry. NAESB supports the Wholesale Electric Quadrant (WEQ), the Wholesale Gas Quadrant, and the Retail Market Quadrant.[7] All participants in the natural gas and electric industries are eligible to join NAESB and participate in standards development.

8. NAESB develops its standards under a consensus process so that the standards draw support from a wide range of industry members. NAESB's procedures are designed to ensure that all industry members can have input into the development of a standard, whether or not they are members of

[1] 16 U.S.C. 791a, *et seq.* (2018).

[2] NAESB filed WEQ Version 003.1 of the Standards for Business Practices and Communication Protocols for Public Utilities as a package on October 26, 2015 (October 26 Filing). *See Standards for Business Practices and Communication Protocols for Public Utilities,* Notice of Proposed Rulemaking, 81 FR 49580 (July 28, 2016), 156 FERC ¶ 61,055 (2016) (WEQ Version 003.1 NOPR).

[3] *Standards for Business Practices and Communication Protocols for Public Utilities,* Notice of Proposed Rulemaking, 83 FR 51654 (Oct. 12, 2018), 165 FERC ¶ 61,007 (2018) (Time Error Correction NOPR).

[4] *See Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–H, 79 FR 56,939 (Oct. 24, 2014), 148 FERC ¶ 61,205, at P 77 (2014).

[5] NERC is the Commission-certified ''electric reliability organization'' responsible for developing and enforcing mandatory Reliability Standards. *See* section 215 of the Federal Power Act, 16 U.S.C. 824o (2018).

[6] In a February 19, 2014 petition, NERC proposed to retire Reliability Standards MOD–001–1a, MOD–004–1, MOD–008–1, MOD–028–2, MOD–029–1a, and MOD–030–2 and requested approval of new Reliability Standard MOD–001–2. Generally, the ''MOD A'' series of NERC Reliability Standards pertain to transmission system modeling. The Commission issued a notice of proposed rulemaking in Docket No. RM14–7–000 that addressed NERC's proposal, and the matter is currently pending before the Commission. *Modeling, Data, and Analysis Reliability Standards,* Notice of Proposed Rulemaking, 79 FR 36269 (June 26, 2014), 147 FERC ¶ 61,208 (2014) (MOD NOPR). In a June 2, 2019 filing, NERC submitted a notice of withdrawal for its petition for approval of the proposed Reliability Standard MOD–001–2 to replace the MOD A Standards in Docket No. RM14–7–000.

[7] The retail gas quadrant and the retail electric quadrant were combined into the retail markets quadrant. NAESB continues to refer to these working groups as ''quadrants'' even though there are now only three.

NAESB, and each standard NAESB adopts is supported by a consensus of the relevant industry segments. Standards that fail to gain consensus support are not adopted. NAESB's consistent practice has been to submit a report to the Commission after it has revised existing business practice standards or has developed and adopted new business practice standards. NAESB's standards are voluntary standards, which become mandatory for public utilities upon incorporation by reference by the Commission.

9. In Order No. 676, the Commission not only adopted business practice standards and communication protocols for the wholesale electric industry, it also established a formal ongoing process for reviewing and upgrading the Commission's Open Access Same Time Information System (OASIS) standards and other wholesale electric industry business practice standards. In later orders in this series, the Commission incorporated by reference: (1) The Version 001 Business Practice Standards; [8] (2) the Version 002.1 Business Practice Standards; [9] (3) business practice standards categorizing various demand response products and services; [10] (4) OASIS-related Business Practice Standards related to Demand Side Management and Energy Efficiency; [11] and (5) the Version 003 Business Practice Standards.[12]

10. NAESB informed the Commission of the changes it had made to its Version 003 standards in its October 26 Filing to the Commission. NAESB adopted certain new and revised WEQ Version 003.1 Business Practice Standards based on developments involving NERC. In part, NAESB developed the WEQ–023 Modeling Business Practice Standards in response to a NERC petition to delete and retire the six ''MOD A'' Reliability Standards. NERC had previously filed a petition with the Commission on February 10, 2014, proposing to retire NERC's six MOD A Reliability Standards and replace them with Reliability Standard MOD–001–2, which NERC stated will focus exclusively on the reliability aspects of Available Flowgate Capability (AFC) and Available Transfer Capability (ATC). On February 7, 2014, NERC submitted a request to NAESB asking NAESB to consider adopting standards that address the commercial and business aspects of the MOD standards proposed for retirement. NAESB subsequently developed the WEQ–023 Business Practice Standards to support and complement the proposed retirement of the MOD A Reliability Standards.

11. The WEQ–023 Business Practice Standards specify the requirements for calculating ATC and AFC and support the tasks of reporting on the commercial aspects of these calculations.[13] WEQ–023 also includes two new requirements not previously included in the NERC Reliability Standards related to contract path management. These two standards, WEQ–023–1.4 and WEQ–023–1.4.1, limit the amount of firm transmission service across a path between balancing authorities to the contract path limit for that given path.

12. After consideration of the October 26 Filing, the Commission issued the WEQ Version 003.1 NOPR on July 21, 2016, wherein the Commission proposed to incorporate the WEQ Version 003.1 Standards, with certain enumerated exceptions. In the WEQ Version 003.1 NOPR, the Commission announced that it will address separately NAESB's WEQ–023 Modeling Business Practice Standards, which concern technical issues affecting ATC/AFC calculation for wholesale electric transmission services.[14]

13. In response to the WEQ Version 003.1 NOPR, eight stakeholders filed comments.[15] A number of comments expressed general support for the Commission's proposals in the WEQ Version 003.1 NOPR, and no comments were received opposing the basic direction of the NOPR, although commenters did make suggestions on several specific details of the NOPR proposals.

14. On May 27, 2017, NAESB filed a report with the Commission [16] stating that it ''reserved'' the WEQ–006 Manual Time Error Correction Standards to correspond to the NERC retirement of Reliability Standard BAL–004–0 Time Error Correction.[17] NERC continues to provide Reliability Coordinators serving as time monitors in the North American Interconnections with a time monitoring reference document that specifies how manual time error corrections are to be implemented if needed to resolve time error issues and outlines procedural responsibilities assigned to the time monitor.[18] NERC provides the time monitoring reference document for guidance, and the information therein does not reflect binding norms or mandatory requirements.[19]

15. On December 8, 2017, NAESB filed the WEQ Version 003.2 Standards. The WEQ Version 003.2 Standards build upon the standards included in the WEQ Version 003.1 Standards and include, in their entirety, the modifications submitted to the Commission in WEQ Version 003.1, which were the subject to the WEQ Version 003.1 NOPR, with the addition of certain revisions and corrections. After consideration of the December 8 Filing, the Commission issued the WEQ Version 003.2 NOPR on May 16, 2019, wherein the Commission proposed to incorporate the WEQ Version 003.2 Standards, with certain enumerated exceptions.[20]

16. On June 5, 2019, NAESB submitted informational comments in the WEQ 003.2 docket to inform the Commission of ongoing NERC and NAESB coordination efforts, and clarified that it had reserved certain WEQ–001 OASIS Business Practice Standards included as part of WEQ Version 003.2 to avoid duplication with

[8] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–C, 73 FR 43,848, (July 29, 2008), 124 FERC ¶ 61,070 (2008), *reh'g denied,* Order No. 676–D, 124 FERC ¶ 61,317 (2008).

[9] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–E, 74 FR 63,288 (Dec. 3, 2009), 129 FERC ¶ 61,162 (2009). This order also incorporated revisions made in response to Order Nos. 890, 890–A, and 890–B. *See Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, 118 FERC ¶ 61,119, *order on reh'g,* Order No. 890–A, 121 FERC ¶ 61,297 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228, *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (2009).

[10] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–F, 75 FR 20,901 (Apr. 22, 2010), 131 FERC ¶ 61,022 (2010).

[11] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–G, 78 FR 14,654 (Mar. 7, 2013), 142 FERC ¶ 61,131 (2013). In this rule, the Commission incorporated by reference into its regulations updated business practice standards adopted by NAESB's WEQ to categorize various products and services for demand response and energy efficiency and to support the measurement and verification of these products and services in organized wholesale electric markets.

[12] *See* Order No. 676–H, 148 FERC ¶ 61,205 (2014).

[13] NAESB October 26 Filing at 3.

[14] *See* WEQ Version 003.1 NOPR, 156 FERC ¶ 61,055 at P 42.

[15] Commenters on the WEQ Version 003.1 NOPR, and the abbreviations used in this final rule to identify them, are listed in the Appendix.

[16] NAESB Status Report on the Reservation of WEQ–006 Manual Time Error Correction Business Practice Standards, March 27, 2017 (March 27 Filing), Docket Nos RM05–000 and RD17–1–000.

[17] *See N. Amer. Elec. Reliability Corp.,* Docket No. RD17–1–000 (Jan. 18, 2017) (delegated order). The delegated letter order approved NERC's Nov. 10, 2016 filing of the petition for approval of retirement of then-effective Reliability Standard BAL–004–0.

[18] NERC, Time Monitoring Reference Document—Version 4 (approved by the NERC Operating Committee on Sept. 14, 2018).

[19] *Id.* at n.1.

[20] *See Standards for Business Practices and Communication Protocols for Public Utilities,* Notice of Proposed Rulemaking, 84 FR 24,050 (May 16, 2019), 167 FERC ¶ 61,127 (2019) (WEQ Version 003.2 NOPR).

the WEQ–023 Modeling Business Practice Standards.

17. On July 23, 2019, NAESB submitted informational comments in response to the WEQ Version 003.2 NOPR stating that a minor correction to the WEQ–003–0 OASIS Data Dictionary was approved to remove references to two data elements and their definitions.[21] The removal to the references occurred as a result of NAESB's ongoing coordination activities with NERC.

## II. Discussion

### *A. Overview*

18. The specific revised or new NAESB business practice standards that we incorporate by reference in this final rule are the following WEQ standards:

| WEQ | Business practice standards |
|---|---|
| 000 | Abbreviations, Acronyms, and Definition of Terms. |
| 001 | Open Access Same-Time Information System (OASIS), OASIS Version 2.2.[22] |
| 002 | OASIS Standards and Communication Protocols (S&CP), OASIS Version 2.2. |
| 003 | OASIS S&CP Data Dictionaries, OASIS Version 2.2. |
| 004 | Coordinate Interchange. |
| 006 | Manual Time Error Correction. |
| 008 | Transmission Loading Relief (TLR)—Eastern Interconnection. |
| 012 | Public Key Infrastructure (PKI). |
| 013 | OASIS Implementation Guide, Version 2.2. |
| 015 | Measurement and Verification of Wholesale Electricity Demand Response. |
| 022 | Electric Industry Registry (EIR). |
| 023 | Modeling. |

19. These standards establish a set of business practice standards and communication protocols for the electric industry that will continue to enable industry members to achieve efficiencies by streamlining utility business and transactional processes and communication procedures. All of these standards, except for Standards WEQ–022 and WEQ–023, update and replace standards that the Commission previously incorporated by reference in Order No. 676–H. In addition, in this final rule we update our reference to Standard WEQ–019 in Part 2 of our regulations, which houses statements of general policy and interpretations of the Commission, so that we refer to the latest version of that standard.[23]

20. In keeping with the prior practice that the Commission adopted in Order No. 676–H, we are requiring public utilities and those entities with reciprocity tariffs to modify their open access transmission tariffs (OATTs) to include the WEQ standards that we are incorporating by reference. In order to comply with this final rule, public utilities and entities with reciprocity tariffs must make a compliance filing through eTariff no later than 90 days from the date the final rule is published in the **Federal Register**, using an indeterminant effective date (12/31/9998) for the tariff records. The Commission will establish an effective date for the proposed tariff changes in the order(s) on the compliance filings no earlier than five months from the date the final rule is published in the **Federal Register**.[24] Should any public utility that has previously been granted a waiver of the regulations believe that its circumstances warrant a continued waiver, the public utility may file a request for a waiver wherein the public utility can detail the circumstances that it believes warrant a waiver.[25] In its request for continued waiver, the public utility must include the date, Docket No. of the order(s) previously granting the waiver(s), and an explanation for why the waiver(s) was initially granted by the Commission. Any waiver requests must be filed at the same time with the public utility's compliance filing or in a separate FPA section 205 filing.

21. As the Commission has explained in prior orders, NAESB approved the standards under its consensus procedures.[26] Adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself must conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In section 12(d) of the National Technology Transfer and Advancement Act of 1995, Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, to carry out policy objectives or activities.[27]

### *B. Issues Raised by Commenters*

22. Eight stakeholders filed comments in response to the WEQ Version 003.1 NOPR. Eight stakeholders also filed comments in response to the WEQ Version 003.2 NOPR. Several comments filed in response to the WEQ Version 003.1 NOPR and WEQ Version 003.2 NOPR expressed general support for the Commission's proposals and no comments were received opposing the basic direction of the two NOPRs, although comments did make suggestions on several specific details of the NOPR proposals. Comments were also filed in response to the Time Error Correction NOPR by five commenters. Commenters were divided with regard to the Commission's proposal to remove the incorporation by reference of the

[21] Both data elements, PROCEDURE_NAME and PROCEDURE_LEVEL, contain references to the retired NERC Reliability Standards IRO–006–TRE–1—IROL and SOL Mitigation in the ERCOT Region, approved by the Commission for retirement on January 29, 2019.

[22] As discussed later in this final rule, the regulatory text accompanying our WEQ Version 003.1 NOPR erroneously proposed to exclude from incorporation several standards in the WEQ–001 suite of standards and also erroneously proposed the incorporation by reference of the entirety of Standard WEQ–023, even though the preamble makes clear that we did not intend to incorporate this standard. As discussed later in this final rule, we correct these errors herein.

[23] The references to the other smart grid standards that we list informationally in Part 2 of our regulations, at 18 CFR 2.27 (2019), as non-mandatory guidance, are unchanged and do not require updating. These are Standards WEQ–016, WEQ–017, and WEQ–020. We are listing for informational purposes as non-mandatory guidance Standard WEQ–018. We also note that the WEQ Version 003.1 NOPR, at P 49, in discussing Standard WEQ–019, referred to the ''International Electrotechnical Commission Information Model.'' We clarify that the full name of this model is the ''International Electrotechnical Commission Common Information Model.''

[24] As we explained in Order No. 676–H, at n.26, to the extent a public utility's OASIS obligations are administered by an independent system operator (ISO) or regional transmission operator (RTO) and are not covered in the public utility's OATT, the public utility will not need to modify its OATT to include the OASIS standards. Such a public utility will, however, be required to comply with these standards unless granted a waiver by the Commission. The business practice standards that we incorporate by reference into our regulations in this final rule govern the terms and conditions that public utilities must include in their OATTs and the transactions that entities enter with public utilities under these OATTs must be in accordance with the incorporated standards.

[25] Order No. 676–E, 129 FERC ¶ 61,162 at P 107.

[26] *See* Order No. 676–H at P 21, n.27 (''WEQ's procedures ensure that all industry members can have input into the development of a business practice standard, whether or not they are members of NAESB, and each standard it adopts is supported by a consensus of the seven industry segments: Transmission, generation, marketer/brokers, distribution/load serving entities, end users, independent grid operators/planners, and technology services. Under the WEQ process, for a standard to be approved, it must receive a super-majority vote of 67 percent of the members of the WEQ's Executive Committee with support from at least 40 percent of each of the seven industry segments. For final approval, 67 percent of the WEQ's general membership must ratify the standards.'').

[27] Public Law No. 104–113, 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

NAESB WEQ–006 Manual Time Error Correction Business Practice Standards. One commenter, Dr. Hardis, argued that his comments should be considered a complaint pursuant to 16 U.S.C. 824o(d)(3), and argued that the Commission should remand the matter of reliability standard BAL–004 back to NERC for reconsideration.

1. Treatment of Requests for Redirects

a. Request for Comments

23. In *Dynegy Power Marketing, Inc,*[28] the Commission established its policy on a customer's right to keep its contractual rights to point-to-point firm transmission service on the original path it has reserved while the customer's request for a redirect is pending. In the WEQ Version 003.1 NOPR, the Commission invited comment on whether the Commission should extend the *Dynegy* policy to both conditional original (parent) reservations for firm transmission service and non-firm transmission service.[29] In *Dynegy,* the Commission held that a transmission customer receiving firm transmission service does not lose its rights to its original path until the redirect request satisfies all of the following criteria: (1) It is accepted by the transmission provider; (2) it is confirmed by the transmission customer; and (3) it passes the conditional reservation deadline under section 13.2 of the transmission provider's OATT. The Commission's concern was that a redirecting customer would lose its rights to the original parent path upon confirmation of a redirect request and be left with no transmission service during the redirect period if the requested redirect was preempted by a competing service request.

24. The NAESB Version 003.1 WEQ–001 business practice standards propose to permit a transmission customer to redirect point-to-point transmission service on a firm basis (WEQ–001–9) from unconditional parent reservations. While the standards do not explicitly permit redirects on a firm or non-firm basis from conditional parent reservations still subject to competition, the proposed standards include an option allowing individual transmission providers to implement alternative practices to the NAESB standards that apply to redirects on a firm basis from parent reservations that are conditional (text of WEQ–001–9 preamble).[30]

25. In the WEQ Version 003.1 NOPR, the Commission explained that the negative effects associated with the potential loss of a customer's parent path when the parent reservation is conditional and subject to competition is arguably less compelling than when the parent reservation is unconditional. The Commission then invited comment on whether the Commission should extend the *Dynegy* policy to both conditional parent reservations for firm transmission service and non-firm transmission service.[31] To aid the Commission's consideration of this issue, the Commission referenced four redirect issues on which NAESB stakeholders were unable to reach consensus and invited comments on whether the Commission should adopt regulations governing the business practices to be followed for requests for redirects from conditional parent reservations for short-term firm transmission service and for non-firm transmission service. These issues are: (1) The treatment of a firm redirect for transmission service following the preemption of the conditional parent reservation; (2) the circumstances under which a firm redirect for transmission service may return to the conditional parent reservation; (3) the number of subsequent firm redirects for transmission service that can stem from the original firm redirect for transmission service; and (4) the proper treatment of requests to redirect requests for non-firm transmission service. In the WEQ Version 003.2 NOPR, the Commission proposed to adopt the NAESB standards with the exception of the text from the WEQ–001–9 preamble, which would allow the implementation of alternative practices.[32]

b. Comments

26. Virtually all the comments received on this subject oppose the option of extending the *Dynegy* redirect policy to either conditional parent reservations for short-term firm transmission service or non-firm transmission service.[33] As a result, most commenters express support for NAESB's proposed redirect standards for unconditional parent reservations,[34] but did not express support for the proposed language provided within the WEQ–001–9 preamble that would also allow transmission providers the option of implementing alternative practices for redirects from conditional reservations.[35] In addition, commenters did not express support for the proposed language provided within the WEQ–001–10 preamble that would allow transmission providers the option of implementing alternative practices for redirects from non-firm reservations.[36] Southern expressed support for retaining the first sentence in the WEQ 001–9 and WEQ 001–10 preambles to make the applicability of the *Dynegy* policy to these standards clear.[37] Simultaneously, some commenters state that they recommend or at least could support the application of a separate policy to provide transmission customers with the ability to redirect from conditional parent reservations.[38]

27. Various commenters note that, under the *Dynegy* redirect policy, the transmission provider must hold ATC for the original firm reservation on the original path and simultaneously hold ATC on the redirect reservation's path until the redirect reaches the conditional deadline, and, at such time, capacity on the parent path may then be

[28] 99 FERC ¶ 61,054, at P 9 (2002) (*Dynegy*). This policy was retained and clarified in *Entergy Services, Inc.,* 143 FERC ¶ 61,143, at PP 30–33 (2013) (*Entergy*).

[29] WEQ Version 003.1 NOPR at P 25.

[30] Standard WEQ–001–9 states: ''[t]he Business Practice Standard WEQ–001–9 is defined in order to enhance consistency of the reservation process that applies to Redirects on a firm basis from Parent Reservations that are unconditional, as defined in Section 13.2(iii) of the pro forma tariff. *The Transmission Provider shall specify any reservation process that applies to Redirects on a firm basis from Parent Reservations that are conditional, as defined in Section 13.2(iii) of the pro forma tariff in its Business Practices that are posted in accordance with Business Practice Standard WEQ–001–13.1.4.*'' (emphasis added).

[31] WEQ Version 003.1 NOPR at P 25.

[32] The WEQ Version 003.2 NOPR does not request comments on the WEQ–001–10 preamble, and the language used therein, as related to treatment of redirects on a non-firm basis, is similar to that used in the WEQ–001–9 preamble for firm redirects. For the reasons outlined in this final rule to except the preamble to WEQ–001–9 from incorporation by reference, the preamble to WEQ–001–10 is excepted from incorporation by reference. *See infra* PP 35–39.

[33] Bonneville WEQ Version 003.1 Comments at 5; EEI WEQ Version 003.1 Comments at 5; Idaho Power WEQ Version 003.1 Comments at 2; Joint Commenters WEQ Version 003.1 Comments at 6; OATI WEQ Version 003.1 Comments at 3; Snohomish/Tacoma WEQ Version 003.1 Comments at 1; Southern WEQ Version 003.1 Comments at 4.

[34] NAESB's redirect standards require a reservation for service to be unconditional before it may be redirected.

[35] Bonneville WEQ Version 003.1 Comments at 4, 7; Idaho Power WEQ Version 003.1 Comments at 2; Joint Commenters WEQ Version 003.1 Comments at 6; OATI at 3; and Southern WEQ Version 003.1 Comments at 4. Bonneville WEQ Version 003.2 Comments at 3; MISO WEQ Version 003.2 Comments at 2; OATI WEQ Version 003.2 Comments at 2–3.

[36] *See e.g.,* MISO WEQ Version 003.2 Comments at 2; OATI WEQ Version 003.2 Comments at 2; SPP WEQ Version 003.2 Comments at 4.

[37] Southern WEQ Version 003.2 Comments at 3.

[38] Bonneville WEQ Version 003.1 Comments at 6; OATI WEQ Version 003.1 Comments at 4. Bonneville WEQ Version 003.2 Comments at 2–3; MISO WEQ Version 003.2 Comments at 1–2.

released.[39] Several commenters contend that this allows the transmission customer to hold priority of service options on two or more transmission paths at the same time.[40] Joint Commenters ask the Commission if there may be benefits to revisiting specifics of the *Dynegy/Entergy* orders since the requirement that a redirect's parent passes the conditional reservation deadline sacrifices system efficiency.[41]

28. Several commenters oppose the proposal to extend the *Dynegy* policy beyond an application to unconditional parent reservations. These commenters point out that prior to the conditional reservation deadline, when the parent reservation is still conditional and subject to competition, there is no guarantee that firm service will be provided to the transmission customer on either the original transmission path or the requested redirect path since the reservation remains subject to competition until the conditional period expires.[42] They observe that the transmission customer's expectation as to the certainty of service is different in the conditional and unconditional cases.[43] Specifically, EEI references sections of the Commission's *pro forma* OATT to support its conclusion that a firm capacity reservation under which the transmission customer is already taking service must already exist, and a reservation for service must be unconditional before it may be redirected.[44] Bonneville notes that a customer with a conditional parent reservation has no reasonable expectation of service, since a later-queued, higher-priority request may preempt or compete with that customer's conditional parent reservation. And because this expectation of service is different from a customer's expectation of service with an unconditional firm reservation, Bonneville argues it is inappropriate to extend the protections afforded by *Dynegy* to conditional parent reservations.[45]

29. Commenters also contend that there may be many difficulties in administering scenarios with multiple conditional, confirmed reservations consuming more transmission capacity than available, since capacity would be retained on both the parent path and all the redirected paths.[46] Some commenters advise that, if transmission customers are able to redirect from conditional parent reservations, it could result in potentially troublesome administrative, billing, and liability issues.[47]

30. Specifically, Joint Commenters and Southern argue that a transmission customer should only be permitted to redirect transmission service from unconditional parent reservations.[48] However, EEI argues individual transmission providers should be allowed the option to also permit redirects from conditional parent reservations by moving firm capacity to the redirect path upon confirmation.[49] Snohomish/Tacoma suggests that the Commission should either: (1) Allow individual transmission providers to craft specific tariff provisions for how redirects from conditional parent reservations will be addressed; or (2) explicitly not apply the *Dynegy* redirect policy, nor any other restriction on redirects from conditional parent reservations.[50] OATI comments that it is generally not in favor of adopting standards that allow for options to implement transmission provider alternative practices to the NAESB standards.[51]

31. OATI notes that, while it supports the application of *Dynegy* to redirects on a firm basis where the parent reservation is confirmed but still within the conditional reservation period (prior to the conditional reservation deadline),[52] it could also support a NAESB standard where the capacity held on the conditional firm parent reservation is released immediately and lost on the parent path upon confirmation of the redirect on a firm basis.[53] Other commenters agree and prefer such a NAESB standard for conditional parent reservations.[54]

32. With respect to the Commission implementing a policy where a transmission customer redirects from a conditional parent reservation and the transmission customer loses the rights to the parent reservation once the redirect is confirmed, Bonneville advises that transmission providers will have a straightforward solution that is implementable and that can leverage technical capabilities that currently exist in most of the industry, and will not be burdened with accounting for capacity on multiple conditional paths.[55]

33. As to requests for redirects of requests for non-firm transmission service, all the commenters who addressed this issue oppose extending the *Dynegy* redirect policy to non-firm transmission service. Commenters note that the Commission's *pro forma* OATT only permits transmission customers taking firm point-to-point service to make modifications to points of receipt (PORs) and points of delivery (PODs), and the OATT does not state transmission customers may modify PORs and PODs on a non-firm basis.[56] OATI states that non-firm (secondary) redirect is the lowest priority service under the OATT and would be subject to preemption or interruption at any time to process either a request to reserve or schedule an existing reservation for either firm or non-firm transmission service.[57]

34. Commenters also believe that a request to redirect firm transmission service on a non-firm basis should only be allowed from an unconditional, firm parent reservation.[58] EEI advises that the potential for gaming, the impact on queue positions and processing, and the problem of undertaking ATC/AFC calculations, outweigh any potential benefits given that a customer can just as easily submit a new request for non-firm transmission service with a modified POR and/or POD.[59] Commenters state that it is unnecessary to adopt changes to the proposed standards, since a customer can relinquish a capacity reservation

[39] *See, e.g.,* OATI WEQ Version 003.1 Comments at 2–3; NV Energy WEQ Version 003.2 Comments at 1.

[40] *See, e.g.,* EEI WEQ Version 003.1 Comments at 7; OATI WEQ Version 003.1 Comments at 3. NV Energy WEQ Version 003.2 Comments at 1.

[41] Joint Commenters WEQ Version 003.1 Comments at 8–9.

[42] *See, e.g.,* EEI WEQ Version 003.1 Comments at 6; OATI WEQ Version 003.1 Comments at 3; Southern WEQ Version 003.1 Comments at 5.

[43] *See, e.g.,* Bonneville WEQ Version 003.1 Comments at 5; EEI WEQ Version 003.1 Comments at 6.

[44] EEI WEQ Version 003.1 Comments at 5–6.

[45] Bonneville WEQ Version 003.1 Comments at 4–5.

[46] Southern WEQ Version 003.1 Comments at 5; Bonneville WEQ Version 003.2 Comments at 3.

[47] Idaho Power WEQ Version 003.1 Comments at 2; Southern WEQ Version 003.1 Comments at 5–6. Bonneville WEQ Version 003.2 Comments at 3.

[48] Joint Commenters WEQ Version 003.1 Comments at 5; Southern WEQ Version 003.1 Comments at 4.

[49] EEI WEQ Version 003.1 Comments at 4.

[50] Snohomish/Tacoma WEQ Version 003.1 Comments at 1.

[51] OATI WEQ Version 003.1 Comments at 4.

[52] *Id.* at 3.

[53] *Id.* at 4.

[54] Bonneville WEQ Version 003.2 Comments at 2–3, MISO WEQ Version 003.2 Comments at 1–2.

[55] Bonneville WEQ Version 003.1 Comments at 6.

[56] EEI WEQ Version 003.1 Comments at 10; Joint Commenters WEQ Version 003.1 Comments at 7; Southern WEQ Version 003.1 Comments at 7.

[57] OATI WEQ Version 003.1 Comments at 6.

[58] EEI WEQ Version 003.1 Comments at 11; Idaho Power WEQ Version 003.1 Comments at 4; OATI WEQ Version 003.1 Comments at 6.

[59] EEI WEQ Version 003.1 Comments at 11.

associated with a non-firm redirect back to the parent reservation.[60]

c. Commission Determinations

35. Based on our consideration of the comments, we incorporate by reference the WEQ–001–9 and WEQ–001–10 standards with the exception of the text contained in the preambles to WEQ–001–9 and WEQ 001–10, which appear to allow transmission providers to adopt alternative procedures for redirects from conditional parent reservations. NAESB revised its standards by adding Standard WEQ 001–9.5.4 to apply the *Dynegy* policy to redirects from unconditional firm service. This standard provides for retention of parent transmission rights when the transmission provider confirms a redirect from unconditional firm service but during the period when the redirect remains conditional (*i.e.,* before the conditional deadline under *pro forma* OATT section 13.2).

36. We conclude that limiting the *Dynegy* policy to redirects from unconditional firm service is reasonable. We base this finding on several factors. With respect to redirect requests with conditional parent reservations, we note that, prior to the conditional reservation deadline, there is no guarantee that firm service will be provided to the transmission customer on the original transmission path. Moreover, the *Dynegy* policy was designed to protect a firm transmission customer that requests a redirect from losing its rights on the original path while its redirect request is pending. This is not the same as establishing a right that requires the transmission provider to hold ATC simultaneously on both the original path and the redirect path when the customer has no right to use a path service on *either* path. The only risk to a customer that requests a redirect for a conditional parent reservation would be the customer losing a right to use a path it does not yet have. As a result, the *Dynegy* policy will extend to neither short-term firm point-to-point transmission service nor non-firm transmission service, and the *Dynegy* policy continues to be limited to parent reservations that are unconditional, as defined in Section 13.2 of the *pro forma* OATT.

37. We decline to incorporate by reference the preamble to WEQ–001–9, which appears to exempt redirects from conditional firm parents from the remainder of the redirect standards and permits transmission providers to implement their own procedures for redirect requests from conditional firm parents. The preamble to standard WEQ –001–9 states:

> The Business Practice Standard WEQ–001–9 is defined in order to enhance consistency of the reservation process that applies to Redirects on a firm basis from Parent Reservations that are unconditional as defined in Section 13.2(iii) of the pro forma tariff. The Transmission Provider shall specify any reservation process that applies to Redirects on a firm basis from Parent Reservations that are conditional, as defined in Section 13.2(iii) of the pro forma tariff in its Business Practices that are posted in accordance with Business Practice Standard WEQ–001–13.1.4.

38. Prior to the revision from WEQ Version 003.1, the WEQ 001–9 section did not contain a preamble and all the redirect standards for firm service applied to redirects from both unconditional and conditional firm parents. We see no reason to exempt redirects from conditional firm parents from these standards with the exception of standard WEQ 001–9.54 implementing the *Dynegy* policy with respect to unconditional firm parents, as discussed above. The application of the remaining redirect standards to redirects from conditional parents will help ensure consistency across the grid. For these same reasons we also decline to incorporate by reference the preamble included at the beginning to WEQ–001–10, which, as of WEQ Version 003.2, applies the above-quoted preamble to redirect requests for non-firm service.

39. We agree with commenters who highlighted the administrative burden associated with standards that allow individual transmission providers to specify their own various business processes for redirects. Without consistent standards, transmission providers and transmission customers would then have to incur the costs of developing different business processes to adapt to the differing requirements, increasing the cost and complexity of their businesses. Furthermore, consistent standards help achieve greater efficiency and reduce costly disparities.

*2. Time Error Correction*

a. Request for Comments

40. In the Time Error Correction NOPR, the Commission proposed to approve NAESB's latest version of its Business Practice Standards to remove the incorporation by reference of the Wholesale Electric Quadrant (WEQ) WEQ–006 Manual Time Error Correction Business Practice Standards as adopted by NAESB in its WEQ Version 003.0 Businesses Practice Standards.[61] The WEQ–006 Manual Time Error Correction Business Practice Standards outline the commercial based procedures to be used for reducing time error to keep the system's time within acceptable limits of true time. NAESB's latest version of its Business Practice Standards retires and eliminates the Manual Time Error Correction Business Practice Standards to correspond with NERC's retirement of the Time Error Correction requirements, which the Commission approved in 2017. In the Time Error Correction NOPR, the Commission also proposed to incorporate by reference Standard WEQ–000, Abbreviations, Acronyms, and Definition of Terms Business Practice Standards (Version 003.2), which would eliminate the definitions of ''Time Error'' and ''Time Error Correction'' as well as making unrelated minor corrections.

b. Comments

41. Commenters were divided in their response to NAESB's proposal to remove the incorporation by reference of the WEQ–006 Manual Time Error Correction Business Practice Standards. NERC states that NAESB reserved WEQ–006 in coordination with NERC's retirement of Reliability Standard BAL–004–0, as approved by the Commission in 2017, and removing the reference to WEQ–006 in 18 CFR 38.1(b) ensures clarity and avoids inadvertent, uncoordinated, manual time error correction.[62] SPP adds that removal of WEQ–006 from the Commission's regulations and the update of Standard WEQ–000 will promote clarity and ensure consistency between the Commission's regulations and current NERC and NAESB standards.[63]

42. By contrast, Dr. Demetrios Matsakis and Dr. Jonathan Hardis[64] state that the proposed rule change is not in the public interest,[65] and Dr. Hardis asserts the public interest standard is the appropriate standard of review.[66] Dr. Hardis states that his

[60] Bonneville WEQ Version 003.1 Comments at 7; Idaho Power WEQ Version 003.1 Comments at 4.

[61] Time Error Correction NOPR, 165 FERC ¶ 61,007 at P 1.

[62] NERC Time Error Correction NOPR Comments at 1–2.

[63] SPP Time Error Correction NOPR Comments at 2.

[64] Dr. Matsakis and Dr. Hardis submit their comments as individual citizens and not on behalf of any organization or employee. Dr. Matsakis is Chief Scientist for Time Services at the U.S. Naval Observatory. Dr. Hardis is a Senior Scientific Advisor for the Physical Measurement Laboratory at the National Institute for Standards and Technology.

[65] Dr. Matsakis Time Error Correction Comments at 1.

[66] Dr. Hardis Time Error Correction Comments at 1.

comments should also serve as a complaint pursuant to 16 U.S.C. 824o(d)(5) [67] and asserts that the Commission should remand the matter of Reliability Standard BAL–004 back to NERC for reconsideration.[68] Additionally, Dr. Hardis and Dr. Matsakis advise that the business practice of ''Time Error Correction'' works so well as a commercial service that the public gives little thought to why their synchronous clocks and appliances work. They state that, without Time Error Correction, synchronous clocks and appliances, which provide accurate time through the utilization of power line frequency, will not be accurate or work properly.[69] Referring to Docket No. RD17–1–000, in which the Commission approved the retirement of Reliability Standard BAL–004–0, Dr. Hardis states the record in that proceeding contained statements that suggest a basic misunderstanding regarding Time Error Correction. He asserts that better regulating the grid frequency to be 60 Hz does not substitute for or eliminate the need for Time Error Correction.[70]

43. Dr. Hardis also responds to the major arguments presented in Docket No. RD17–1–000 that support the retirement of Reliability Standard BAL–004–0.[71] In support of his arguments, Dr. Hardis references a research paper that analyzes industry-supplied Time Error Correction data to conclude that without Time Error Correction being in effect between March 2016, when Daylight Saving Time was implemented, and November 2016, when Standard Time was re-implemented, there would have been approximately 7.5 minutes of time drift on the Eastern Interconnection.[72]

44. Dr. Hardis also asserts that the decision to retire WEQ–006 was primarily made by those involved within NAESB's Wholesale Energy Quadrant, without adequate notice, which results in a lack of balance and underrepresentation from other interests (*e.g.,* retail consumers, appliance manufactures, and state regulatory agencies).[73] Additionally, Dr. Hardis contends that Time Error Correction is an interstate issue and that some kind of enforceable standards are still needed.[74]

45. NAESB filed comments clarifying that NAESB: (1) Is accredited by the ANSI; (2) is obligated to adhere to the ANSI principles of standards development, including the principles of openness and balance; and (3) employed extensive efforts to distribute notice to more than 200 different entities regarding the standards development effort, the formal comment period, and the intent of the NAESB WEQ Executive Committee to consider and vote on the recommended standard reservations and modifications.[75] NAESB notes that it adheres to its governing principle of openness during the standards development process, with publicly noticed meetings, agendas, and items set for discussion and/or possible vote. NAESB notes that its process allows for all interested parties, regardless of membership, to have the opportunity to participate in the development of standards.[76]

*c. Commission Determinations*

46. Upon consideration of the record, we will not adopt the Time Error Correction NOPR proposal to remove the incorporation by reference to NAESB's latest version of the WEQ–006 Manual Time Error Correction Business Practice Standards. We find that NAESB has not provided sufficient justification for retiring Time Error Correction as a business standard; the only support provided for its retirement is that NERC retired the corresponding Reliability Standard as being unnecessary for reliability. In their comments, Dr. Hardis and Dr. Matsakis, however, raise considerable unrebutted concerns about the retirement of NAESB's Time Error Correction standards, citing significant reasons for why there is a continued need for, and possibly expansion, of such standards. While the Commission previously approved the retirement of NERC's BAL–004–0 (Time Error Correction) as related to reliability,[77] NOPR commenters provide significant evidence that Time Error Correction remains an important business practice that requires robust and meaningful business practice standards. Moreover, NERC continues to provide Reliability Coordinators serving as time monitors in the North American Interconnections with a time monitoring reference document that specifies how manual time error corrections are to be implemented if needed and outlines procedural responsibilities assigned to the time monitor. After considering this record, we advise public utilities to work through the NAESB business practices development processes to revisit the rationale for removing the Time Error Correction standards to determine whether they should be retained or revised. Therefore, we do not adopt the NOPR proposal to incorporate by reference the reservation of the WEQ–006 Manual Time Error Correction Business Practice Standards, nor do we adopt the elimination to the definitions of ''Time Error'' and ''Time Error Correction'' in Standard WEQ–000 (Version 003.2). Rather, in this final rule, we incorporate by reference the WEQ–006 Version 003.1 Standard for Time Error Correction.

47. With regard to Dr. Hardis' comments on the retirement of Reliability Standard BAL–004–0, we find that those comments are outside the scope of this proceeding and therefore we do not address them here. Moreover, we dismiss that portion of Dr. Hardis' comments wherein he requests that the Commission treat his pleading also as a complaint under 16 U.S.C. 824o(d)(5).[78]

3. Other Issues Raised by Commenters

a. NERC/NAESB Coordination

i. Comments

48. NAESB states that it developed the WEQ–023 Modeling Business Practice Standards in WEQ Version 003.1 to support and complement the proposed retirement of certain NERC MOD A Reliability Standards which were to be replaced by NERC MOD–001–2 Reliability Standards. It states that the proposed NERC MOD–001–2 Reliability Standards were before the Commission in Docket No. RM14–7–

[67] *Id.* at 17.

[68] *Id.* at 2, 17.

[69] *Id.* at 1–3; Dr. Matsakis Time Error Correction Comments at 1.

[70] Dr. Hardis Time Error Correction Comments at 4.

[71] *Id.* at 9–13.

[72] *Id.* at 14 (citing J.E. Hardis, B. Fonville, and D. Matsakis, ''*Time and frequency from electrical power lines,*'' Proceedings of the 48th Annual Precise Time and Time Interval Systems and Applications Meeting, Monterey, California, January 2017, pp. 372–386, *https://www.nist.gov/publications/time-and-frequency-electrical-power-lines).*

[73] Dr. Hardis Time Error Correction Comments at 16.

[74] *Id.* at 14–15, 17.

[75] NAESB Time Error Correction Comments at 1–2.

[76] *Id.*

[77] *See North American Electric Reliability Corp.,* Docket No. 17–1–000 (Jan. 18, 2017) (delegated order).

[78] The Commission has consistently rejected efforts to combine complaints with other types of filings. *See Midwest Indep. Transmission Sys. Operator, Inc.,* 108 FERC ¶ 61248, at 62,383 n.8 (2004) (citing *Entergy Servs., Inc.,* 52 FERC ¶ 61,317 at 62,270 (1990) (stating that the Commission has determined that complaints must be filed separately from motions to intervene and protests)). In rejecting these combined requests, we have stated that a combined filing does not assure that the procedural and other requirements applicable to the processing of a complaint will be met. Our dismissal of the conditional complaint is without prejudice to Dr. Hardis filing a separate complaint consistent with Rule 206 of the Commission's Rules of Practice and Procedure. *See* 18 CFR 385.206 (2019).

00.[79] As part of the WEQ–023 Modeling Business Practice Standards, NAESB proposes to move 13 WEQ–001 standards and one appendix that relate to the calculation of ATC/AFC to WEQ–023.[80] NAESB states that these 13 standards are currently included in WEQ–001–18 Postback Requirements and WEQ–019 Grandfathered Agreements. On June 5, 2019, NAESB submitted comments in the WEQ Version 003.2 NOPR proceeding reiterating that the WEQ–001 OASIS Business Practice Standards, included as part of WEQ Business Practice Standards Version 003.2, reserved 13 individual standards and one appendix for consistency purposes to avoid duplication with the WEQ–023 Modeling Business Practice Standards.[81]

49. NAESB also submitted separate comments to the Commission detailing the ongoing coordination activities between NAESB and NERC, which led to NAESB's submission of a minor correction to WEQ–003–0 OASIS Data Dictionary to remove references to two data elements and their definitions.[82] NAESB states that both data elements, PROCEDURE_NAME and PROCEDURE_LEVEL, contain references to the retired NERC Reliability Standards IRO–006–TRE–1—IROL and SOL Mitigation in the ERCOT Region, approved by the Commission for retirement on January 29, 2019.

ii. Commission Determination

50. The Commission appreciates and supports the ongoing coordination activities between NAESB and NERC. We decline NAESB's request to incorporate by reference the entire WEQ–023 Modeling Business Practice Standards, and are instead incorporating by reference only those standards moved from WEQ–001 to WEQ–023. The Commission is considering NERC's proposed retirement of its ATC-related Reliability Standards in Docket No. RM14–7–000. In addition, the Commission established a proceeding in Docket No. AD15–5–000 to consider the proposed changes to the calculation of ATC, and has conducted a technical conference and received comments regarding such changes.[83] As a result, we do not incorporate by reference the entire WEQ–023 Modeling Business Practice Standards in this final rule, but instead only incorporate by reference those sections listed below, and will consider the remaining standards as part of the overall inquiry into ATC calculation.

51. In its WEQ Version 003.1 filing, NAESB requested to move 13 standards and Appendix D related to ATC/AFC that are currently included in WEQ–001 to WEQ–023. In addition to moving the enumerated standards to WEQ–023, NAESB seeks to reserve the 13 standards and Appendix D in WEQ–001. In this final rule, we approve NAESB's request to move the 13 standards and Appendix D to WEQ–023 and reserve the same standards and appendix within WEQ–001. Accordingly, the regulatory text accompanying this final rule incorporates by reference certain of the WEQ–023 Standards, including: WEQ–023–5; WEQ–023–5.1; WEQ–023–5.1.1; WEQ–023–5.1.2; WEQ–023–5.1.2.1; WEQ–023–5.1.2.2; WEQ–023–5.1.2.3; WEQ–023–5.1.3; WEQ–023–5.2; WEQ–023–6; WEQ–023–6.1; WEQ–023–6.1.1; WEQ–023–6.1.2; and WEQ–023–A Appendix A. Consistent with our support of the ongoing NAESB and NERC collaborative standards development activities, in this final rule, we also grant NAESB's request and incorporate by reference the removal of references to the two data elements, PROCEDURE_NAME and PROCEDURE_LEVEL, and their definitions within the WEQ–003–0 OASIS Data Dictionary.

b. Corrections to Regulatory Text

i. Comments

52. A number of commenters have noted minor inconsistencies between the discussion in the preamble of the WEQ Version 003.1 NOPR of the standards proposed to be incorporated by reference and the proposed regulatory text. They suggest that the regulatory text be corrected to better match up with the discussion in the preamble. We agree. Commenters note an inconsistency in the WEQ Version 003.1 NOPR, between paragraph 27 of the WEQ Version 003.1 NOPR stating that the Commission proposed to incorporate the revised standards on timing of ATC narrative posting and the final proposed action to amend § 38.1 which continued to exclude 001–14.1.3 and 001–15.1.2.[84] Commenters note that there is no further discussion of this action in the Version 003.2 NOPR.[85]

53. Commenters also note minor inconsistencies between the Commission's WEQ Version 003.1 NOPR to adopt revised standard WEQ 001–106.25, and the Commission's exclusion of WEQ 001–106.25 in the WEQ Version 003.2 NOPR.[86] In the Version 003.1 NOPR, the Commission proposed to incorporate by reference, into the Commission's regulations at 18 CFR 38.1, NAESB's revised Standards WEQ–WEQ–001–106.2.21, WEQ–001–106.2.1.1, and WEQ–001–106.2.5, as set forth in the WEQ Version 003.1 Business Practice Standards.

ii. Commission Determination

54. In consideration of these comments, in this final rule we incorporate by reference 001–14.1.3 and 001–15.1.2 into the Commission's regulations at 18 CFR 38.1. We also incorporate by reference WEQ 001–106.25 into the Commission's regulations at 18 CFR 38.1.

c. Suggested Modifications to WEQ–004

i. Comments

55. CAISO offers two suggestions for modifying Standard WEQ–004 and suggests that the Commission make a request to NAESB to address these issues. Its first suggestion relates to Appendix A of revised NAESB Standard WEQ–004, Section B.3, which requires a Sink Balancing Authority to communicate a message via email only to adjacent Balancing Authorities during an e-Tag Authority Service failure.[87] CAISO suggests that the Sink Balancing Authority be allowed to broadcast its message to adjacent Balancing Authorities ''by email or similar alternate method.'' CAISO argues that this broader language would allow for alternate methods of communication to be used in instances where the e-Tag Authority Service is not functioning because the internet itself is unavailable.

56. CAISO's second suggestion relates to the language in Standard WEQ–004, Section B.4 and the subsequent table under the heading ''Singular Failure

[79] NAESB October 26 Filing at 13.

[80] *Id.* at 14.

[81] NAESB enumerates the following standards as reserved WEQ–001–18, WEQ–001–18.1, WEQ–001–18.1.1, WEQ–001–18.1.2, WEQ–0018–1.2.1, WEQ–001–18.1.2.2, WEQ–001–18.1.2.3, WEQ–001–18.1.3, WEQ–001–18.2, WEQ–001–19, WEQ–001–19.1, WEQ–001–19.1.1, WEQ–001–19.1.2, and WEQ–001–D Appendix D. NAESB December 8, 2017 Filing at 3–4.

[82] NAESB WEQ Version 003.2 July 23, 2019 Comments at 2.

[83] *See, e.g.,* the December 18, 2014 status report filed by NAESB in Docket Nos. RM05–5–000 and RM14–7–000, and the Commission's April 21, 2015 workshop, *Available Transfer Capability Standards for Wholesale Electric Transmission Services,* Docket No. RM15–5–000.

[84] OATI WEQ Version 003.1 Comments at 3; Southern WEQ Version 003.1 Comments at 7–8.

[85] OATI WEQ Version 003.1 Comments at 3; Southern WEQ Version 003.1 Comments at 7–8.

[86] Bonneville WEQ Version 003.2 Comments at 4; OATI WEQ Version 003.2 Comments at 3–4; Southern WEQ Version 003.2 Comments at 8–9; SPP WEQ Version 003.2 Comments at 5.

[87] CAISO WEQ Version 003.1 Comments at n.3 (citing WEQ–004–A, Appendix A, Section B (e-Tag Authority Service Failure Actions, No. 3)).

Actions.'' It argues this language should be amended to broaden the method of communication beyond telephone.[88] CAISO recommends that this language should be amended to state ''communicate and confirm,'' which would not only take into account other methods of communication that have been developed and are being used as a result of technological advances (*e.g.,* electronic messaging or industry specific messaging systems like the WECC Net messaging system), but would also allow the messaging contemplated by these provisions to be accomplished by alternate routes should telephone use be unavailable.

ii. Commission Determination

57. We make no finding with regard to CAISO's suggested modifications, as the proposed changes have not been formally considered by NAESB and have not gone through the requisite consensus proceeding. CAISO can present these suggested revisions to NAESB and work through the NAESB process to build consensus for its position and, if successful, implement these changes at the time when NAESB next updates its business practice standards for public utilities.

d. Suggested Continued Optional Use of DUNS Numbers

i. Comments

58. In its WEQ Version 003.1 NOPR comments EEI states that it supports the Commission's finding eliminating the use of DUNS numbers to identify organizations in OASIS postings. However, EEI encourages the Commission to recognize that the NAESB standards allow transmission providers who wish to continue using DUNS numbers for other purposes the option to do so, while allowing transmission providers who do not wish to use the numbers simply to fill in the DUNS number field with 9s. While many EEI members prefer not to have to use the DUNS numbers, some members prefer to continue using them for a variety of reasons, for example, to avoid back-office problems and to reconcile with their use of DUNS numbers in the network integration transmission service (NITS) context. Thus, EEI argues that the NAESB approach is an appropriate compromise that the Commission should allow.

ii. Commission Determination

59. The revised Standard WEQ–001–3.1 included in the Version 003.1 package of standards no longer makes any reference to the use of DUNS numbers to identify an organization in OASIS postings. However, we agree with EEI that the revised standard does not *prohibit* the continued use of DUNS numbers to identify an entity in the Electric Industry Registry or for other purposes. We do not find this solution objectionable and do not find this an obstacle to our incorporating the standard by reference as we proposed in the WEQ Version 003.1 NOPR.

e. Timing for Source and Sink Unmasking

i. Comments

60. In its WEQ Version 003.1 NOPR comments, EEI notes that the revised NAESB standards ''unmask the source and sink for a request for transmission service for all instances where the request for transmission service is moved to any final state,'' and the Commission proposes to adopt this change.[89] However, EEI recommends against adopting this change and instead encourages the Commission to clarify that source and sink information should continue to be unmasked only when a transmission service request is ''confirmed.'' EEI argues that, if this standard is incorporated as it currently stands, the Commission could be understood to require unmasking of the source and sink information when a request's status is withdrawn, refused, invalid, declined, superseded, annulled, or retracted because these can all be considered to be ''final states.'' However, EEI is concerned that the unmasking of source and sink for these additional statuses could expose market information during the request process, prior to the transmission request being in the actual final state of ''confirmed'' intended by the submitter.[90] As an example, EEI describes a situation where a transmission request was submitted with an error and as a result was declined.[91] In such a situation, EEI is concerned that if ''declined'' were treated as a final state, the source and sink would be exposed prior to obtaining the corrected final state of transmission reservation as ''confirmed.'' EEI argues that, at a minimum, adding some sort of time delay on all status states other than ''confirmed'' until the replacement transmission reservation was ''confirmed'' could allow the submitter to get the corrected request before the source and sink are exposed.[92]

ii. Commission Determination

61. In effect, EEI asks the Commission to modify Standard WEQ–002–4.3.6.2 by ''clarifying'' that, despite the language of the standard that source and sink are to be unmasked at the time when the request for transmission service is moved to any final state, the standard should be interpreted to mean that source and sink should not be unmasked until the request reaches the final state of ''confirmed'' intended by the submitter. Notwithstanding EEI's concerns, there has been an industry consensus for the standard as adopted by NAESB and we decline to modify the standard as suggested by EEI. EEI or its members may, if they wish, seek to build a consensus through the NAESB process to revise the standard as recommended in its comments.

f. Waivers

i. Comments

62. PJM asks the Commission to continue to acknowledge in its final rule that consistent with Commission precedent and currently-effective policy, each public utility may seek as part of its compliance filing waiver of new or revised standards in the WEQ Version 003.2 Standards, and renewal of existing waivers previously granted by the Commission. PJM requests a similar clarification be included in the final rule for this proceeding.[93]

ii. Commission Determination

63. The Commission has previously stated that if a public utility asserts that its circumstances warrant a continued waiver of the regulations, the public utility may file a request for a waiver wherein public utility can detail the circumstances that it believes warrant a waiver.[94] In its request for continued waiver, the public utility must include the date, Docket No. and explanation for why the waiver was initially granted by the Commission. The Commission will decide on any such waiver request on a case-by-case basis, and absent a Commission-approved waiver, compliance with the standards is required by all public utilities.

4. Implementation

i. Comments

64. Bonneville recommends the Commission set the implementation timeline to account for implementation of both the Version 003.1 and 003.2 Standards and suggests a timeline of 12 to 15 months to implement changes to OASIS Templates and 24 to 30 months

[88] *Id.* at n.6 (citing WEQ–004–A, Appendix A, Section B (e-Tag Authority Service Failure Actions, No.4).

[89] EEI WEQ Version 003.1 Comments at 16.

[90] *Id.* at 17.

[91] *Id.*

[92] *Id.*

[93] PJM WEQ Version 003.2 Comments at 2–3.

[94] Order No. 676–E, 129 FERC ¶ 61,162 at P 107.

to implement the WEQ Version 003.1 and 003.2 Standards.[95] MISO requests that the time allotted for OASIS to support the Version 2.2 OASIS Templates be modified to 12 months, and that the time for Transmission Providers to implement all changes be modified to 24 months.[96] NV Energy recommends that the Commission allow a total time of 24 months for all the steps required for implementation of Version 003.1 and Version 003.2.[97] SPP states that the Commission should allow six additional months to implement the changes proposed in Version 003.2 to the 12 months to implement Version 003.1 for a total of 18 months.[98] EEI notes that the Commission proposes to adopt NAESB standards implementing a one-day posting of ATC narratives explaining changes in monthly or yearly ATC values on a constrained path as a result of a 10-percent change in total transfer capability. EEI argues that in order to provide adequate time for software developers to develop the automation needed to meet the one-day deadline, the Commission should provide at least one year from the effective date of the standard to make these necessary changes.[99]

ii. Commission Determination

65. Public utilities must make a compliance filing to comply with the requirements of this final rule through eTariff no later than 90 days from the date the final rule is published in the **Federal Register**, using an indeterminant effective date (12/31/9998) for the tariff records. The Commission will establish an effective date for the proposed tariff changes in the order(s) on compliance filings. To give parties sufficient time to make computer and other modifications required by this final rule, the Commission will set an effective date no earlier than five months from the date the final rule is published in the **Federal Register**. A few commenters requested additional time to make compliance filings. EEI points to the need to develop software to implement the revisions to ATC; but as discussed earlier, the ATC standards will be addressed in a separate proceeding. Other comments request additional time to implement both Versions 003.1 and 003.2. This final rule adopts only Version 003.2, except for WEQ–006 Manual Time Error Correction, and does not require combined implementation. Other than these rationales, the comments do not provide specific justification for their longer than usual implementation timelines, so we find no reason to extend the normal implementation schedule.

66. Those utilities that revised their tariff after Order No. 676–H to incorporate the complete set of NAESB standards without modification need to implement the standards incorporated by reference in this final rule no later than five months from the date the final rule is published in the **Federal Register**. For public utilities that do not incorporate the NAESB standards without modification in their tariffs, and consistent with Order No. 587–Y and the Commission's requirement for natural gas pipelines to provide information on the NAESB WGQ Standards incorporated by reference, we are adopting a requirement in this final rule for public utilities to include a single tariff sheet in which they list every NAESB standard currently incorporated by reference by the Commission.[100] This section should be a separate tariff record under the Commission's electronic tariff filing requirement and should be filed electronically using the eTariff portal using the Type of Filing Code 580. The public utility must specify in the tariff record a list of all the NAESB standards currently incorporated by reference by the Commission: (a) Whether the standard is incorporated by reference; (b) for those standards not incorporated by reference, the tariff provision that complies with the standard; and (c) a statement identifying any standards for which the public utility has been granted a waiver, extension of time, or other variance with respect to compliance with the standard.

67. Moreover, utilities that now wish to comply by incorporating the complete set of NAESB standards into their tariffs without modification may do so by making a filing with the Commission to include the following language in their tariffs: ''The current versions of the NAESB WEQ Business Practice Standards incorporated by reference into the Commission's regulations as specified in Part 38 of the Commission's regulations (18 CFR part 38) are incorporated by reference into this tariff.''

## III. Notice of Use of Voluntary Consensus Standards

68. Office of Management and Budget Circular A–119 (section 11) (Feb. 10, 1998) provides that when a federal agency issues or revises a regulation containing a standard, the agency should publish a statement in the final rule stating whether the adopted standard is a voluntary consensus standard or a government-unique standard. In this final rule, the Commission is incorporating by reference voluntary consensus standards developed by the NAESB's WEQ.

## IV. Incorporation by Reference

69. The Office of the Federal Register requires agencies incorporating material by reference in final rules to discuss, in the preamble of the final rule, the ways that the materials it incorporates by reference are reasonably available to interested parties and how interested parties can obtain the materials.[101] The regulations also require agencies to summarize, in the preamble of the final rule, the material it incorporates by reference. The standards we incorporate by reference in this final rule can be summarized as follows:

70. The WEQ–000 Abbreviations, Acronyms, and Definition of Terms Business Practice Standards provide a single location for all abbreviations, acronyms, and defined terms referenced in the WEQ Business Practice Standards. These standards provide common nomenclature for terms within the wholesale electric industry, thereby reducing confusion and opportunities for misinterpretation or misunderstandings among industry participants. We are incorporating by reference WEQ Version 003.2 of the WEQ–000 Abbreviations, Acronyms, and Definition of Terms and incorporating by reference certain definitions from WEQ Version 003.1 related to the WEQ–006 Manual Time Error Correction Business Practice Standards. The definitions from WEQ Version 003.1 are: Interconnection Time Monitor, Time Error, and Time Error Correction.

71. The WEQ–001 OASIS Business Practice Standards define the general and specific transaction processing requirements and related business processes required for OASIS. The standards detail requirements related to standard terminology for transmission and ancillary services, attribute values

[95] Bonneville WEQ Version 003.2 Comments at 4.

[96] MISO WEQ Version 003.2 Comments at 3.

[97] NV Energy WEQ Version 003.2 Comments at 2. (NV Energy argues that the Commission should provide ''sufficient time for the complete implementation of the changes and new functionalities required by taking into consideration the need for building the functionalities, testing by vendors, testing by transmission providers, training in-house and training of the industry for implementation.'').

[98] SPP WEQ Version 003.2 Comments at 3.

[99] EEI WEQ Version 003.1 Comments at 15.

[100] *See Standards for Business Practices of Interstate Natural Gas Pipelines,* 165 FERC ¶ 61,109 at P 25 (2018) (Order 587–Y).

[101] 1 CFR 51.5 (2019). *See* Incorporation by Reference, 79 FR 66267 (Nov. 7, 2014).

defining transmission service class and type, ancillary and other services definitions, OASIS registration procedures, procurement of ancillary and other services, path naming, next hour market service, identical transmission service requests, redirects, resales, transfers, OASIS postings, procedures for addressing ATC or AFC methodology questions, rollover rights, conditional curtailment option reservations, auditing usage of Capacity Benefit Margin, coordination of requests for service across multiple transmission systems, consolidation, preemption and right-of-first refusal process, and NITS requests.

72. The WEQ–002 OASIS Standards and Communication Protocols Business Practice Standards define the technical standards for OASIS. These standards detail network architecture requirements, information access requirements, OASIS and point-to-point interface requirements, implementation, and NITS interface requirements.

73. The WEQ–003 OASIS Data Dictionary Business Practice Standards define the data element specifications for OASIS.

74. The WEQ–004 Coordinate Interchange Business Practice Standards define the commercial processes necessary to facilitate interchange transactions via Request for Interchange (RFI) and specify the arrangements and data to be communicated by the entity responsible for authorizing the implementation of such transactions (the entities responsible for balancing load and generation).

75. The WEQ–005 Area Control Error (ACE) Equation Special Cases Business Practice Standards define commercial based requirements regarding the obligations of a balancing authority to manage the difference between scheduled and actual electrical generation within its control area. Each balancing authority manages its ACE in accordance with the NERC Reliability Standards. These standards detail requirements for jointly owned utilities, supplemental regulation service, and load or generation transfer by telemetry.

76. The WEQ–006 Manual Time Error Correction Business Practice Standards define the commercial based procedures to be used for reducing time error to within acceptable limits of true time. These standards have subsequently been marked reserved by NAESB.

77. The WEQ–007 Inadvertent Interchange Payback Business Practice Standards define the methods in which inadvertent energy is paid back, mitigating the potential for financial gain through the misuse of paybacks for inadvertent interchange. Inadvertent interchange is interchange that occurs when a balancing authority cannot fully balance generation and load within its area. The standards allow for the repayment of any imbalances through bilateral in-kind payback, unilateral in-kind payback, or other methods as agreed to.

78. The WEQ–008 Transmission Loading Relief—Eastern Interconnection Business Practice Standards define the business practices for cutting transmission service during a TLR event. These standards detail requirements for the use of interconnection-wide TLR procedures, interchange transaction priorities for use with interconnection-wide TLR procedures, and the Eastern Interconnection procedure for physical curtailment of interchange transactions.

79. The WEQ–011 Gas/Electric Coordination Business Practice Standards define communication protocols intended to improve coordination between the gas and electric industries in daily operational communications between transportation service providers and gas-fired power plants. The standards include requirements for communicating anticipated power generation fuel for the upcoming day as well as any operating problems that might hinder gas-fired power plants from receiving contractual gas quantities.

80. The WEQ–012 Public Key Infrastructure (PKI) Business Practice Standards establish the cybersecurity framework for parties partaking in transactions via a transmission provider's OASIS or e-Tagging system. The NAESB PKI framework secures wholesale electric market electronic commercial communications via encryption of data and the electronic authentication of parties to a transaction through the use of a digital certificate issued by a NAESB certified certificate authority. The standards define the requirements for parties utilizing the digital certificates issued by the NAESB certificate authorities.

81. The WEQ–013 OASIS Implementation Guide Business Practice Standards detail the implementation of the OASIS Business Practice Standards. The standards detail requirements related to point-to-point OASIS transaction processing, OASIS template implementation, preemption and right-of-first-refusal processing, NITS application and modification of service processing, and secondary network transmission service.

82. The WEQ–015 Measurement and Verification of Wholesale Electricity Demand Response Business Practice Standards define a common framework for transparency, consistency, and accountability applicable to the measurement and verification of wholesale electric market demand response practices. The standards describe performance evaluation methodology and criteria for the use of equipment, technology, and procedures to quantify the demand reduction value—the measurement of reduced electrical usage by a demand resource.

83. The WEQ–021 Measurement and Verification of Energy Efficiency Products Business Practice Standards define a common framework for transparency, consistency, and accountability applicable to the measurement and verification of wholesale electric market energy efficiency practices. The standards establish energy efficiency measurement and verification criteria and define requirements for energy efficiency resource providers for the measurement and verification of energy efficiency products and services offered in the wholesale electric markets.

84. The WEQ–022 EIR Business Practice Standards define the business requirements for entities utilizing the NAESB managed EIR, a wholesale electric industry tool that serves as the central repository for information needed in the scheduling of transmission through electronic transactions. The standards describe the roles within EIR, registration requirements, and cybersecurity.

85. The WEQ–023 Modeling Business Practice Standards specify the requirements for incorporating postbacks in the ATC posted on OASIS and the treatment of grandfathered agreements in the calculation of ATCs and AFCs. In the event of a conflict between these Business Practice Standards and the Transmission Service Provider's tariff or FERC approved seams agreement(s), the tariff or FERC approved seams agreement(s) shall have precedence.

86. In addition, NAESB has adopted an additional nine suites of standards that, consistent with our past decisions, we are not incorporating by reference.[102] Additionally, as mentioned above, we are addressing the WEQ–023 ATC Modeling Standards, with the exception of the sections listed herein, in a separate rulemaking proceeding.

87. Our regulations provide that copies of the standards incorporated by reference may be obtained from NAESB, whose offices are located at 801 Travis Street, Suite 1675, Houston, TX 77002, Phone: (713) 356–0060. NAESB's website can be accessed at *https://www.naesb.org*. Copies of the standards may be inspected at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE, Washington, DC 20426, Phone: (202) 502–8371, *http://www.ferc.gov*.[103]

88. NAESB is a private, consensus standards developer that develops voluntary wholesale and retail standards related to the energy industry. The procedures utilized by NAESB make its standards reasonably available to those affected by the Commission's regulations.[104] Participants can join NAESB, for an annual membership cost of $7,500, which entitles them to full participation in NAESB and enables them to obtain these standards at no additional cost.[105] Non-members may obtain the Individual Standards Manual or Booklet for $250 per manual or booklet.[106] Non-members also may obtain the complete set of Business Practice Standards on USB flash drive for $2,000. NAESB also provides a free electronic read-only version of the standards for a three-business day period or, in the case of a regulatory comment period, through the end of the comment period.[107] In addition, NAESB considers requests for waivers of the charges on a case-by-case basis based on need.

## V. Information Collection Statement

89. The Paperwork Reduction Act (PRA)[108] requires each federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information (including reporting, record keeping, and public disclosure requirements) directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements imposed by rules (including deletion, revision, or implementation of new requirements).[109] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

90. The Commission solicits comments from the public on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility and clarity of the information collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Specifically, the Commission asks that any revised burden or cost estimates submitted by commenters be supported by sufficient detail to understand how the estimates are generated.

91. Comments concerning the information collections modified in this final rule and the associated burden estimates should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov*. Please refer to FERC–516E (OMB Control No. 1902–0290) and FERC–717 (OMB Control No. 1902–0173).

92. This final rule will affect the following existing data collections: Standards for Business Practices and Communication Protocols for Public Utilities (FERC–717) and Electric Rate Schedule Filings and Tariff Filings (FERC–516E).[110] Estimates of the PRA-related burden and cost[111] follow.

MODIFICATIONS DUE TO THE FINAL RULE IN DOCKET NOS. RM05–5–025, RM05–5–026, AND RM05–5–027

| | Number of respondents | Annual number of responses per respondent | Total number of responses | Average burden (hrs.) & cost ($) per response | Total annual burden hrs. & total annual cost ($) |
|---|---|---|---|---|---|
| | (1) | (2) | (1) * (2) = (3) | (4) | (3) * (4) = (5) |
| FERC–516E (one-time tariff filing)[112] ..... | 165 | 1 | 165 | 6 hrs.; $480 ..... | 990 hrs.; $79,200 |

[102] The suites of NAESB business practice standards we are not incorporating by reference in this final rule are: (1) The WEQ–009 Standards of Conduct for Electric Transmission Providers, which NASESB has now eliminated as they duplicate the Commission's regulations; (2) the WEQ–010 Contracts Related Business Practice Standards that establish model contracts for the wholesale electric industry, and which the Commission has not incorporated as they are not mandatory; (3) the WEQ–014 WEQ/WGQ eTariff Related Business Practice Standards, which provide an implementation guide describing the various mechanisms, data tables, code values/reference tables, and technical specifications used in the submission of electronic tariff filings to the Commission, which the Commission has not incorporated as these submittals are governed by the Commission's eTariff regulations; (4) the WEQ–023 Modeling Business Practice Standards, with enumerated exceptions, which the Commission is addressing in a separate rulemaking; and (5) the WEQ–016, WEQ–017, WEQ–018, WEQ–019, and WEQ–020 Business Practice Standards that were developed as part of the Smart Grid implementation and which the Commission adopted as non-mandatory guidance in 18 CFR 2.27 (2019). *See* Order No. 676–H, 148 FERC ¶ 61,205.

[103] 18 CFR 284.12 (2019).

[104] As a private, consensus standards developer, NAESB needs the funds obtained from its membership fees and sales of its Individual Standards Manual or Booklet to finance the organization. The parties affected by these Commission regulations generally are highly sophisticated and have the means to acquire the information they need to effectively participate in Commission proceedings.

[105] *NAESB Membership Application, https://www.naesb.org/pdf4/naesbapp.pdf*.

[106] *NAESB Materials Order Form, https://www.naesb.org//pdf/ordrform.pdf*.

[107] Procedures for non-members to evaluate work products before purchasing are available at *https://www.naesb.org/misc/NAESB_Nonmember_Evaluation.pdf*.

[108] 44 U.S.C. 3501–21.

[109] 5 CFR part 1320.

[110] The reporting and recordkeeping requirements would normally be covered by FERC–516 (OMB Control No. 1902–0096) and FERC–717. However, another request for an unrelated final rule is pending OMB review under FERC–516, and only one item per OMB Control Number may be pending OMB review at a time. In order to be submitted timely, the PRA requests for this final rule will be submitted to OMB in FERC–516E (a temporary placeholder collection number, as was done for Docket Nos. RM05–5–025 and RM05–5–027), and FERC–717.

[111] The Commission staff estimates that industry is similarly situated in terms of hourly cost (for wages plus benefits). Based on the Commission's Fiscal Year (FY) 2019 average cost of $167,091/year (for wages plus benefits, for one full-time employee), $80.00/hour is used.

[112] This includes any burden associated with waiver requests.

MODIFICATIONS DUE TO THE FINAL RULE IN DOCKET NOS. RM05–5–025, RM05–5–026, AND RM05–5–027—Continued

| | Number of respondents (1) | Annual number of responses per respondent (2) | Total number of responses (1) * (2) = (3) | Average burden (hrs.) & cost ($) per response (4) | Total annual burden hrs. & total annual cost ($) (3) * (4) = (5) |
|---|---|---|---|---|---|
| FERC–717 (compliance with standards) [113] | 165 | 1 | 165 | 30 hrs.; [114] $2,400 ..... | 4,950 hrs.; $396,000 |
| Total ..... | ..... | ..... | 330 | ..... | 5,940 hrs.; $475,200 |

93. The Commission sought comments on the burden of complying with the requirements imposed by these requirements. No comments were filed addressing the reporting burden. While a number of utilities have reduced their actual filing burden by revising their tariffs as suggested in Order No. 676–H (and explained again in paragraph 66 of this final rule), we have not reduced the burden estimate to reflect this. Thus, our burden estimate is conservative in the regard.

94. The Commission's regulations adopted in this rule are necessary to establish a more efficient and integrated wholesale electric power grid. Requiring such information ensures both a common means of communication and common business practices that provide entities engaged in the wholesale transmission of electric power with timely information and uniform business procedures across multiple Transmission Providers. These requirements conform to the Commission's goal for efficient information collection, communication, and management within the electric power industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

*Title:* Standards for Business Practices and Communication Protocols for Public Utilities (FERC–717); [115] and Electric Rate Schedules and Tariff Filings (FERC–516E).

*Action:* Final rule.

*OMB Control No.:* 1902–0290 (FERC–516E); 1902–0173 (FERC–717).

*Respondents:* Business or other for profit, (Public Utilities—Not applicable to small businesses).

*Frequency of Responses:* One-time.

*Necessity of the Information:* This rule will upgrade the Commission's current business practice and communication standards. Specifically, these standards will provide common nomenclature for terms within the wholesale electric industry; define the general and specific transaction processing requirements and related business processes required for OASIS; define the commercial processes necessary to facilitate interchange transactions via RFI; define the business practices for cutting transmission service during a TLR event; assist with supporting the short-term pre-emption process and the merger of like transmission services; establish the cybersecurity framework for parties partaking in transactions via a transmission provider's OASIS or e-Tagging system; detail requirements related to point-to-point OASIS transaction processing; define a common framework for transparency, consistency, and accountability applicable to the measurement and verification of wholesale electric market demand response practices; ensure several suites of standards are consistent with or accurately reflect modifications to the NERC Reliability Standards, including dynamic tagging, pseudo-times, the full transfer of the Electric Industry Registry and additional changes to support market operator functionalities. These practices will ensure that potential customers of open access transmission service receive access to information that will enable them to obtain transmission service on a non-discriminatory basis and will assist the Commission in maintaining a safe and reliable infrastructure and also will assure the reliability of the interstate transmission grid. The implementation of these standards and regulations is necessary to increase the efficiency of the wholesale electric power grid. This final rule also updates the reference to NAESB's Smart Grid Standards that the Commission has listed informationally as non-mandatory guidance in Part 2 of the Commission's regulations.

95. The information collection requirements of this final rule are based on the transition from transactions being made under the Commission's existing business practice standards to conducting such transactions under the standards incorporated by reference in this final rule and to account for the burden associated with the new standard(s) being incorporated by reference here (*e.g.,* WEQ–000).

96. *Internal Review:* The Commission has reviewed the revised business practice standards and has determined that the revisions adopted in this final rule are necessary to maintain consistency between the business practice standards and reliability standards on this subject. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

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

## VI. Environmental Analysis

98. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[116] The Commission has categorically excluded certain actions from these requirements as not having a

[112] This includes any burden associated with waiver requests.

[113] FERC–717 corresponds to OMB Control No. 1902–0173 that identifies the information collection associated with Standards for Business Practices and Communication Protocols for Public Utilities.

[114] The 30-hour estimate was developed in Docket No. RM05–5–013, when the Commission prepared its estimate of the scope of work involved in transitioning to the NAESB Version 002.1 Business Practice Standards. *See* Order No. 676–E, 129 FERC ¶ 61,162 at P 134. We have retained the same estimate here, because the scope of the tasks involved in the transition to Version 003.2 of the Business Practice Standards is very similar to that for the transition to the Version 003 Standards.

[115] FERC–717 was formerly known as Open Access Same-Time Information System and Standards for Business Practices and Communication Protocols.

[116] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

significant effect on the human environment.[117] The actions adopted here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering analysis, and dissemination, and for sales, exchange, and transportation of natural gas and electric power that requires no construction of facilities. Therefore, an environmental assessment is unnecessary and has not been prepared in this final rule.

**VII. Regulatory Flexibility Act**

99. The Regulatory Flexibility Act of 1980 (RFA) [118] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. As shown in the information collection section, this final rule applies to 165 entities. More specifically, this final rule imposes the latest version (Version 003.2) of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the WEQ and the associated financial burden upon these entities. Comparison of the applicable entities with the Commission's small business data indicates that approximately 26 are small entities [119] or 15.8 percent of the respondents affected by this final rule.

100. The Commission estimates that each of the entities (small and large) to whom the final rule applies will incur one-time paperwork costs of $2,880.[120] The Commission does not consider the estimated cost to be a significant economic impact on a substantial number of small entities. Accordingly, the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

**VIII. Document Availability**

101. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

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

103. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

**IX. Effective Date and Congressional Notification**

104. These regulations are effective April 27, 2020. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. The final rule will be submitted to the Senate, House, and Government Accountability Office.

**List of Subjects**

*18 CFR Part 2*

Electric utilities, Guidance and policy statements.

*18 CFR Part 38*

Business practice standards, Electric utilities, Incorporation by reference, Reporting and recordkeeping requirements.

By the Commission.

Issued: February 4, 2020.

**Kimberly D. Bose,**

*Secretary.*

In consideration of the foregoing, the Commission amends parts 2 and 38, chapter I, title 18, Code of Federal Regulations, as follows:

## PART 2—GENERAL POLICY AND INTERPRETATIONS

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** 5 U.S.C. 601; 15 U.S.C. 717–717z, 3301–3432, 16 U.S.C. 792–828c, 2601–2645; 42 U.S.C. 4321–4370h, 7101–7352.

■ 2. Amend § 2.27 by revising paragraphs (c) and (d) to read as follows:

**§ 2.27 Availability of North American Energy Standards Board (NAESB) Smart Grid Standards as non-mandatory guidance.**

* * * * *

(c) WEQ–018, Specifications for Wholesale Standard Demand Response Signals (WEQ Version 003.2, Dec. 8, 2017);

(d) WEQ–019, Customer Energy Usage Information Communication (WEQ Version 003.1, Sep. 30, 2015); and

* * * * *

## PART 38—STANDARDS FOR PUBLIC UTILITY BUSINESS OPERATIONS AND COMMUNICATIONS

■ 3. The authority citation for part 38 continues to read as follows:

**Authority:** 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 4. Revise § 38.1 to read as follows:

**§ 38.1 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.**

(a) Any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce or for the sale of electric energy at wholesale in interstate commerce and any non-public utility that seeks voluntary compliance with jurisdictional transmission tariff reciprocity conditions must comply with the business practice and electronic communication standards promulgated by the North American Energy Standards Board (NAESB) Wholesale Electric Quadrant (WEQ) that are incorporated by reference in paragraph (b) of this section.

(b) The material cited in this paragraph (b) was approved by the Director of the Federal Register for incorporated by reference in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the material may be obtained from North American Energy Standards Board (NAESB), 801 Travis Street, Suite 1675, Houston, TX 77002, Tel: (713) 356–0060. NAESB's website is at *www.naesb.org/*. The material may be inspected at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE, Washington, DC 20426, Tel: (202) 02–8371, *www.ferc.gov,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html*. The NAESB WEQ

[117] 18 CFR 380.4.

[118] 5 U.S.C. 601–612.

[119] The Small Business Administration sets the threshold for what constitutes a small business. Public utilities may fall under one of several different categories, each with a size threshold based on the company's number of employees, including affiliates, the parent company, and subsidiaries. For the analysis in this final rule, we are using a 500 employee threshold for each affected entity. Each entity is classified as Electric Bulk Power Transmission and Control (NAICS code 221121).

[120] $475,200 (total one-time paperwork cost) ÷ 165 (number of entities) = $2,880/entity.

Business Practice Standards; Standards and Models approved for incorporation by reference are:

(1) WEQ–000, Abbreviations, Acronyms, and Definition of Terms, standard WEQ–000–2 ([WEQ] Version 003.1, September 30, 2015), including only: the definitions of Interconnection Time Monitor, Time Error, and Time Error Correction;

(2) WEQ–000, Abbreviations, Acronyms, and Definition of Terms, ([WEQ] Version 003.2, Dec. 8, 2017)(with minor correction applied July 23, 2019);

(3) WEQ–001, Open Access Same-Time Information Systems (OASIS), [OASIS] Version 2.2 ([WEQ] Version 003.2, Dec. 8, 2017), excluding: standards WEQ–001–9 preamble text, WEQ–001–10 preamble text;

(4) WEQ–002, Open Access Same-Time Information Systems (OASIS) Business Practice Standards and Communication Protocols (S&CP), [OASIS] Version 2.2 ([WEQ] Version 003.2, Dec. 8, 2017);

(5) WEQ–003, Open Access Same-Time Information Systems (OASIS) Data Dictionary, [OASIS] Version 2.2 ([WEQ] Version 003.2, Dec. 8, 2017) (with minor corrections applied July 23, 2019);

(6) WEQ–004, Coordinate Interchange ([WEQ] Version 003.2, Dec. 8, 2017);

(7) WEQ–005, Area Control Error (ACE) Equation Special Cases ([WEQ] Version 003.2, Dec. 8, 2017);

(8) WEQ–006, Manual Time Error Correction ([WEQ] Version 003.1, Sept. 30, 2015);

(9) WEQ–007, Inadvertent Interchange Payback ([WEQ] Version 003.2, Dec. 8, 2017);

(10) WEQ–008, Transmission Loading Relief (TLR)—Eastern Interconnection ([WEQ] Version 003.2, Dec. 8, 2017);

(11) WEQ–011, Gas/Electric Coordination ([WEQ] Version 003.2, Dec. 8, 2017);

(12) WEQ–012, Public Key Infrastructure (PKI) ([WEQ] Version 003.2, Dec. 8, 2017);

(13) WEQ–013, Open Access Same-Time Information Systems (OASIS) Implementation Guide, [OASIS] Version 2.2 ([WEQ] Version 003.2, Dec. 8, 2017);

(14) WEQ–015, Measurement and Verification of Wholesale Electricity Demand Response ([WEQ] Version 003.2, Dec. 8, 2017);

(15) WEQ–021, Measurement and Verification of Energy Efficiency Products ([WEQ] Version 003.2,Dec. 8, 2017);

(16) WEQ–022, Electric Industry Registry ([WEQ] Version 003.2, Dec. 8, 2017); and

(17) WEQ–023, Modeling ([WEQ] Version 003.2, Dec. 8, 2017), including only: standards WEQ–023–5; WEQ–023–5.1; WEQ–023–5.1.1; WEQ–023–5.1.2; WEQ–023–5.1.2.1; WEQ–023–5.1.2.2; WEQ–023–5.1.2.3; WEQ–023–5.1.3; WEQ–023–5.2; WEQ–023–6; WEQ–023–6.1; WEQ–023–6.1.1; WEQ–023–6.1.2; and WEQ–023–A Appendix A.

## Appendix

**Note:** The Following Appendix Will Not Be Published in the Code of Federal Regulations.

**List of Entities Filing Comments on WEQ Version 003.1 NOPR in Docket No. RM05–5–025, and the Abbreviations Used To Identify Them**

- Bonneville Power Administration (9/26/16) (Bonneville)
- California Independent System Operator Corporation (9/26/16) (CAISO)
- Edison Electric Institute (9/26/16) (EEI)
- Idaho Power Company (9/23/16) (Idaho Power)
- Open Access Technology International (9/27/16) (OATI)
- Public Utility District No. 1 of Snohomish County, Washington and the City of Tacoma, Department of Public Utilities, Light Division (collectively, Snohomish/Tacoma) (9/26/16)
- Southern Company Services, Inc. (9/26/16) (Southern)
- Southwest Power Pool, Inc. and Midwest Independent System Operator, Inc. (9/26/16) (collectively, Joint Commenters)

**List of Entities Filing Comments on WEQ Version 003.2 NOPR in Docket No. RM05–5–027, and the Abbreviations Used To Identify Them**

- Bonneville Power Administration (7/23/2019) (Bonneville)
- Midcontinent Independent System Operator, Inc. (7/23/2019) (MISO)
- North American Energy Standards Board (6/5/2019) (NAESB)
- Nevada Power Company and Sierra Pacific Power Company (7/23/2019) (NV Energy)
- Open Access Technology International, Inc. (7/22/2019) (OATI)
- PJM Interconnection, L.L.C. (7/23/2019) (PJM)
- Southern Company Services, Inc. (7/23/2019) (Southern)
- Southwest Power Pool, Inc. (7/23/2019) (SPP)

**List of Entities Filing Comments on WEQ Time Error Correction NOPR in Docket No. RM05–5–026, and the Abbreviations Used To Identify Them**

- Dr. Jonathan E. Hardis (11/13/18)
- Dr. Demetrios Matsakis (11/13/18)
- North American Electric Reliability Corporation (10/24/2018) (NERC)
- North American Energy Standards Board (11/28/2018) (NAESB)
- Southwest Power Pool, Inc. (11/13/18) (SPP)

[FR Doc. 2020–03244 Filed 2–24–20; 8:45 am]

**BILLING CODE 6717–01–P**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

**[Docket No. SSA–2017–0046]**

**RIN 0960–AH86**

## Removing Inability To Communicate in English as an Education Category

**AGENCY:** Social Security Administration.

**ACTION:** Final rules.

**SUMMARY:** We are finalizing our proposed regulations to eliminate the education category ''inability to communicate in English'' when we evaluate disability claims for adults under titles II and XVI of the Social Security Act (the Act). This education category is no longer a useful indicator of an individual's educational attainment or of the vocational impact of an individual's education because of changes in the national workforce since we adopted the current rule more than 40 years ago. We expect that these revisions will help us better assess the vocational impact of education in the disability determination process.

**DATES:** The final rule is effective on April 27, 2020.

**FOR FURTHER INFORMATION CONTACT:** Dan O'Brien, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 597–1632. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

We are finalizing the proposed rules on removing the education category ''inability to communicate in English,'' which we published in a notice of proposed rulemaking (NPRM) on February 1, 2019 (84 FR 1006). We are revising our rules to remove the education category ''inability to communicate in English'' based on research and data related to English language proficiency, work, and education; expansion of the international reach of our disability programs; audit findings by our Office of the Inspector General (OIG); [1] and public comments we received on the NPRM. We expect these changes will

[1] See Office of Inspector General, Social Security Administration, Audit Report, *Qualifying for Disability Benefits in Puerto Rico Based on an Inability to Speak English* (April 2015) (OIG report), at *https://oig.ssa.gov/sites/default/files/audit/full/pdf/A-12-13-13062_0.pdf.*

help us better assess the vocational impact of education in the disability determination process.

In the preamble to the NPRM, we explained that we use a five-step sequential evaluation process to determine whether an adult is disabled under the Act.[2] When this final rule becomes effective, we will no longer consider whether an individual is able to communicate in English at the fifth and final step of the sequential evaluation process (step 5). The NPRM also discussed in detail further conforming edits, and the bases for our revisions. Because we are adopting these revisions as we proposed them, we are not repeating that information here. Interested readers may refer to the preamble to the NPRM, available at *http://www.regulations.gov* by searching for docket number SSA–2017–0046.

In the preamble, we refer to the regulations in effect on the date of publication as the ''current'' rule. We refer to the regulations that will be in effect on April 27, 2020 as the ''final'' rule.

**Public Comments**

We received 216 comments on the NPRM, 212 of which were related to the regulation and are thus available for public viewing at *http://www.regulations.gov*.[3] These comments were from:

- Individual citizens and claimant representatives;
- Members of Congress;
- National groups representing claimant representatives, such as the National Organization of Social Security Claimants' Representatives and the National Association of Disability Representatives; and
- Advocacy groups, such as the Consortium for Citizens with Disabilities and Justice in Aging.

We carefully considered these comments; below, we discuss and respond to the significant issues raised by the commenters that were within the scope of the NPRM. We summarized, condensed, and paraphrased the comments due to their length. We organized the comments and our responses by category for ease of review.

**Eliminating the English Language Distinction**

*Comment:* Several commenters supported the proposal to eliminate the ''inability to communicate in English'' as an education category. One commenter expressed that the current rule gives non-English speakers an advantage over English speakers. Other commenters asserted that the current rule treats persons who are non-English speaking as though they are illiterate; that it creates a negative perception of non-English speakers; and that it suggests only English-speaking persons are educated enough to hold a job.

*Response:* We concur with the commenters' support for the proposal to eliminate the language distinction. The goal of this final rule is to help ensure our program rules remain current, and we expect that this final rule will allow us to decide disability claims consistent with the changes that have occurred in the national workforce in the last four decades.

*Comment:* One commenter supported our proposal, stating there is no strict correlation between proficiency in English and the ability to make valuable contributions to the U.S. economy. The commenter opined that our current rules might determine a highly-skilled non-English speaker to be disabled, diverting disability funds away from the people who most need them.

*Response:* We acknowledge the commenter's support for our rule. We, however, disagree that our current rules have diverted disability funds away from those who need them the most. Whether an individual is able to communicate in English is one of many factors we consider when determining disability. For example, if an individual has the residual functional capacity to perform his or her past relevant work, we find the person not disabled, regardless of the person's ability to communicate in English.

**Changes in the National Workforce**

*Comment:* Several commenters noted that the United States (U.S.) is now a diverse country with work opportunities for non-English speakers. One commenter stated that an ability to speak, read, or write in English is no longer imperative for attaining a job in the U.S. Other commenters similarly opined that the U.S. today is a diverse country with employment opportunities in many industries for non-English-speakers, and that a lack of English language proficiency is not the obstacle that it used to be. A commenter also expressed that the ''inability to communicate in English'' education category is unnecessary, and that changing the current rule is ''overdue.''

*Response:* We acknowledge the commenters' support for our rule. Our current rules, published in 1978,[4] are premised on the assumption that ''it may be difficult for someone who does not speak and understand English to do a job, regardless of the amount of education the person may have in another language.'' [5] As we discussed in the NPRM, and as the commenters said, there have been changes in the national workforce since we added the ''inability to communicate in English'' category to our rules on evaluating education. These changes and other data and research have led us to conclude that this education category is no longer a useful indicator of an individual's educational attainment or of the vocational impact of an individual's education for the purposes of our programs. This final rule reflects those changes in the national workforce, acknowledge the vocational advantage that formal education may provide in any language, and account for expansion of the international reach of our disability programs.

*Comment:* One commenter, citing to the Office of Research, Evaluation, and Statistics (ORES) Analysis of 1980 Census and 2016 American Community Survey: English Proficiency,[6] contended that the data we presented does not support the proposal, because job opportunities for individuals with limited English proficiency (LEP) have not grown at the same rate as the LEP population. The commenter asserted

[2] The sequential evaluation of disability for adults is composed of five steps. We determine whether an individual: Is doing substantial gainful activity (step 1); has one or more severe medically determinable impairments (step 2); has an impairment that meets or medically equals the requirements of the Listing of Impairments in 20 CFR part 404, subpart P, appendix 1 (step 3); can do his or her past relevant work (step 4); and can do any other work, given his or her residual functional capacity, age, education, and work experience (step 5). If at any step, we can make a finding of ''disabled'' or ''not disabled,'' we stop the evaluation, make our determination or decision, and do not proceed to the next step. See 20 CFR 404.1520(a)(4) and 416.920(a)(4).

[3] We excluded one comment from one of our employees who improperly submitted the comment in the capacity as an employee. We excluded three other comments because they were out of scope or nonresponsive to the proposal.

[4] 43 FR 55349, 55364–65 (1978). Our original rules on the inability to communicate in English stated that this factor ''may be considered a vocational handicap because it often narrows an individual's vocational scope.'' 20 CFR 404.1507(f) (1979). In 1980, we reorganized and rewrote a number of rules in simpler, briefer language, including our rule on consideration of education as a vocational factor. 45 FR 55566, 55591 (1980). Our rules on the inability to communicate in English have remained unchanged since that 1980 revision.

[5] See 20 CFR 404.1564(b)(5) and 416.964(b)(5).

[6] See SSA Office of Research, Evaluation, and Statistics (ORES) Analysis of 1980 Census and 2016 American Community Survey: English Proficiency (ORES English Proficiency Analysis 2016), Table 1: Estimated working-age (25–64) population, by English proficiency and educational attainment, 1980 and 2016 (ORES English Proficiency Analysis 2016 Table 1), and Table 2: Estimated labor force participation of working-age (25–64) population, by English proficiency and educational attainment, 1980 and 2016 (ORES English Proficiency Analysis 2016 Table 2), available at *regulations.gov* as a supporting and related material for docket SSA–2017–0046.

that the percentage of working-age LEP individuals with a high school degree in the workforce only increased by 3.7% between 1980 to 2016, while the working-age LEP population increased by 5.4% during the same period.

*Response:* We disagree because the statistics presented by the commenter characterizing our data are incorrect. The increase in the working age (25–64) LEP [7] population between 1980 and 2016 was not 5.4%.[8] The working age LEP population more than tripled, increasing from approximately 5.4 million to 17.8 million.[9] Also, the increase in the labor force participation rate (LFPR) [10] of the working age LEP population with high school education was not 3.7%. Rather, their LFPR increased by 3.7 percentage *points,* from 70% to 73.7%.[11] See Tables 1–2 below for a summary of relevant data.

TABLE 1—WORKING AGE LEP POPULATION IN THE U.S.

| 1980 | 2016 | Change |
|---|---|---|
| 5.1% (5.4 million). | 10.5% (17.8 million). | LEP population increased by 5.4 percentage points. |

TABLE 2—LABOR FORCE PARTICIPATION BY LEP INDIVIDUALS WITH HIGH SCHOOL DIPLOMA

| 1980 | 2016 | Change |
|---|---|---|
| 70% (819,000). | 73.7% (4.4 million). | Labor force participation increased by 3.7 percentage points. |

More importantly, between 1980 and 2016, the working age LEP population more than doubled from 5.1% to 10.5% as a percentage of the US population (approximately 5.4 million to 17.8 million).[12] During the same period, the LFPR of the working age LEP population (with no restriction on education) increased from 66.7% to 72.2% (approximately 3.6 million to 12.9 million).[13] This means that in 2016, 1 out of 10 working age individuals in the country was a person with LEP, and that 72% of the working age LEP population were in the labor force. The data, while not an exact match for all the parameters we examine, indicates that individuals with LEP were more likely to be part of the labor force in 2016 than in 1980.[14] See Table 3 below for a summary of relevant data.

TABLE 3

| Working age LEP population in the U.S. | | Labor force participation of LEP population in the U.S. | |
|---|---|---|---|
| 1980 | 2016 | 1980 | 2016 |
| 5.1% (5.4 million) ..... | 10.5% (17.8 million) ..... | 66.7% (3.6 million) ..... | 72.2% (12.9 million). |

We also looked at employment rate [15] as another indicator of how the national workforce has changed. Because employment rate focuses exclusively on the employed population, it demonstrates that people with LEP are working, and that the percentage of those who are working has increased since 1980. In 2017, the employment rates for the working age LEP population (95.2%) and the working age population that speak only English (95.8%) were about the same.[16] The employment rate for people who speak only English changed slightly from 1980 to 2017 (95.2% to 95.8%).[17] The employment rate for individuals with LEP increased by a slightly greater percentage over that same period (92.4% to 95.2%).[18] The employment rate for those who speak no English, however, increased from 88.1% to 94.3% during the same period.[19] Moreover, the number of individuals who speak no English increased substantially, and at a greater rate than all other group, except the LEP group that speaks English not well.[20] The group that speaks no English and the group that speaks English not well nearly quadrupled between 1980 and 2017.[21] In sum, contrary to the commenter's assertions, the data we presented supports our final rule removing inability to communicate in English as an education category because, as explained above, the labor force participation and employment rates for individuals with LEP have increased. See Tables 4–5, below, for a summary of relevant data.

[7] As explained in the NPRM, the U.S. Census Bureau defines LEP as those who speak English ''well,'' ''not well,'' or ''not at all.'' See U.S. Census Bureau American Community Survey (ACS), What State and Local Governments Need to Know, p. 12, n. 8, February 2009, *https://www.census.gov/content/dam/Census/library/publications/2009/acs/ACSstateLocal.pdf.*

[8] See ORES English Proficiency Analysis 2016 Table 1.

[9] Id.

[10] Labor force participation rate refers to the percent of the civilian population that is working or actively looking for work.

[11] See ORES English Proficiency Analysis 2016 Table 2.

[12] See ORES English Proficiency Analysis 2016 Table 1.

[13] Between 1980 and 2016, the LFPR of the individuals who spoke only English increased from 73.4% to 77.5% (approximately 69.8 million to 101.1 million). See ORES English Proficiency Analysis 2016 Table 2.

[14] When we published the NPRM, we used 2016 data about the LFPR and the working age population by English proficiency and educational attainment, because this was the most recent data available. Because many commenters referred to the 2016 data that we discussed in the NPRM, some of our responses in this final rule refer to this 2016 data. However, we now have parallel data available for 2017. The 2017 data closely tracks the data from 2016 that we cited in the NPRM. For example, in 2017 the working age LEP population's LFPR was 72.6%, compared to 72.2% in 2016. For the complete 2017 data, see the Office of Research, Evaluation, and Statistics (ORES) Analysis of 1980 Census and 2017 American Community Survey: English Proficiency and Labor Force Participation (ORES Labor Force Analysis 2017), available at *regulations.gov* as supporting and related material for docket SSA–2017–0046.

[15] In our analysis, employment rate equals the percent of civilian individuals ages 25–64 who report that they are working.

[16] For the population that spoke only English, approximately 97.6 million individuals out of 101.9 million in the labor force were employed. For the LEP population, approximately 12.2 million individuals out of 12.8 million in the labor force were employed. See the Office of Research, Evaluation, and Statistics (ORES) Analysis of 1980 Census and 2017 American Community Survey: English Proficiency, Population Size, and Employment (ORES English Proficiency, Population, and Employment Analysis 2017) Table 2 and ORES Labor Force Analysis 2017, available at *regulations.gov* as a supporting and related material for docket SSA–2017–0046.

[17] ORES English Proficiency, Population, and Employment Analysis 2017 Table 2.

[18] Id.

[19] Id.

[20] See the Office of Research, Evaluation, and Statistics (ORES) Analysis of 1980 Census and 2017 American Community Survey: English Proficiency, Population Size, and Employment (ORES English Proficiency, Population, and Employment Analysis 2017) Table 1, available at *regulations.gov* as a supporting and related material for docket SSA–2017–0046.

[21] Id. The population of LEP individuals who speak no English increased from approximately 682,000 to 2.6 million.

TABLE 4

| Working age population in the U.S. | 1980 | 2017 (million) | Rate of population growth (percent) |
|---|---|---|---|
| Total | 107.2 million | 170.5 | 59.05 |
| Speaks only English | 95.2 million | 130.9 | 37.50 |
| Speaks English very well | 6.6 million | 22 | 233.33 |
| LEP | 5.4 million | 17.6 | 225.93 |
| Speaks English well | 3.1 million | 8.4 | 170.97 |
| Speaks English not well | 1.7 million | 6.6 | 288.24 |
| Speaks no English | 682,000 | 2.6 | 281.23 |

TABLE 5—EMPLOYMENT RATE FOR WORKING AGE POPULATION

| | 1980 (percent) | 2017 (percent) |
|---|---|---|
| Population with LEP | 92.4 | 95.2 |
| Population that speaks no English | 88.1 | 94.3 |
| Population that speaks only English | 95.2 | 95.8 |

*Comment:* Some commenters asserted that the fact that work opportunities for the population with LEP expanded is irrelevant, because the ''inability to communicate in English'' education category only includes the LEP population that speaks no English. Commenters pointed out that the ''LEP'' rubric includes individuals who speak English ''well,'' ''not well,'' and ''not at all,'' so the LEP population is too broad to represent those individuals who are ''unable to communicate in English.'' These commenters contended that the appropriate proxy for individuals with an ''inability to communicate in English'' would be only those individuals with LEP who speak no English. Further, some of these commenters asserted that the labor force participation for individuals who speak no English has, in their opinions, not improved much.

*Response:* We disagree. The ''inability to communicate in English'' education category can apply to a range of individuals with varying levels of English communication ability. This is because our agency uses the ''inability to communicate in English'' category to include all individuals who are unable to do one or more of the following in English: (1) Read a simple message; (2) write a simple message; or (3) speak or understand a simple message.[22] In other words, we currently find as ''unable to communicate in English'' individuals who cannot speak English but who have some, or even higher, capacity to read and understand English. Similarly, we find as ''unable to communicate in English'' individuals who cannot read or write English, but who can speak some English. Therefore, while not an exact match, the LEP population is an appropriate proxy for the population we deem ''unable to communicate in English'' under our current rules.

In response to the commenters' assertion that the LFPR for this group has not increased, we note that the data we cited indicates that individuals who speak no English are participating in the labor force in increased numbers. Between 1980 and 2016, the LFPR for those who speak no English rose from 54.7% to 61.5% (approximately from 373,000 to 1.7 million in absolute numbers).[23] [24] [25] The proportion of the working age population who do not speak English to the total labor force nearly tripled, that is, from approximately 373,000 out of 78.3 million to approximately 1.7 million out of 131 million over the same period.[26]

Moreover, the 2016 data shows that the LFPR of the individuals who spoke no English increased more than any other group at the High School Diploma, Some College, and College Graduate levels.[27] At the Less than High School Diploma level, even though the increase in the LFPR of those individuals who spoke no English was not the highest among all groups, the LFPR of the no English group (60.5%) was still higher than that of only English group (48.9%).[28] [29] In 1980, the reverse was true.[30]

*Comment:* Some commenters raised the concern that the work opportunities for individuals with LEP are not the same throughout the U.S. A few commenters noted that the region in which an individual with LEP lives and the number of people in that individual's region of residence who speak the same language as the individual could affect job prospects. One commenter stated that no one speaks anything other than English in his region, so he believed that an inability to communicate in English would be a significant barrier to working where he lives. Another commenter said that even though a substantial number of LEP persons live in his region, he doubted that employers would hire them, because a large number of English proficient workers are available in his region. Another commenter asserted that, for non-English speaking individuals, the language the individuals speak might affect their work opportunities. This commenter opined that an individual with LEP who speaks Spanish might have better work prospects than an individual with LEP who speaks another language.

*Response:* Our disability programs are national in scope. According to the Act, it does not matter whether work ''exists in the immediate area in which [a claimant] lives'' as long as sufficient work exists in the ''national economy.'' [31] The Act defines the ''national economy'' as ''the region

[22] See 20 CFR 404.1564 and 416.964. See also Program Operations Manual System (POMS) DI 25015.010C.1.b Education as a Vocational Factor, available at *https://secure.ssa.gov/apps10/poms.NSF/lnx/0425015010.*

[23] See ORES English Proficiency Analysis 2016 Table 2.

[24] The LFPR for those who speak only English rose from 73.4% to 77.5% (approximately from 69.8 million to 101.1 million in absolute numbers). Id.

[25] The LFPR for those who speak no English was 61% (approximately 1.6 million in absolute numbers) in 2017. See ORES English Labor Force Analysis 2017.

[26] See ORES English Proficiency Analysis 2016 Table 2.

[27] Id.

[28] Id.

[29] In 2017, the data shows that the LFPR of those with less than a high school diploma and who spoke no English was 59.2%. The LFPR of those similarly situated individuals who spoke only English was 49.1%. See ORES English Proficiency, Population, and Employment Analysis 2017.

[30] In 1980, the LFPR of those with less than a high school diploma and who spoke no English was 54.5%. The LFPR of those with less than a high school diploma who spoke only English was 60.7%. See ORES English Proficiency Analysis 2016 Table 2.

[31] See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act, 42 U.S.C. 423(d)(2)(A), 1382c(a)(3)(B).

where [a claimant] lives'' *or* ''several regions of the country.'' [32] The existence of jobs for individuals with LEP may vary depending on the immediate area in which the individual resides. The Act, however, requires us to consider the existence of jobs in the overall national economy (defined as an entire region or several regions of the country).

As to the concern that an individual with LEP may not be hired because employers may prefer a person who is proficient in English, the Act prohibits us from considering ''whether a specific job vacancy exists for [a claimant], or whether he would be hired if he applied for work.'' [33] Consistent with the Act, our regulations explain that when we determine whether a claimant can adjust to other work, we do not consider the hiring practices of employers.[34] Again, we are required to consider only whether a claimant could engage in work that exists in significant numbers in the national economy, not how likely claimants are to be hired by certain employers.

*Comment:* Some commenters expressed the view that an increase in the size of the population with LEP does not translate to greater work opportunities for those individuals with LEP. These commenters contended that increased linguistic diversity in the economy might actually make finding work more difficult for workers with LEP, because they would have a harder time finding other workers who speak the same language.

*Response:* The available data does not support the assertions made in this comment. Both the LEP population as a percentage of the U.S. population and their LFPR increased considerably between 1980 and 2016. In fact, during this period, the LFPR of the LEP population increased more than that of the individuals who spoke only English. The LEP population's LFPR increased by 5.5 percentage points (from 66.7% to 72.2%) while the LFPR of the population that spoke only English increased by 4.1 percentage points (from 73.4% to 77.5%).[35] The increase is notable considering the change in the make-up of the U.S. population. In 1980, the LEP individuals made up only 5.1% (5.4 million) of the population.[36] In 2016, LEP individuals made up 10.5% (17.8 million) of the U.S. population.[37] Further, the Brookings Institution's 2014 study (the Brookings analysis) that evaluated the LEP population in 89 metropolitan areas (home to 82% of nation's LEP population) in 43 States and the District of Columbia showed that a majority of working-age individuals with LEP are in the labor force.[38] While the LFPR increase for the LEP population could theoretically be attributed to multiple factors, the data suggests that there are job opportunities for those with LEP.

*Comment:* One commenter asserted that our reliance on the Brookings analysis was inappropriate because the study did not examine LEP individuals with disabilities, but rather focused on the general LEP population.

*Response:* Under the Act, we find a person disabled if the person cannot do his or her past relevant work or any other work that exists in the national economy in significant numbers. This means that a person found disabled under our rules would not be working, absent special circumstances. Therefore, we examined data about the LFPR of individuals in the general LEP population, rather than focusing on the data about LEP individuals who are disabled. Examining statistics on persons with impairments who are in the labor force would not have been directly relevant to this rulemaking, because if such persons were able to engage in work in the national economy, their impairments would not have been severe enough to meet the Act's definition of ''disability'' in the first place.

**Inability To Communicate in English as a Barrier to Work**

*Comment:* A few commenters cited Social Security Ruling (SSR) 85–15,[39] which says that we will find an individual disabled if his or her mental capacity is insufficient to meet the demands of unskilled work due to a mental impairment. These commenters equated the effects of ''inability to communicate in English'' with the effects of having a mental impairment that severely limits the potential work capacity. These commenters stated that our rules should treat similarly the effects of the ''inability to communicate in English'' and those of severely limiting mental impairments. One of these commenters also cited listing 2.09, which addresses ''loss of speech,'' [40] and said that it is implausible that the ''inability to communicate in English'' would be completely vocationally irrelevant when we find an individual who is unable to speak disabled under listing 2.09.

*Response:* We disagree with these comments, because the loss of speech under listing 2.09 and an inability to communicate in English (or in any one particular language) are different and cannot be conflated. SSR 85–15 addresses primarily the loss of functional capacity that results from a medically determinable impairment(s) (MDI). Under the Act, an MDI ''results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.'' [41] The ''inability to communicate in English'' is not an MDI; rather, it is a subset of the Act's vocational factor of education. Our rules treat MDIs differently from vocational factors in determining disability. Specifically, we consider the effects of an MDI or a combination of MDIs to determine an individual's residual functional capacity (RFC).[42] We do not include the effects of vocational factors—*i.e.,* age, education, and work experience —when determining an RFC. Under this final rule, how we assess an RFC remains the same, but we will no longer consider an ''inability to communicate in English'' as a subset of the vocational factor of education for the reasons we explain here and in the NPRM. We note that persons who are unable to communicate due to an MDI would be evaluated under the criteria for that MDI; the inability to communicate generally (presumably in any language, not just English) would be considered in that context, and not as a ''symptom'' in isolation.

The comparison of the ''inability to communicate in English'' to ''loss of speech'' under listing 2.09 can be

[32] Id.

[33] See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act, 42 U.S.C. 423(d)(2)(A), 1382c(a)(3)(B).

[34] See 20 CFR 404.1566(c) and 416.966(c).

[35] See ORES English Proficiency Analysis 2016 Table 2.

[36] ORES English Proficiency Analysis 2016 Table 1.

[37] Id.

[38] Jill H. Wilson, Investing in English Skills: The Limited English Proficient Workforce in U.S. Metropolitan Areas, Metropolitan Policy Program, at Brookings Institution (September 2014), p. 15, 20; and Appendix. Limited English Proficiency Population, Ages 16–64, 89 Metropolitan Areas, 2012, p. 32–37, available at *https://www.brookings.edu/wp-content/uploads/2014/09/Srvy_EnglishSkills_Sep22.pdf.*

[39] SSR 85–15: Titles II and XVI: Capability to Do Other Work–The Medical-Vocational Rules as a Framework for Evaluating Solely Nonexertional Impairments.

[40] 20 CFR part 404, subpart P, appendix I, Listing 2.09. As explained in footnote 2, we use the five-step sequential evaluation process to determine whether an individual is disabled. At the third step, if we determine that a claimant has an impairment that meets or medically equals the requirements of the Listing of Impairments in 20 CFR part 404, subpart P, appendix 1, we find the person disabled. See 20 CFR 404.1520(a)(4)(iii) and 416.920(a)(4)(iii).

[41] Sections 223(d)(2)(C)(3),1614(a)(3)(D) of the Act, 42 U.S.C. 423(d)(3),1382c(a)(3)(D).

[42] See 20 CFR 404.1545 and 416.945; and sections 223(d)(2)(C)(3),1614(a)(3)(D) of the Act, 42 U.S.C. 423(d)(3),1382c(a)(3)(D).

similarly distinguished. Listing 2.09 deals with individuals who due to a MDI have an ''inability to produce by any means speech that can be heard, understood, or sustained.'' [43] We find individuals who satisfy the listing requirements disabled at step 3 of the sequential evaluation process, with no consideration of whether they are able to communicate in English or in another language.[44] An inability to communicate in English was a category of education that we considered at step 5 [45] and was not a functional limitation. Equating an ''inability to speak'' to an ''inability to communicate in English'' due to a lack of English proficiency draws a false equivalency between two groups of individuals who are fundamentally dissimilar. Our program experience and common understanding make it clear that individuals who are unable to produce by any means of speech that can be heard, understood, or sustained because of a severe MDI are substantially more limited than those without such an impairment who merely lack facility with the English language.

*Comment:* One commenter opined that an individual's ability to communicate in English should remain a relevant vocational factor because every vocational expert [46] would say that language proficiency affects job placement. The commenter reasoned that if that were not the case, the Dictionary of Occupational Titles (DOT) would not have included a language component in their job descriptions.

*Response:* The commenter asserted that because the DOT has a language component in their job descriptions, the ability to communicate in English must be a relevant vocational factor. We note that even under our current rules, the inability to communicate in English has no impact on disability determinations for claimants under age 45.[47] This underscores that the ability to communicate in English is not an influencing factor as a matter of general principle.

Further, we did not state the ability to communicate in English is irrelevant to job placement. Through this rule, we are simply acknowledging the changes that have occurred in the labor market and the workforce in the last four decades. The data we presented in the NPRM demonstrated that individuals with LEP, including those who speak no English, are participating in the U.S. labor force at considerably higher levels than previously. This indicates that more jobs are present in the national economy for the LEP population. We are not legally bound to establish disability determination criteria based on every possible influencing vocational factor. Rather, we are required to determine that jobs exist in the national economy for disability applicants and recipients (if they are determined to no longer be qualified for payments based on medical factors).

*Comment:* Multiple commenters disagreed with the statement from the NPRM that English language proficiency has the least significance for unskilled work, because most unskilled jobs involve working with things rather than with data or people.[48] They contended that even unskilled jobs require some level of training, which would include verbal or written instructions. Several commenters also said that many unskilled jobs require public contact and the ability to communicate in English. These commenters noted that unskilled jobs like a ''fast food worker'' include duties such as taking customer orders and communicating the orders to the kitchen. Some commenters noted that the Occupational Information Network (O*NET) does not list any job for which knowledge of the English language is unnecessary or unimportant.

*Response:* The data we cited does not support the commenter's view. A large number of individuals with LEP, including those who speak no English, participate in the labor force in a variety of occupations. The Brookings analysis cited in the NPRM shows that over 1 million individuals with LEP, including those who speak no English, are represented in each of the following occupations: Building and grounds cleaning and maintenance; production; construction and extraction; food preparation and serving; transportation and material moving; sales and related occupations; and office and administrative support.[49] This data indicates that, contrary to the commenters' assumptions, employers do find a way to communicate with LEP employees, indicating that LEP is not a barrier to all types of employment.

*Comment:* In the NPRM, we noted that the work history of those claimants found disabled under Rule 201.17 or Rule 202.09 (the two main grid rules that we used for the inability to communicate in English) [50] included the following ten occupations: Laborer, machine operator, janitor, cook, maintenance, housekeeping, driver, housekeeper, truck driver, and packer.[51] Pointing to this list, several commenters contended that only physically demanding work is available to individuals who speak no English, because the DOT classifies these jobs as ''medium'' and ''heavy'' work. These commenters further argued that this list underscores how difficult it would be for older, severely impaired individuals who are unable to communicate in English to adjust to other work available in the national economy.

*Response:* The occupations cited are not all as physically demanding as characterized by the commenters. These occupations are types of work that many claimants whom we found ''unable to communicate in English'' had previously done, and many of them exist as unskilled, light exertional level work. In a supplemental document, ''Table of example entries of 'cook,' 'machine operator' and 'housekeeping' jobs in the Dictionary of Occupational Titles,'' [52] we list multiple examples of ''cook,'' ''machine operator,'' and ''housekeeping'' occupations with their corresponding strength requirement and specific vocational preparation.[53] As shown in our table, the DOT has multiple entries of various ''cook'' occupations that range in exertional level from light to medium. As well, the DOT lists numerous entries for ''machine operator'' occupations that range from sedentary to very heavy exertional levels. ''Housekeeping'' occupations exist at the light exertional level. Moreover, the ten occupations listed above do not represent all jobs that a person who may be found ''unable to communicate in English'' can do. Finally, English language proficiency has the least significance for unskilled work because most unskilled jobs involve working with things rather

[43] See 20 CFR part 404, subpart P, appendix I, Listing 2.09.

[44] See footnote 40.

[45] At step 5, we consider a claimant's vocational factors, *i.e.,* age, education, and work experience, together with the claimant's RFC to determine whether the claimant can do work in the national economy. See 20 CFR 404.1520(a)(4)(v) and 416.920(a)(4)(v).

[46] Vocational experts are vocational professionals who may provide impartial expert evidence at the administrative hearing level.

[47] See 20 CFR part 404, subpart P, appendix 2, Tables No. 1, 2, and 3.

[48] See 84 FR 1006, 1008 (February 1, 2019), citing 20 CFR part 404, subpart P, appendix 2, sections 201.00(h)(4)(i) and 202.00(g).

[49] See 84 FR 1006, 1009.

[50] See 20 CFR part 404, subpart P, appendix 2, Tables No. 1 and 2. We refer to the numbered rules in the tables as ''grid rules.''

[51] See 84 FR 1006, 1009.

[52] The supporting document, ''Table of example entries of ''cook, ''machine operator,'' and ''housekeeping'' jobs in the Dictionary of Occupational Titles'' is available at *http://www.regulations.gov* as supporting and related material for docket SSA–2017–0046.

[53] Specific vocational preparation is the amount of time required by a typical worker to learn the job.

than with data or people. From our adjudicative experience, we know that a significant number of unskilled jobs exist at the sedentary and light exertional levels in the national economy.

In fact, in the NPRM we also said that the Brookings analysis shows that over 1 million individuals with LEP, including those who speak English ''not at all,'' are represented in each of the following occupations: Building and grounds cleaning and maintenance; production; construction and extraction; food preparation and serving; transportation and material moving; sales and related occupations; and office and administrative support. These occupations represent seven of 22 major occupation groups that exist in the national economy.[54] Each major group contains numerous jobs that exist at varying exertional levels. As well, we note that sales and related occupations and office and administrative support are not physically taxing by nature.

*Comment:* Several commenters contended that we should not eliminate a rule that affects only a very small group of people who are age 45 or older, are restricted to sedentary or light work, and are without skills.

*Response:* Our goal in publishing this rule is to ensure we use the most accurate, current criteria possible when determining if someone is disabled. The data we cited in the NPRM and here, indicating the existence of jobs in the national economy for individuals with LEP, supports our decision to remove the inability to communicate in English. It is the supportability and applicability of the criteria used, not the number of people affected, that drives this policy. The increase in the LFPR and employment rate in the LEP population apply to both the LEP individuals who are under 45 and the LEP individuals who are 45 or older. We also note that the two groups' LFPR and employment rate in 2017 were comparable, as shown in Table 6, below.[55]

TABLE 6—COMPARISON OF LEP LFPR AND EMPLOYMENT RATES FOR AGES 25–44 VS. AGES 45–64

| | Ages 25–44 (%) | Ages 45–64 (%) |
|---|---|---|
| LFPR for LEP Individuals ..... | 74.2 | 70.9 |
| Employment Rate for LEP Individuals ..... | 94.9 | 95.6 |

*Comment:* Some commenters contended that we offered no meaningful evidence that the nationwide job prospects for ''older, severely disabled workers with very limited functional capacity who are unable to communicate in English'' have improved. They asserted that we did not establish that a sufficient occupational base of jobs exists for this narrow group of individuals.

*Response:* In the NPRM and this final rule, we presented data demonstrating that the national workforce has changed, and that individuals who are unable to communicate in English are working in much greater numbers than previously. Further, the inability to communicate in English is just one of multiple factors that we consider under the sequential evaluation process. Thus, workers who are ''severely disabled'' are likely to qualify for Social Security disability payments based on medical or other factors, rather than on their inability to communicate in English. Because this final rule removes only one category of several from our consideration of education, and education is just one of many factors that we consider under the sequential evaluation process, it does not follow that removal of this factor would lead to ''severely disabled'' people no longer being able to receive disability payments. For example, at step 3 of the sequential evaluation, we will continue to determine whether a claimant is disabled based solely on ''medical severity'' of a claimant's impairments, without considering age or English language proficiency.[56] Similarly, at step 5 of the sequential evaluation process, we will still consider the factors of age, education, and work experience to determine if the individual can adjust to other work in the national economy.

*Comment:* Many commenters asserted that claimants who are unable to communicate in English have fewer vocational opportunities than the claimants with the same level of education who can communicate in English.

*Response:* The Act does not require us to consider whether the individuals who are unable to communicate in English and individuals who are able to communicate in English have equivalent vocational opportunities when assessing disability. Under the Act, the issue of whether an individual is disabled is determined based on whether an individual, with his or her RFC, age, education, and work experience, is able to perform any substantial gainful work that exists in significant numbers in the national economy.[57] We believe the data cited in the NPRM and in this final rule supports our position that there is such work available.

**Education, Inability To Communicate in English, and Illiteracy**

*Comment:* Several commenters supported the proposal, including one commenter who noted that an individual's actual formal education is the best preparation for future jobs, and that assessing an individual's education category based solely on communication skills was ''unreasonable.'' The commenter also indicated that our current rule might have the effect of stigmatizing as illiterate those people who cannot communicate in English. Another commenter stated that the ''inability to communicate in English'' category is outdated, because it suggests that only a person who speaks English is educated enough to hold a job. Similarly, one commenter indicated that disregarding education simply because a person has limited English proficiency did not make sense, noting that many of her family members who know little English hold advanced degrees from their home country.

*Response:* We acknowledge the support provided by the commenters, and reiterate that we no longer consider English proficiency to be the best proxy for assessing an individual's education level as part of our disability determination process. We therefore anticipate the revision we are making in this final rule will help us better assess the vocational impact of education in the disability determination process, in a manner consistent with the current national economy.

*Comment:* One commenter, citing to research and to the U.S. Census Bureau's 2014 American Community Survey data, asserted that immigrants have difficulty transferring their foreign education, foreign credentials, and overseas job experience to the U.S. job market. Another commenter, also

[54] See *https://www.bls.gov/oes/current/oes_stru.htm.*

[55] For more detailed information, see the Office of Research, Evaluation, and Statistics (ORES) Analysis of 1980 Census and 2017 American Community Survey: English Proficiency, Labor Force Participation, and Employment, Table 1: Estimated labor force participation of working-age population (25–64), by English proficiency and age, 1980 and 2017, and Table 2: Estimated employment rate of working-age population (25–64), by English proficiency and age, 1980 and 2017, available at regulations.gov as a supporting and related material for docket SSA–2017–0046.

[56] See 20 CFR 404.1520(a) and (d) and 416.920(a) and (d).

[57] See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act, 42 U.S.C. 423(d)(2)(A), 1382c(a)(3)(B).

pointing to the 2014 American Community Survey data, said that a significant number of immigrants are working in jobs for which they are educationally overqualified, and this demonstrates that they are not able to make full use of their educational background in the U.S. job market. One commenter described working with immigrants who were physicians in their native country but who could only qualify as low-paid home health aides in the U.S. because of their poor English (and various licensing requirements).

*Response:* The standard applied at step 5 to determine disability is not whether an individual is able to find work that maximizes the individual's education and work experience. Rather, the standard is whether an individual who cannot do his or her previous work is able to engage in ''any other kind of substantial gainful work'' which exists in the national economy, given his or her RFC, age, education, and work experience.[58] The phrase ''any other kind of substantial gainful work'' makes clear that we are not required to identify work that maximizes an individual's education and work experience. Thus, finding a claimant not disabled because he or she has a capacity to adjust to work that is less than his or her education and skill level is entirely consistent with the Act. This is the case even for claimants who have the ability to fully communicate in English.

*Comment:* One commenter claimed that we did not show how foreign formal education, coupled with the inability to communicate in English, provides any vocational advantage. The commenter contended that we did not demonstrate that workers with a foreign formal advanced education are affected by this rule. The commenter opined that workers with the inability to communicate in English frequently lack a formal education.

*Response:* The Act requires us to consider an individual's education in some cases when we make disability determinations. We clarify that we are not making conclusions about the numbers of workers with foreign advanced education who are affected by our current rules. Similarly, we acknowledge that individuals with an inability to communicate in English have various education levels, and we will continue to assign individuals to the most appropriate of the remaining education categories (illiteracy, marginal education, limited education, and high school education and above).[59] Our final rule simply no longer prioritizes English skills over formal education.

*Comment:* Some commenters expressed that having formal education might not lead to a vocational advantage. One of these commenters noted that, even within the U.S., the quality of education varies significantly, and that many American high school graduates, especially those from low-income families, may have failed to develop reading skills beyond elementary levels due to differences in education funding. In this context, the commenter noted that if there were such variability among American educational institutions, correctly assessing formal education attained from another country would be even more difficult. Further, this commenter and several others noted that formal education from a non-English speaking country might not be helpful if the individual is unable to communicate in English.

*Response:* We disagree. Because we have never assessed the quality of education that a particular school has provided, and that will not change in this rule. When we determine an individual's education category, we consider the numerical grade level an individual completed if there is no other evidence to contradict it. We will adjust the numerical grade level if other factors suggest it would be appropriate, such as past work experience, the kinds of responsibilities an individual may have had when working, daily activities, hobbies, or the results of testing showing intellectual ability.[60]

We also disagree with the comment that formal education from a non-English speaking country might not be helpful if the individual is unable to communicate in English. Our current rules explain that educational abilities consist of reasoning, arithmetic, and language skills.[61] An individual's actual educational attainment (reflecting those three areas, among others), not the specific language the individual speaks, generally determines the individual's educational abilities. Thus, lack of English language proficiency does not diminish an individual's actual educational abilities, nor does it negate educational abilities attained through formal education.

*Comment:* Several commenters said we should maintain our current rules because the effects of illiteracy and inability to communicate in English on an individual's ability to work would be similar. One commenter, for example, said that those individuals who are illiterate and those who are unable to communicate in English would have a similar inability to read basic safety signs and supervisory instructions. Another commenter expressed that keeping the ''illiteracy'' education category while eliminating the ''inability to communicate in English'' education category is inconsistent and biased. The commenter said someone who can read and write in another language, but cannot do so in English, faces the same hardships and challenges in a work place as an illiterate individual.

*Response:* We disagree. Even though we treated illiteracy and inability to communicate in English similarly before this final rule, we maintained two distinct education categories for these situations, demonstrating that they are not the same. Individuals with LEP can have varying levels of education, ranging from none to post-secondary education, while an illiterate individual likely has no or minimal education.[62] Further, from a practical standpoint, people with LEP do not experience the disadvantages that people with illiteracy do. For example, the commenter raised the issue of being unable to read safety warning signs. In that circumstance, someone who was illiterate would have no way of knowing what he or she were reading, and no way to find out other than asking someone. Someone with LEP, however, might be able to use a free online translator program on a personal handheld electronic device to find out the meaning of the sign's message.

Regarding the comment that reading documents and following instructions in a workplace may be challenging for some individuals who have no English language proficiency, the data cited in the NPRM and here indicate that many of these individuals are in fact participating in the workforce and are employed, despite the language barrier.

*Comment:* One commenter suggested an alternative to our proposed rule. The commenter suggested that we revise the ''illiteracy'' education category to include the inability to read or write in any language, not just in English. The commenter contended that, with this revision, older individuals who cannot read or write in any language would be found disabled under the current grid rules that include ''Illiterate or Unable to Communicate in English.''

The commenter also suggested that we revise the ''inability to communicate

[58] See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act, 42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B).

[59] See 20 CFR 404.1564(b)(1)–(4) and 416.964(b)(1)–(4).

[60] See 20 CFR 404.1564 and 416.964.

[61] Id.

[62] See 20 CFR 404.1564(b)(1) and 416.964(b)(1).

in English'' category. The commenter recommended that we consider education in another language, particularly at the high school level or above, when determining whether a claimant's inability to communicate in English has an impact on finding work in the national economy. The commenter further suggested that, for claimants with a considerable amount of education in a language other than English living in the U.S. territories, we should heavily weigh the effects of their education. The commenter noted that, due to complexities involved in determining availability of jobs in the national economy, we must use a vocational expert in such cases.

*Response:* Regarding the commenter's suggestion about revising the illiteracy category, we note that our current regulations at 20 CFR 404.1564 and 416.964 describe the illiteracy education category without reference to a specific language. As to the other suggestions, as the commenter noted, the options recommended would require our adjudicators to undertake complex analyses of even greater subjectivity, likely leading to inconsistent results. Further, if we were to adopt the suggestion of considering education differently in the U.S. territories, we would create a different set of rules for those living in places where English is not the dominant language. This would not be consistent with the intent of the Act that we apply our rules with national uniformity and consistency.[63]

*Comment:* Some commenters asserted that the proposed rule would be too burdensome for us to administer. Specifically, they said our adjudicators would have difficulty assessing education attained in another language or in another country.

*Response:* We acknowledge that evaluating education completed in another country could be complex at times. However, we already do this under our current rules. For claimants who are proficient in English, we assess foreign schooling if they attended school in another country. Under our current regulations, we use the highest numerical grade an individual completed to determine the individual's educational abilities unless there is evidence to contradict it.[64] This will not change under the final rule. We will provide training to our adjudicators about how we will assess education under the new framework of the remaining four education categories. We do not anticipate that the evaluation process will become more burdensome.

**U.S. Territories and Countries With a Totalization Agreement**

*Comment:* A commenter supported our proposal, stating that evaluating disability claims based on an individual's ability to communicate in English is no longer appropriate considering the international expansion of the Social Security agreements (also known as totalization agreements).[65]

*Response:* We acknowledge the commenter's support for the rule. We agree that the international reach of our disability program has steadily expanded, and we anticipate further expansion. As explained in the NPRM, in 1978 we had a totalization agreement with only one country. In contrast, we now have totalization agreements with 30 countries, and English is the dominant language in only four of those countries. The increasingly global scope of our programs is also illustrated by the fact that, during the public comment period for the proposed rule, two new totalization agreements (with Slovenia and Iceland) went into effect.[66]

*Comment:* Several commenters claimed that our proposal appeared to be based on our experience adjudicating claims from individuals in the U.S. territories and outside of the U.S. These commenters asserted that we should not change nationwide policy based on a small number of ''uncommon cases'' in these areas. One commenter referenced data stemming from an OIG report.[67] This data seemed to indicate that during calendar year 2011–2013, there were an average of 122 disability allowances per year in Puerto Rico in which ''inability to communicate in English'' was a deciding factor.

*Response:* We disagree that we based our proposal on ''uncommon cases.'' The Puerto Rico data referenced by the commenter was only one source of support cited in the NPRM. As previously noted in this document, one of the reasons for the proposal is the expansion of the population with LEP as a portion of the U.S. population and the increase in their LFPR and employment rate, demonstrating that a lack of English proficiency is no longer the work barrier that it used to be. As stated previously, other reasons for the change include research and data related to English language proficiency, work, and education; the expansion of the international reach of our disability programs; and public comments we received on them in support of our NPRM.

*Comment:* Another commenter expressed that because individuals living in Puerto Rico and other U.S. territories can and do move to one of the 50 States, and because many individuals receiving disability benefits while living abroad have a right to live in the U.S., current rules based on the dominant language of the U.S. should be retained.

*Response:* We note that regardless of the individual's country of origin, residence or language, we administer the program based on uniform rules, because this is a national program.

*Comment:* Some commenters suggested that we revise the ''inability to communicate in English'' category to distinguish the areas with more diverse labor markets, such as foreign language enclaves, from the rest of the U.S., where the ability to communicate in English may be more important vocationally.

*Response:* We are required to administer a national disability program that applies rules uniformly across the nation, which means we must apply the same rules regardless of where a claimant resides. Thus, adopting this suggestion would be contrary to the Act, which prohibits us from considering work that exists only in very limited numbers or in relatively few geographic locations as work that exists in the ''national economy.''[68] The intent of the Act was to ''provide a definition of disability which can be applied with uniformity and consistency throughout the Nation, without regard to where a particular individual may reside, to local hiring practices or employer preferences, or to the state of the local or national economy.''[69] The language of the Act clearly reflects this principle.[70] Accordingly, our rules must

[63] See H.R. Rpt. 90–544, at 40 (Aug. 7, 1967), and Sen. Rpt. 90–744, at 49 (Nov. 14, 1967).

[64] See 20 CFR 404.1564(b) and 416.964(b).

[65] Totalization agreements eliminate dual social security coverage in situations when a person from one country works in another country and is required to pay social security taxes to both countries on the same earnings. Thus, the commenter's point is that some individuals for whom we would evaluate inability to communicate in English under current policy might not actually be living in a country or territory where English is the dominant language.

[66] In the NPRM, we reported we had totalization agreements with 28 countries See 84 FR 1006, 1009. Totalization agreements with Slovenia and Iceland went into effect on February 1, 2019 and March 1, 2019, respectively. See 83 FR 64631 (2018) and 84 FR 6190 (2019). The 30 agreements include Slovenia and Iceland.

[67] *Qualifying for Disability Benefits in Puerto Rico Based on an Inability to Speak English,* available at *https://oig.ssa.gov/sites/default/files/audit/full/pdf/A-12-13-13062_0.pdf.*

[68] See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act, 42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B).

[69] See H.R. Rpt. 90–544, at 40 (Aug. 7, 1967), and Sen. Rpt. 90–744, at 49 (Nov. 14, 1967).

[70] The relevant text in full says: ''An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only

remain national in scope. Removing the category of ''inability to communicate in English'' and considering actual educational attainment for all claimants keeps our program in line with its national scope, and promotes accurate assessment of disability throughout the 50 States, the District of Columbia, the U.S. territories, and abroad.

*Comment:* One commenter asserted that they perceived us to be concerned about whether ''inability to communicate in English'' should be considered for the claimants currently living in Puerto Rico or internationally, and that this assumed concern is misplaced. According to the commenter, because we administer a Federal program with a national scope, the Act requires that we consider jobs in the ''national economy,'' and whether work exists in the ''immediate area in which [the claimant] lives'' [71] is irrelevant.

*Response:* We disagree with the commenter's assertion that we proposed this rule based solely, or even primarily, on concerns about limited regions. As we stated above, the examples of Puerto Rico and claimants living outside the U.S. were only part of our justification for this rule. We wanted our rules in this area to reflect the increased existence of jobs in the national economy for LEP workers; the research and data related to English language proficiency, work, and education; the expansion of the international reach of our disability programs; and in response to public comments we received on them in support of our NPRM.

However, we do note that the Act does not prohibit us from considering if work exists in significant numbers in the ''immediate area'' where a claimant lives.[72] While we do not require that the work exists in the immediate area in which the claimant lives, we do require that the work exists in significant numbers either in the region where the individual lives (an area larger than the immediate area in which the claimant lives and which may or may not include jobs in the immediate area) or in several regions of the country.

*Comment:* One commenter requested that we share more data to enable the public to better assess whether issues with ''inability to communicate in English'' are national in scope. The commenter asked for data on allowances under ''inability to communicate in English,'' and the educational attainment of those claimants by State. The commenter opined that this would confirm either that there is a national problem in the application of ''inability to communicate in English,'' or that the problem is a local one based in the unique characteristics of Puerto Rico as a territory.

*Response:* We believe the data we have provided already about some State allowance rates under Rule 201.17 and 202.09 in the NPRM's supporting material is sufficient to demonstrate that this rule is based on more than just information from Puerto Rico. Because we are administering a national program, providing more state-by-state data is out of context. As we discussed in the NPRM and this final rule, the data we cited indicates there have been changes in the national workforce since we published our current rules over 40 years ago. These changes demonstrate that the ''inability to communicate in English'' education category is no longer a useful indicator of an individual's educational attainment or of the vocational impact of an individual's education.

*Comment:* One commenter suggested that we should not disregard this rule in its entirety, but apply it in limited circumstances. As an example, the commenter said that we should codify the U.S. First Circuit Court of Appeals' decision in *Crespo* v. *Secretary of Health and Human Services.*[73] This suggestion would allow us to continue to apply the current rule where English is the predominant language.

*Response:* The commenter asked us to apply this final rule disparately in different regions. In the *Crespo* case example cited by the commenter, the court found it acceptable to consider, during our disability evaluation process, the claimant's ability to communicate in Spanish in place of the ability to communicate in English, because the claimant was a resident of Puerto Rico. In recommending that we apply *Crespo* nationally, the commenter is therefore suggesting that we should only proceed with the final rule for areas in which our beneficiaries may reside, but English is not the primary spoken language (*e.g.,* Puerto Rico; foreign countries with whom we have totalization agreements). The commenter, therefore, is recommending that we maintain the current rule in the 50 States.

Regarding the specific example of *Crespo,* as even the commenter noted, the court explicitly declined to apply the rationale outside of this specific case.[74] As well, we administer a national disability program that applies rules uniformly across the nation, regardless of where a claimant resides.

**Implementation, Efficiency, and Burden**

*Comment:* One commenter said that our employees believe the proposed rules would lead to inefficient and unfair resolutions of claims. The commenter stated that he had spoken with one former and one current SSA employee about the proposal.

*Response:* We disagree with this comment. We decide each claim fairly and always strive to provide timely decisions. As part of our implementation of this final rule, we will provide comprehensive training to our staff to ensure we continue to meet the obligation of providing timely, accurate, and consistent decisions. We will also continue to monitor for quality in the decisionmaking process to ensure our adjudicators apply the rules correctly.

*Comment:* In the NPRM, we proposed to apply this rule for ''new applications, pending claims, and continuing disability reviews (CDR), as appropriate, as of the effective date of the final rule.'' [75] Several commenters opposed the proposed implementation process. These commenters said that using the new rules for claims pending at the time this final rule goes into effect is inefficient.

Some commenters asked that we not apply this final rule to claims filed prior to the effective date. They expressed concern that claimants may experience a delay in receiving their decisions because we may need to hold supplemental hearings for claims that are in post-hearing status as of the effective date of this final rule.

unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), ''work which exists in the national economy'' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.'' See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act, 42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B).

[71] Id.

[72] Id.

[73] See *Crespo* v. *Secretary of Health and Human Services,* 831 F.2d 1 (1st Cir. 1987).

[74] Id. at 7. (''In using the grid as a framework for consideration of the vocational testimony, therefore, the ALJ was justified in treating claimant's fluency in Spanish as tantamount to fluency in English. See 20 CFR 404.1564(b)(5) (inability to communicate in English is a vocational consideration '[b]ecause English is the dominant language of the country'). In so holding, we do not suggest that the Secretary, in relying on the grid for a dispositive finding on disability in appropriate cases where no significant nonexertional impairments are present, is free to substitute Spanish for English in the requirements of the grid whenever a claimant resides in Puerto Rico. We need not, and do not, reach that issue.'')

[75] 86 FR 1006 and 1011.

Another commenter asked that we clarify whether the proposed changes would apply to new applicants only, and whether current recipients of disability benefits would need to re-apply when this final rule becomes effective. The commenter noted that a non-English speaking individual whom we previously found disabled may have a reliance interest. This commenter suggested we should allow that person to retain payments if our medical review process reveals that his or her medical condition remained unchanged.

*Response:* Our standard practice is to implement the final rule as of the effective date for all pending claims, CDRs, and new applications. We will do the same for this regulation.[76] We disagree that this implementation process will be inefficient and note that, in general, it will not require us to hold supplemental hearings. Because we already ask for education information as part of our standard disability determination process (at the time of initial application filing and again at the reconsideration and hearing levels), and this information is not dependent on the claimant's ability to communicate in English, we will be able to use that existing information when we implement the final rule. For example, we ask all claimants to provide the highest grade of school completed; to specify whether they received special education in school; and to disclose if they completed vocational school. We therefore do not anticipate needing more education information than what we already have as part of our existing processes. Further, as discussed above, we will provide training to adjudicators to ensure accurate, effective, and timely adjudication of claims.

Current beneficiaries will not need to reapply. However, we will use this final rule when we review their cases under our CDR process. This change in the rule will only affect those who experience medical improvement and were previously assigned to the inability to communicate in English education category. For these individuals only, we will redetermine their education category and assign one of the four remaining education categories based on their level of education. Because we use the Medical Improvement Review Standard to determine if an individual's disability continues or ceases in a CDR, this final rule will not affect a beneficiary whose medical condition has not changed since he or she was last found disabled.

*Comment:* Multiple commenters asserted that the proposed rule would require us to obtain the testimony of vocational experts at the hearing level to assess whether specific jobs require the ability to communicate in English. Some commenters stated that the proposed rule would delay favorable decisions for many claimants unable to communicate in English, because vocational expert testimony is available only at the hearing level.

One commenter said that because language limitations affect individuals' RFCs, the hypothetical questions presented to vocational experts at hearings should include the effects of an inability to communicate in English. Another commenter said that the proposed rules would lengthen the hearings, because vocational experts would need to respond to additional hypothetical questions about whether certain jobs require the ability to communicate in English.

*Response:* We disagree with these comments. The same rules will apply at all adjudicatory levels. Therefore, even at the hearing level where a vocational expert may testify about the demands and existence of jobs in the national economy, adjudicators will not consider the effects of inability to communicate in English. With regard to the comment that we would need to incorporate the effects of language into a hypothetical RFC posed to vocational experts, as we noted previously, under our current rules and this final rule, we do not consider the effects of an inability to communicate in English when we assess an individual's RFC. We consider only the effects of an MDI or a combination of MDIs to determine an individual's RFC.[77] ''Inability to communicate in English'' is not an MDI. When the final rule takes effect, we will not consider whether an individual can communicate in English at any step of the sequential evaluation process. Thus, if claimants or their representatives raise the issue of the inability to communicate in English in a hypothetical question posed to a vocational expert during a hearing, we will find it to be out of scope for the purposes of determining disability.

*Comment:* Several commenters asserted that this rule would cause more appeals, would increase the disability hearings backlog, and would increase our administrative costs.

*Response:* The changes in this final rule are straightforward, and represent an incremental change to our larger disability evaluation process. An estimated increase of 22,382 hearings spread over the 10-year period of fiscal years (FY) 2020–2029 is small relative to the number hearings we hold annually (for example, we made over 700,000 hearing decisions in FY 18).[78] Therefore, we do not anticipate difficulty administering the changes with current resources. We have not seen evidence to indicate that the proposed rule, as implemented, would substantially increase the number of pending hearings, or that it would impose unmanageable administrative costs. See the ''E.O. 12866'' section of the preamble, further below, for our specific estimates of administrative costs associated with this rule.

**Discrimination and Disparate Impact**

*Comment:* Some commenters expressed that they supported the proposed rules because they believed the rules would allow us to more fairly assess education and account for increased diversity in the U.S. One commenter said that the proposed rules would allow us to adjudicate disability claims more equitably. Another commenter criticized the current rules, opining that the rules may impose social and political stigmas upon non-English speaking individuals. One commenter asserted that measuring English abilities is neither an effective, nor a culturally sensitive way to assess an individual's ability to work.

*Response:* We acknowledge and note the commenters' support for the rule. As stated above, we expect that the revisions will help us better assess the vocational impact of education in the disability determination process.

*Comment:* Many commenters said the proposed rules would have a negative effect on vulnerable populations, such as immigrants, older people, women, refugees, individuals with low-income, and individuals with LEP. Some commenters expressed the proposed rules would have a disparate impact and discriminatory effect on thousands of older, non-English-speaking citizens. Other commenters were concerned that the proposed rules would result in the denial of benefits to a large number of claimants.

One commenter said that denial and loss of benefits would cause economic harm to the affected claimants. Another

[76] With only one exception, namely Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 FR 5844 (January 18, 2017), we have always implemented our final rules as of the effective date for all pending claims, CDRs, and new applications. We implemented that regulation differently because individuals who filed claims before the effective date of those final rules may have requested evidence, including medical opinions from treating sources, based on our then-current policies. 82 FR at 5862.This reliance-based justification is not applicable here because we expect additional development of evidence related to this final rule to be minimal.

[77] See 20 CFR 404.1545 and 416.945.

[78] See *https://www.ssa.gov/appeals/*.

commenter noted that the proposed rules could contribute to ''generational poverty.'' One commenter, citing *Dorsey* v. *Bowen,* 828 F.2d 246, (4th Cir. 1987), noted that the ''Social Security Act is a remedial statute to be broadly construed and liberally applied in favor of beneficiaries.'' This commenter asserted that we are strictly construing the Act against the most vulnerable of our citizens.

Another commenter said that the Supreme Court has interpreted that discrimination based on language or English proficiency is a form of national origin discrimination. Another commenter said that we should undertake an analysis of the potential discriminatory impact of the proposed rules.

One commenter said discrimination by government against taxpayers because of their race or national origin is strictly prohibited under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Some commenters said the proposed rules discriminate against individuals based on their national origin, race, or immigration status. One such commenter contended that the proposed rules demonstrate a hostility towards non-native born Americans.

*Response:* We disagree with the commenters' statements that this rule will have a negative effect on vulnerable populations; is discriminatory in intent or effect; or that it is motivated by hostility towards a certain group of people. We have not seen any evidence (nor did the commenters present any) that the proposed rules, as implemented, would negatively affect vulnerable populations, because we will continue to assess other eligibility criteria for such populations besides the ability to communicate in English.

In response to claims that the rule is discriminatory, we note that the new rule, once implemented, will apply the same standards for evaluating educational level to all claimants, regardless of country of origin or residence and primary language. Similarly, we strongly disagree with the statement that our rule was motivated by hostility towards a certain group of people. Like all Federal agencies, we are obligated to serve all members of the public equally. We take that responsibility seriously, and we do not discriminate against individuals based on race, age, gender, language, national origin, immigration status, or for any other reason. We intend for this rule to help us better assess the vocational factor of education in the contemporary work environment for all claimants and beneficiaries.

The proposed rule also does not violate the equal protection component of the Due Process Clause of the Fifth Amendment. In the NPRM, we articulated a basis for no longer distinguishing between those who are unable to communicate in English and those who are able to communicate in English at step 5 of the sequential evaluation process. Further, under this final rule, we will apply the same standard in assessing education for all claimants. This final rule does not categorize individuals based on any particular identities, nor does it deprive an individual of a protected property interest. Our regulations provide due process to individuals with appropriate procedural protections. This final rule is consistent with the constitutional principles of equal protection.

Finally, the principle that the Act should be ''broadly construed'' in favor of beneficiaries does not mean that we should not, or may not, revise our rules to account for changes in the national workforce. The quoted statement is an interpretative standard sometimes applied by the courts in the judicial review of agency decisions; it does not mean that we are required to develop rules that only favor beneficiaries, or that do not result in any program and administrative savings.

*Comment:* Some commenters asserted that the proposed rules are ''arbitrary and capricious.''

*Response:* The commenters appear to be referring to the standard that courts apply when they review rules promulgated after informal rulemaking.[79] Under this standard, the agency must examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made. A rule may be arbitrary and capricious, for example, if an agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.[80] None of that is true here. In this rulemaking, the final rule is supported by the objective data we have provided, and we have explained our justifications for the proposed change in the NPRM and this final rule in detail. The final rule is not inconsistent with the Act or any other Federal law, and we have considered and responded to the significant concerns raised by the commenters. Our rule therefore cannot be considered ''arbitrary or capricious'' under the law.

*Comment:* Some commenters asserted that our proposed rules conflicted with various legal authorities. A few commenters opined that the NPRM conflicted with Federal laws that protect the rights of persons with LEP, who experience discrimination in health care, employment, and public services, under Title VI of the Civil Rights Act of 1964 and implementing regulations. One commenter stated that the NPRM violated Executive Order 13166, which directs Federal agencies to ensure that all persons with LEP should have meaningful access to federally-conducted and federally-funded programs and activities.

*Response:* This final rule does not violate the Civil Rights Act of 1964, its implementing regulations, Executive Order 13166, or any other provision of Federal law. We are eliminating a rule that reflected the existence of jobs in the economy for certain individuals who were unable to communicate in English at the time we issued it in 1978. The final rule we are adopting today simply reflects the changes in the national workforce since 1978, and the greater existence of jobs for individuals with LEP. When the final rule takes effect, we will no longer consider an individual's English proficiency when determining an individual's education. Such a rule does not preclude individuals with LEP from having meaningful access to our programs; it merely updates our rules to reflect that an inability to communicate in English is no longer a useful indicator of an individual's educational attainment or of the vocational impact of an individual's education.

We remain committed to fulfilling our responsibilities and obligations towards individuals with LEP, and this final rule is fully consistent with Federal laws that protect the rights of persons with LEP. We have a longstanding commitment to ensure that individuals with LEP have equal access to our programs. For example, we provide free interpreter services,[81] and Social Security information is publicly available in several languages.[82] This final rule has no effect on these services, which ensure that all individuals with

[79] See 5 U.S.C. 706(2)(A).

[80] *Motor Vehicle Manufacturers Association of the United States* v. *State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29, 43 (1983).

[81] Available at *https://www.ssa.gov/multilanguage/langlist1.htm.*

[82] Available at *https://www.ssa.gov/site/languages/en/.*

LEP will continue to have meaningful access to our programs.

**Department of Homeland Security (DHS)'s NPRM on Inadmissibility on Public Charge Grounds**

*Comment:* Multiple commenters asserted that our NPRM does not align with DHS's NPRM, ''Inadmissibility on Public Charge Grounds,'' published on October 10, 2018.[83] Specifically, these commenters cited the following excerpt from the DHS NPRM: ''an inability to speak and understand English may adversely affect whether an alien can obtain employment. Aliens who cannot speak English may be unable to obtain employment in areas where only English is spoken. People with the lowest English speaking ability tend to have the lowest employment rate, lowest rate of full-time employment, and lowest median earnings.'' [84] The commenters also noted Census data research DHS had cited to support this assertion. Commenters expressed that the two proposed rules were not in accordance with each other because the DHS proposal stated that an ability to speak English directly affects the ability to find work, whereas our proposal stated that an ability to speak English is irrelevant for an individual's ability to find employment.

*Response:* Because we administer different programs with different legal mandates than DHS does, our proposed rule explored different aspects of job availability and English proficiency data than DHS did. For the purposes of our programs and the population we are examining, we believe the data we reviewed and presented supports our final rule consistent with our statutory mandate to consider, among other things, an individual's education and the existence of work in the national economy. DHS's legal mandate is to determine whether an alien (that is, a non-citizen, non-U.S. national person) seeking admission to the United States or adjustment of status to that of a lawful permanent resident is likely at any time in the future to become a public charge. We are not projecting the likelihood of LEP individuals being hired for particular types of jobs, *i.e.* those that would make the alien more likely to be self-sufficient. We are only stating that jobs exist in the national economy that LEP individuals perform. Finally, some of the commenters inaccurately characterized our NPRM as stating that the ability to speak English is irrelevant to finding work. We did not make this assertion. Rather, we stated that, as a result of changes in the national workforce over the last 40 years, we no longer consider English proficiency to be an appropriate proxy for assessing an individual's education level as part of our disability determination process.

**Other Comments**

*Comment:* Some commenters supported this proposal based on their assumption that it would improve Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) program integrity and save money. One commenter expressed the view that we would prevent an estimated 10,500 adults [85] with ''manageable work limitations'' from receiving SSDI or SSI disability benefits, keeping more resources for those who are ''truly needy.''

*Response:* The purpose of this final rule is not to save money or to make it more difficult for individuals to qualify for disability benefits. Rather, we anticipate that this final rule will allow us to better assess the vocational impact of an individuals' education on their ability to work in the contemporary work environment. Finally, we note that our standard for determining disability is based on the criteria in the Act and our regulations, and not whether an individual has ''manageable work limitations'' or whether the individual is ''truly needy.''

*Comment:* Some commenters asserted that the criteria for qualifying for disability benefits are already strict enough, and that we should not impose additional restrictions or barriers to qualifying for benefits.

*Response:* The rule does not create additional restrictions or barriers to qualifying for benefits; rather, it is modifying the way in which we assess educational level achieved, which is an existing category we examine. As discussed above and in the NPRM, since 1978, the national workforce has become more linguistically diverse, and employment rate and LFPR have expanded considerably for individuals with LEP. This final rule thus recognizes that English proficiency is no longer an appropriate proxy for assessing education as part of our disability determination process.

*Comment:* Some commenters said that the inability to communicate in English is not a disability, suggesting our rules equated it with being disabled.

*Response:* We note that inability to communicate in English is one of many factors we consider in determining disability under the current rules. An inability to communicate in English by itself is not a determinative factor when determining whether an individual is disabled under our current rules.

*Comment:* One commenter stated that we should not pursue a final rule because we had not completed a full Regulatory Impact Analysis (RIA) for the regulation. Other commenters opined that the NPRM did not account for significant and foreseeable costs to society. These commenters asserted that burdens created by this rule would increase costs to state and local governments and community organizations, because they would likely spend more on things such as general assistance and homelessness assistance to meet the needs of those harmed by this rule.

*Response:* As we report below and as we reported in the NPRM, we expect this final rule will have a financial impact on the Social Security trust fund of over $100 million a year.[86] Regulations that have annual effect on the economy of $100 million or more are deemed economically significant and have additional analytical requirements under E.O. 12866, such as requiring an RIA. Our Office of the Chief Actuary estimated this rule would technically meet this threshold: For the period of FY 2020 through FY 2029, they estimated a reduction of $4.5

[83] 83 FR 51114; Available at *https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds.* We note that DHS also published a corresponding final rule on August 14, 2019, 84 FR 41292, which is available at *https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds.* However, several district courts have ordered that DHS cannot implement and enforce this final rule. The court orders also postpone the effective date of the final rule until there is final resolution in these cases. Some of the injunctions are nationwide and prevent DHS from implementing the rule anywhere in the United States. We note, though, that the Ninth Circuit recently granted a stay of one of these nationwide injunctions because ''DHS has shown a strong likelihood of success on the merits, that it will suffer irreparable harm, and that the balance of the equities and public interest favor a stay'' pending appeal. City and County of San Francisco v. United States Citizenship and Immigration Services, 944 F.3d 773, 781 (9th Cir. 2019). We also note that, more recently, the Supreme Court granted a stay of another nationwide injunction in one of these cases. Department of Homeland Security v. New York, No. 19A785, 2020 WL 413786 (U.S. Jan. 27, 2020).

[84] See 83 FR 51114, 51195 (internal footnotes omitted).

[85] Although the citation provided by this commenter refers to the ''Office of the Inspector General, Qualifying for disability benefits in Puerto Rico based on an inability to speak English, Social Security Administration (2015),'' we believe the number 10,500 refers to the estimated reduction of 6,500 Federal Old Age, Survivors, and Disability Insurance (OASDI) beneficiary awards per year and 4,000 SSI recipient awards per year on average over the period FY 2019–28 that our Office of the Chief Actuary provided in the NPRM. See 84 FR 1006, 1011.

[86] 84 FR 1006, 1011.

billion in Federal Old Age, Survivors, and Disability Insurance (OASDI) benefit payments and a reduction of $0.8 billion in Federal SSI payments. However, we have adequately accounted for the direct effects of this rulemaking through our analysis of transfer impacts and administrative costs. While not a separate RIA document, we believe the evaluations completed in the NPRM and this final rule fulfill our obligation to review the direct effects of the rulemaking. Some of the costs mentioned by commenters, such as money spent on homelessness assistance, are out of the scope of our rulemaking and associated analysis.

A Regulatory Flexibility Act (RFA) analysis is also required for rules that have a significant economic impact on a substantial number of small entities (SISNOSE); the commenters allude to this requirement with their assertion that this rule will ''increase costs to state and local governments and community organizations.'' Specifically, the RFA [87] requires an RFA analysis under the following circumstances: ''[w]henever an agency is required . . . to publish general notice of proposed rulemaking for any proposed rule, . . . the agency shall prepare and make available for public comment an initial regulatory flexibility analysis.'' That analysis must ''describe the impact of the proposed rule on small entities.'' In addition, when the agency subsequently publishes a final rule, it must ''prepare a final regulatory flexibility analysis.'' The requirement to prepare an initial or final regulatory flexibility analysis, however, ''shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The agency must publish such certification in the **Federal Register** when it publishes its notice of proposed rulemaking or final rule, ''along with a statement providing the factual basis for such certification.'' The agency must provide a copy of its certification and accompanying statement to the Chief Counsel for Advocacy of the Small Business Administration. Because this final rule only directly affects individuals, it will not impose any direct costs on small entities, including small government jurisdictions. We consider the potential costs commenters cited to be indirect, and as such they would be outside the scope of our SISNOSE determination.

*Comment:* One commenter indicated that we should not require individuals to speak English to receive disability benefits. Another commenter opposed the proposed rules because, according to the commenter, we may deny benefits to people who cannot speak because of a medical impairment.

*Response:* The comment implies that this final rule would require individuals to speak English to receive disability benefits. Neither the current rule nor this final rule requires individuals to be able to communicate in English to obtain benefits. When this final rule becomes effective, whether or not an individual is able to communicate in English will be irrelevant for the purposes of disability determination.

This final rule does not affect people who cannot speak because of a medical impairment. As we explained earlier, we will continue to evaluate medical impairment-related speech difficulties under our rules to determine whether these limitations meet a listing or preclude the individual from performing substantial gainful work.

*Comment:* Several commenters opposed the proposed rule, contending that LEP individuals with disabilities face barriers to learning English. They noted that the assumption underlying the proposed rule is that LEP individuals with disabilities can learn English in order to work. They argued that we did not acknowledge that cognitive and physical disabilities might interfere with their ability to learn a new language. Other commenters opposed the proposal on the grounds that many individuals with LEP may not have the resources (*e.g.,* time, money, access to classes) to learn a new language. Other commenters opined that an inability to learn a new language might indicate that the person has challenges in adjusting to new work. These commenters argued that difficulty in learning to communicate in English can therefore be a proxy for difficulty learning the duties of a job, and for this reason, we should retain ''inability to communicate in English.''

*Response:* Many of these comments are outside the scope of our proposal and disability program. We do not consider whether an individual is able to learn English under the current rules. We also do not need the factor ''inability to communicate in English'' to determine whether an individual is likely to have difficulty learning the duties of a job. We already consider an individual's cognitive and physical limitations related to MDIs that may interfere with an individual's ability to perform basic work activities. This final rule does not change this.

*Comment:* One commenter said we should not apply the proposed rules to individuals who may otherwise be eligible for disability under the ''arduous unskilled work'' medical-vocational profile.[88] To be found disabled under the profile, an individual must possess no more than a marginal education and must have spent 35 years performing arduous unskilled work. The commenter expressed that even if such an individual has had more than a marginal education in another country, it did not allow him or her to do anything other than the arduous unskilled work. The commenter argued that we should not penalize such an individual for having an education that does not serve him or her in the U.S.

*Response:* Under our final rule, inability to speak English will no longer be a proxy for education. For individuals who fall under the arduous unskilled physical labor profile, we will still examine their years of history performing solely arduous unskilled physical labor. As well, we will more closely examine the actual education level attained. Since we will still look at education and work history, individuals who fall under the profile will not be disadvantaged.

*Comment:* One commenter found it problematic that the proposed rules would bar an adjudicator from lowering an individual's education category based on ''inability to communicate in English.'' The commenter also noted that claimants who participated in an English learner program but remain unable to communicate in English likely did not attain the level of reasoning, arithmetic, and language abilities that the person was supposed to have gained. The commenter reasoned that such individuals could not have developed educational abilities due to inability to communicate in English, and we should therefore consider this in our proposal.

*Response:* We agree that in cases where individuals receive elementary or secondary education in a language other than their primary language, the language learning process may or may not affect their actual educational attainment. Our current regulations acknowledge that the numerical grade level completed in school may not represent an individual's actual educational abilities, which may be

[87] 5 U.S.C. 601–612

[88] The arduous unskilled physical labor profile applies when an individual has no more than a marginal education and work experience of 35 years or more during which he or she did only arduous unskilled physical labor. The individual also must not be working and no longer able to do this kind of work because of a severe impairment(s). If these criteria are met, we will be find the individual disabled. See 20 CFR 404.1562(a) and 416.962(a); and POMS DI 25010.001 Special Medical-Vocational Profiles, available at *https://secure.ssa.gov/poms.NSF/lnx/0425010001.*

higher or lower.[89] Therefore, to the extent supported by individual case evidence, we will continue to consider the related impact on educational abilities when assigning an education category in these cases.

*Comment:* One commenter opposed the proposed rule, citing a decline in American high school graduates' foreign language skills as a reason. The commenter said that only 20 percent of today's high school graduates have taken a foreign language class, and that colleges have closed 651 foreign language programs between 2013 and 2016. The commenter cited this data to support the assertion that many future employers would be unable to communicate even simple statements with foreign language-speaking employees. The commenter implied that this would affect the workforce, and that we failed to consider such effects in our rulemaking.

*Response:* The evidence we cited in the proposed rule and repeated here, demonstrates that many individuals with LEP are currently in the labor force; this indicates that their employers' potential inability to converse with them in their primary language is not a barrier to employment.[90] Further, our rulemaking (and rulemaking in general) can only contemplate evidence that actually exists; it is outside the scope of rulemaking to consider an assumption about whether future employers will be able to communicate in a foreign language to accommodate their employees with LEP.

*Comment:* We received comments that we should retain the ''inability to communicate in English'' for health and work safety reasons. Some commenters asserted that individuals with LEP in the national workforce are at a greater risk for occupational injuries and illnesses, most often due to language barriers. They claimed the proportion of fatal and nonfatal workplace injuries experienced by immigrants has been increasing.[91]

Similarly, another commenter said we should not adopt the proposed rules because some employers may require English language proficiency for safety reasons. The commenter further noted that employers might prefer to hire those who can communicate in English to avoid workers' compensation claims from accidents due to an inability to understand safety instructions.

*Response:* While we acknowledge the importance of safety in the workplace, it is outside the scope of our program to assess safety concerns associated with jobs a worker may be able to perform. As discussed above, in determining whether a claimant can adjust to other work, we do not consider the hiring practices of employers or whether the individual is likely be hired to do particular work, among other things.[92] As we stated above, the Act requires us only to determine whether a claimant can perform any substantial gainful work which exists in the national economy.

*Comment:* Some commenters said we should wait to adopt the proposed rules because we may propose additional revisions to other rules relating to disability determinations in the near future. The commenters said there will be more changes to the disability determination process because of a forthcoming new information system and vocational tool and they asked that we not incorporate revisions to current rules in a piecemeal or a premature manner.

*Response:* The possibility that we may propose other revisions in the future is not a reason to delay revisions that are currently warranted (based on the reasons we have articulated in the NPRM and here).

*Comment:* One commenter opined that this final rule would undermine the current occupational base that has served as the basis for the grid rules. As an example, the commenter noted that SSA has taken administrative notice of approximately 1,600 sedentary and light occupations in the national economy at the unskilled level. Based on this fact, the commenter asserted that the grid rules assume that a person with either light or sedentary work capacity, but who would be classified as ''unable to communicate in English,'' would not actually be able to perform the 1,600 unskilled light and sedentary occupations. The commenter stated that, accordingly, we would now need to reassess all of our work categories, and document evidence that a significant number of jobs *are* actually available for individuals who cannot communicate in English.

*Response:* We disagree with the commenter's conclusions, as the commenter's foundational statements reflect incorrect assumptions. While the current grid rules do reflect the ''inability to communicate in English'' as a factor to consider, they are not, in fact, based on the assumption that full English proficiency is required to engage in all of the 1,600 sedentary and light occupations in the national economy at the unskilled level. The existing occupational base does not distinguish between jobs that require or do not require English proficiency. Rather, the occupational base reflects the existence of unskilled sedentary, light, medium, and heavy jobs that exist in the national economy.

*Comment:* One commenter asserted that we withdrew a 2005 NPRM that proposed to revise the vocational factor of age [93] due to insufficient evidentiary support. The commenter drew a parallel between that NPRM and this rule, recommending that we withdraw this rule because, in the commenter's stated opinion, we had failed to provide conclusive supporting research for this rule and the 2005 NPRM.

*Response:* We disagree with this comment, because our decision not to finalize the 2005 NPRM that proposed revising the rules on the vocational factor of age was not due to a lack of adequate justification. As well, the commenter did not provide any evidence demonstrating that we had failed to provide sufficient supporting research for the 2005 NPRM. For this final rule, as explained previously, we presented sufficient supporting evidence to justify our changes, both in the NPRM and again here.

*Comment:* A few commenters asserted that we incorrectly claimed that the education level of non-English speakers in the workforce has increased over time.

*Response:* We did not claim that the education level of individuals who are unable to communicate in English in the workforce has increased over time. We clarify that in the NPRM, we noted that out of all claimants who reported an inability to read, write, or speak English in FY 2016, 49% (58,175) of title II claimants and 39% (49,943) of title XVI claimants completed a high school education or more.[94] We cited this data to show that many people who reported an inability to read, write, or speak English do have a high school education or more. We do not suggest that this data shows that educational attainment increased over the years for individuals who are unable to communicate in English.

**How We Will Implement This Final Rule**

We will begin to apply this final rule to new applications, pending claims,

[89] See 20 CFR 404.1564(b) and 416.964(b).

[90] See ORES English Proficiency Analysis Table 2.

[91] The commenter cited Flynn M. A., Safety & the Diverse Workforce: Lessons from NIOSH's Work With Latino Immigrants. Professional Safety (2002), p. 52.

[92] See 20 CFR 404.1566(c) and 416.966(c).

[93] *Age as a Factor in Evaluating Disability* 70 FR 67101 (Nov. 4, 2005), withdrawn on May 8, 2009 at 74 FR 21563.

[94] See 84 FR 1006, 1008.

and CDRs, as appropriate, as of the effective date of this final rule.[95]

**Regulatory Procedures**

*Executive Order 12866, as Supplemented by Executive Order 13563*

We consulted with OMB and determined that this final rule meets the criteria for an economically significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed the rule. Details about the economic impacts of our rule follow.

Anticipated Reduction in Transfer Payments Made by Our Programs

Our Office of the Chief Actuary estimates, based on the best available data, that this final rule will result in a reduction of about 6,000 OASDI beneficiary awards per year and 3,800 SSI recipient awards per year, on average, for the period FY 2020–29, with a corresponding reduction of $4.5 billion in OASDI benefit payments and $0.8 billion in Federal SSI payments for the total period of FY 2020–29.

Anticipated Administrative Costs to the Social Security Administration

The Office of Budget, Finance, and Management estimates administrative costs of $90 million (840 work years) [96] for the 10-year period from FY 2020 through FY 2029. Although we included administrative cost estimates for the disability determination services (DDS) in our NPRM, we are now using a revised cost estimate methodology that does not allow us to calculate the total administrative costs for SSA and DDS separately. Administrative costs include considerations such as system enhancements, potential appeals, and additional time needed to process initial disability claims and CDRs.

As mentioned above, the rule will result in a $90 million administrative cost to the government for the 10-year period from FY 2020 through FY 2029. However, we believe the qualitative benefits of ensuring the disability determination criteria we use are up-to-date and reflective of the current economy (specifically, for this rule, the criteria we use to determine an individual's education level) justifies this one-time cost. This final rule will also help us to fulfill our statutory obligation to be the best possible stewards of the Social Security programs.

We also determined that this final rule meets the plain language requirement of Executive Order 12866.

*Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OMB designated this rule as a major rule, as defined by 5 U.S.C. 804(2).

*Executive Order 13132 (Federalism)*

We analyzed this final rule in accordance with the principles and criteria established by Executive Order 13132, and determined that it will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that the final rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

*Executive Order 13771*

Based upon the criteria established in Executive Order 13771, we have identified the anticipated administrative costs as follows: The final rule is anticipated to result in administrative costs of $90 million and 840 work years for the period of FY 2020 through FY 2029. See the E.O. 12866 section above for further details on these costs.

This rule is designated a 13771 ''regulatory'' action.

*Regulatory Flexibility Act*

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

*Paperwork Reduction Act*

This final rule contains public reporting requirements in the regulation sections listed below, or will require changes in the forms listed below, which we did not previously clear through an existing Information Collection Request.

Below is a chart showing current burden estimates (time and associated opportunity costs) for all ICRs due to the implementation of the regulation. None of the burdens associated with these ICRs will change as a result of this final rule.

| OMB No. form No. regulation section | Description of public reporting requirement | Number of respondents (annually) | Frequency of response | Average burden per response (minutes) | Estimated annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Total annual opportunity cost (dollars) ** |
|---|---|---|---|---|---|---|---|
| 0960–0072, SSA–454 | Continuing Disability Review Report. | 541,000 | 1 | 60 | 541,000 | * $10.22 | ** $5,529,020 |
| 0960–0579, SSA–3368 | Disability Report—Adult | 2,258,510 | 1 | 90 | 3,387,766 | * 10.22 | ** 34,622,968 |
| 0960–0681, SSA–3373 | Function Report—Adult | 1,734,635 | 1 | 61 | 1,763,546 | * 10.22 | ** 18,023,440 |
| 0960–0635, SSA–3380, 20 CFR 404.1564, 20 CFR 416.964. | Function Report—Adult Third Party. | 709,700 | 1 | 61 | 721,528 | * 22.50 | ** 16,234,380 |
| 0960–0144, SSA–3441 | Disability Report—Appeal | 760,620 | 1 | *** 41 | 520,346 | * 10.22 | ** 5,317,936 |
| Total | | 6,004,465 | | | 6,934,186 | | ** 79,727,744 |

* We based these figures on average DI payments, as reported in SSA's disability insurance payment data, and by average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data.

** This figure does not represent actual costs that we are 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.*

*** This burden per response figure is not exact, as we have multiple collection modalities under this OMB Number with different response time estimates, and input the closest minute estimate to complete the chart. In the Supporting documents, we explain in further detail the different modalities and their actual numbers.

We are submitting an Information Collection Request for clearance to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity;

[95] We will use the final rule beginning on its effective date. We will apply the final rule to new applications filed on or after the effective date, and to claims that are pending on and after the effective date. This means that we will use the final rule on and after its effective date in any case in which we make a determination or decision, including CDRs, as appropriate. See 20 CFR 404.902 and 416.1402.

[96] We calculate one work year as 2,080 hours of labor, which represents the amount of hours one SSA employee works per year based on a standard 40-hour work week.

and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

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.*

You can submit comments until March 26, 2020, which is 30 days after the publication of this notice. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and record keeping requirements, Social Security.

*20 CFR Part 416*

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: January 30, 2020.

**Andrew Saul,**

*Commissioner of Social Security.*

For the reasons stated in the preamble, we are amending 20 CFR part 404, subpart P, and part 416, subpart I, as set forth below:

## PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

### Subpart P—Determining Disability and Blindness

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

**Authority:** Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a) and (h)–(j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a) and (h)–(j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend § 404.1564 by:

■ a. Removing the sixth sentence of paragraph (b) introductory text and paragraph (b)(5);

■ b. Redesignating paragraph (b)(6) as paragraph (c); and

■ c. Revising the first sentence of newly redesignated paragraph (c).

The revision reads as follows:

**§ 404.1564 Your education as a vocational factor.**

* * * * *

(c) *Information about your education.* We will ask you how long you attended school, and whether you are able to understand, read, and write, and do at least simple arithmetic calculations.* * *

■ 3. Amend appendix 2 to subpart P of part 404 by:

■ a. In section 201.00:

■ i. Revising paragraph (h)(1)(iv) and the second sentence of paragraph (h)(2);

■ ii. In paragraph (h)(4)(i), revising the first sentence, adding a sentence after the first sentence, and revising the last sentence; and

■ iii. In Table No. 1, revise rules 201.17, 201.18, 201.23, and 201.24;

■ b. In section 202.00:

■ i. Revising paragraphs (d) and (g); and

■ ii. In Table No. 2, revising rules 202.09, 202.10, 202.16, and 202.17; and

■ c. In section 203.00, Table No. 3, revising rule 203.01.

The revisions and addition read as follows:

**Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines**

* * * * *

201.00 * * *

(h)(1) * * *

(iv) Are illiterate.

(2) * * * It is usually not a significant factor in limiting such individual's ability to make an adjustment to other work, including an adjustment to unskilled sedentary work, even when the individuals are illiterate.

* * * * *

(4) * * *

(i) While illiteracy may significantly limit an individual's vocational scope, the primary work functions in most unskilled occupations involve working with things (rather than with data or people). In these work functions, education has the least significance. * * * Thus, the functional capacity for a full range of sedentary work represents sufficient numbers of jobs to indicate substantial vocational scope for those individuals age 18–44, even if they are illiterate.

* * * * *

TABLE NO. 1—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO SEDENTARY WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

| Rule | Age | Education | Previous work experience | Decision |
|---|---|---|---|---|
| * | * | * | * | * |
| 201.17 | Younger individual age 45–49 | Illiterate | Unskilled or none | Disabled. |
| 201.18 | .....do | Limited or Marginal, but not Illiterate. | .....do | Not disabled. |
| * | * | * | * | * |
| 201.23 | Younger individual age 18–44 | Illiterate | Unskilled or none | [4] Do. |
| 201.24 | .....do | Limited or Marginal, but not Illiterate. | .....do | [4] Do. |
| * | * | * | * | * |

* * * * * * *

[4] See 201.00(h).

202.00 * * *

(d) A finding of disabled is warranted where the same factors in paragraph (c) of this section regarding education and previous work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (*i.e.,* closely approaching advanced age, 50–54) and an individual's vocational scope is further significantly limited by illiteracy.

* * * * *

(g) While illiteracy may significantly limit an individual's vocational scope, the primary work functions in most unskilled occupations relate to working with things (rather than data or people). In these work functions, education has the least

significance. Similarly, the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. The capability for light work, which includes the ability to do sedentary work, represents the capability for substantial numbers of such jobs. This, in turn, represents substantial vocational scope for younger individuals (age 18–49), even if they are illiterate.

TABLE NO. 2—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO LIGHT WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

| Rule | Age | Education | Previous work experience | Decision |
|---|---|---|---|---|
| * | * | * | * | * |
| 202.09 | Closely approaching advanced age. | Illiterate | Unskilled or none | Disabled. |
| 202.10 | .....do | Limited or Marginal, but not Illiterate. | .....do | Not disabled. |
| * | * | * | * | * |
| 202.16 | Younger individual | Illiterate | Unskilled or none | Do. |
| 202.17 | .....do | Limited or Marginal, but not Illiterate. | .....do | Do. |
| * | * | * | * | * |

* * * * * 203.00 * * *

TABLE NO. 3—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO MEDIUM WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

| Rule | Age | Education | Previous work experience | Decision |
|---|---|---|---|---|
| 203.01 | Closely approaching retirement age. | Marginal or Illiterate | Unskilled or none | Disabled. |
| * | * | * | * | * |

* * * * *

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

### Subpart I—Determining Disability and Blindness

■ 4. The authority citation for subpart I of part 416 continues to read as follows:

**Authority:** Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 5. Amend § 416.964 by:
■ a. Removing the sixth sentence of paragraph (b) introductory text and paragraph (b)(5);
■ b. Redesignating paragraph (b)(6) as paragraph (c); and
■ c. Revising the first sentence of newly redesignated paragraph (c).

The revision reads as follows:

**§ 416.964 Your education as a vocational factor.**

* * * * *

(c) *Information about your education.* We will ask you how long you attended school, and whether you are able to understand, read, and write, and do at least simple arithmetic calculations. * * *

[FR Doc. 2020–03199 Filed 2–24–20; 8:45 am]

BILLING CODE 4191–02–P

## LIBRARY OF CONGRESS

### Copyright Office

### 37 CFR Parts 201 and 205

**[Docket No. 2020–1]**

### Email Rule for Statutory Litigation Notices

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Copyright Office is issuing a final rule amending its procedures for submitting notices to the Office pursuant to sections 411 and 508 of the Copyright Act. Previously, these notices were submitted by mail to two different addresses, which risked delays and caused unnecessary burdens for both submitters and the Office. The new rule will alleviate these issues by requiring these notices to be submitted by email.

**DATES:** Effective May 26, 2020.

**FOR FURTHER INFORMATION CONTACT:** Jordana Rubel, Assistant General Counsel, by email at *jrubel@copyright.gov* or John R. Riley, Assistant General Counsel, by email at *jril@copyright.gov*; either can be reached by telephone at 202–707–8350.

**SUPPLEMENTARY INFORMATION:**

#### 1. Background

Under sections 411 and 508 of the Copyright Act,[1] certain parties are required to notify the Register of Copyrights about copyright litigation. Sections 411(a) and 411(b) each define circumstances in which the Register of Copyrights must be notified of civil copyright lawsuits, to provide opportunity for he or she to participate in the case. Section 411(a) provides that copyright claimants who were denied registration by the Copyright Office for a specific work must inform the Register when they initiate a lawsuit alleging infringement of that work so that the Register may elect to become a party to the civil action with respect to the issue of registrability of the copyright for the work. Section 411(b) provides that if a party in a copyright infringement lawsuit alleges that a certificate of registration issued by the Copyright Office contains inaccurate information that was knowingly included in the application, then the court shall ask the

[1] 17 U.S.C. 411, 508.

Register to advise whether, if the Register had known of that inaccuracy, he or she would have refused registration.

Section 508 of the Copyright Act requires the clerks of the courts of the United States to notify the Copyright Office of the names and addresses of the parties and the title, author, and registration number of each work involved in any action under title 17. The clerks must also, within one month after any final order or judgment is issued in such a case, send the Office a copy of the order or judgment and any written opinion. Once received, the Office must make these documents part of its public records.

Currently, the Office does not have detailed regulations governing the submission of section 411(b) or 508 notices; the applicable regulation currently indicates that such submissions should be addressed to a post office box rather than the main Copyright Office mailing address.[2] The Office has a regulation specifically governing section 411(a) notifications, which indicates that such documents must be sent by ''registered or certified mail to the General Counsel of the Copyright Office'' or delivered by hand.[3]

The Office recognizes that litigants and court clerks who must file these required statutory notices would benefit from a rule that requires electronically submitted documents and that would allow court clerks to send the required notifications through the federal courts' Case Management/Electronic Case Files system. Further, the Office would benefit from streamlined delivery of these notices, as it can be difficult to predict how long it will take for a mailed notice to actually be received, particularly given delays due to security screening.[4]

While a much smaller number of section 411(a) and (b) notices are received, the Office receives thousands of section 508 notices each year. The Administrative Office of the U.S. Courts created form AO–121, ''Report on the Filing or Determination of an Action or Appeal Regarding a Copyright'' to assist court clerks in complying with their statutory duties under 17 U.S.C. 508.[5] This form is provided to court clerks in Portable Document Format (''PDF'') and includes blank spaces in which court clerks can provide parties' names and addresses and the titles, authors, and registration numbers of works at issue in the case. In the Office's experience, some court clerks do not fill in any or all of the blanks on the forms they send to the Office and instead merely append a copy of the complaint to a blank form. The attached complaints, which can be lengthy, are not themselves required to be submitted to the Office to comply with section 508 and their presence increases the physical space needed to store the notices.

In late 2013, as part of a pilot project, the Copyright Office started permitting several judicial districts to send AO–121 forms electronically, as attachments to emails. The Office views this project as a success and has received requests from additional districts who wish to submit section 508 notices electronically. The Office believes that allowing all district courts and appellate courts to submit notices to the Office electronically, including through the Case Management/Electronic Case Files system, would simplify the submission process for courts and eliminate some paper record storage for the Office.[6] Receiving the section 508 notices electronically will also make it easier for the Office to make those forms available for public inspection electronically. Similarly, allowing email submission of section 411(a) notices will benefit the public and the Office as it will ensure quick and easily confirmed delivery of these required notices.

The Copyright Office is publishing this amendment as a final rule without first publishing a notice of proposed rulemaking, as it constitutes a change to a ''rule[ ] of agency . . . procedure, or practice.'' [7] Further, the rule does not ''alter the rights or interests of parties,'' but merely ''alter[s] the manner in which the parties present themselves or their viewpoints to the agency.'' [8] The Office has worked with the Administrative Office of the United States Courts to create procedures for implementing service of these notices via email by the courts and will publicize to the general public the requirement to serve 411(a) notices by email.

**List of Subjects**

*37 CFR Part 201*

Copyright, General provisions.

*37 CFR Part 205*

Copyright, Courts.

**Final Regulations**

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR parts 201 and 205 as follows:

## PART 201—GENERAL PROVISIONS

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

**Authority:** 17 U.S.C. 702.

■ 2. Amend § 201.1(c)(1) by:
■ a. Adding the words ''*Notices and*'' before ''Requests'' in the paragraph heading.
■ b. Removing ''Notices related to the filing of copyright infringement suits and submitted pursuant to 17 U.S.C. 411(a) and 17 U.S.C. 508; requests pursuant to 17 U.S.C. 411(b)(2) from district courts to the Register of Copyrights, all other'' and adding in its place ''Other than notices served on the Register of Copyrights submitted pursuant to 17 U.S.C. 411(a), 411(b)(2), and 508, all time sensitive''.
■ c. Adding two sentences to the end of the paragraph. d ''

The addition reads as follows:

**§ 201.1 Communication with the Copyright Office.**

* * * * *

(c) * * *

(1) * * * Notices and requests served on the Register of Copyrights submitted pursuant to 17 U.S.C. 411(a) or 411(b)(2) should be submitted via email in accordance with 37 CFR 205.13 (for section 411(a) notices) and § 205.14 (for section 411(b)(2) notices). Notices served on the Register of Copyrights submitted pursuant to 17 U.S.C. 508 should be submitted via email in accordance with 37 CFR 205.15.

## PART 205—LEGAL PROCESS

■ 3. The authority citation for part 205 continues to read as follows:

**Authority:** 17 U.S.C. 702.

■ 4. Amend § 205.13 by:
■ a. Removing ''registered or certified mail''.
■ b. Removing ''at the address specified in § 201.1(c)(1) of this chapter, or delivery by hand addressed to the General Counsel of the Copyright Office and delivered to the Copyright Information Section, U.S. Copyright Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue SE, Washington, DC'' and add in its place ''to the General Counsel of the

[2] 37 CFR 201.1(c)(1).

[3] *Id.* at 205.13.

[4] *See* 81 FR 62373 (Sept. 9, 2016) (noting same in mailbox rule for registration reconsiderations),

[5] *Report on the Filing or Determination of an Action or Appeal Regarding Copyright* (Jun. 2016), *https://www.uscourts.gov/sites/default/files/ao121.pdf* (''Form AO–121'').

[6] The Office is working with the Administrative Office of the U.S. Courts to update form AO–121 and notify the court clerks of these new regulations and procedures for submitting notices to the Office.

[7] 5 U.S.C. 553(b)(A).

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

Copyright Office via email to 411filings@copyright.gov''.

■ c. Adding '', as an attached file,'' after ''form of a letter''.

■ d. Removing ''envelope'' and add in its place ''email's subject line''.

■ e. Adding three sentences after the phrase ''Section 411(a) Notice to the Register of Copyrights.'' .''

The revisions reads as follows:

**§ 205.13 Complaints served on the Register of Copyrights pursuant to 17 U.S.C. 411(a).**

* * * Attachments must be submitted in Portable Document Format (PDF), assembled in an orderly form, and uploaded as individual electronic files (*i.e.,* not .zip files). Attachments to a single email should be no greater than 20 MB in total. The files must be viewable, contain embedded fonts, and be free from any access restrictions (such as those implemented through digital rights management) that prevent the viewing and examination of the file. If submission of a notice via email is not feasible, please contact the Office of the General Counsel by telephone during normal business hours at 202–707–8380.* * *

■ 5. Add § 205.14 to read as follows:

**§ 205.14 Court requests to the Register of Copyrights pursuant to 17 U.S.C. 411(b)(2).**

Where there is an allegation that a copyright registration certificate includes inaccurate information with knowledge that it was inaccurate and the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration, pursuant to 17 U.S.C. 411(b)(2), the court shall request the opinion of the Register of Copyrights to advise the court whether the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration. The request should be sent to the General Counsel of the Copyright Office via email to *411filings@copyright.gov*. Attachments to a single email should be no greater than 20 MB in total. If submission of a request via email is not feasible, please contact the Office of the General Counsel by telephone during normal business hours at 202–707–8380.

■ 6. Add § 205.15 to read as follows:

**§ 205.15 Court notices to the Register of Copyrights pursuant to 17 U.S.C. 508.**

Pursuant to 17 U.S.C. 508, within one month after the filing of any action under title 17, notice of the names and addresses of the parties and the title, author, and registration number of each work involved in the action, including any other copyrighted work later included by subsequent amendment, answer, or other pleading, must be served by the clerk of the court on the Register of Copyrights. Further, the clerk of the court must notify the Register within one month after any final order or judgment is issued in the case, sending with the notification a copy of the order or judgment together with the written opinion, if any, of the court. These notices must be sent to the General Counsel of the Copyright Office via email to *508filings@copyright.gov*. Notices must include a fully completed PDF version of the Administrative Office of the U.S. Courts' form AO–121, ''Report on the Filing or Determination of an Action or Appeal Regarding a Copyright,'' available at the U.S. Courts' website: *https://www.uscourts.gov/forms/other-forms/report-filing-or-determination-action-or-appeal-regarding-copyright*. If submission of a notice via email is not feasible, please contact the Office of the General Counsel by telephone during normal business hours at 202–707–8380.

Dated: January 14, 2020.

**Maria Strong,**

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

Approved by:

**Carla D. Hayden,**

*Librarian of Congress.*

[FR Doc. 2020–02374 Filed 2–24–20; 8:45 am]

**BILLING CODE 1410–30–P**

## POSTAL SERVICE

## 39 CFR Part 111

## USPS Returns Service

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is amending *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) section 505.3.0, and various other sections, to remove references to the traditional Merchandise Return Service (MRS) portion of merchandise return service and to enhance USPS Returns® service.

**DATES:** *Effective:* February 25, 2020.

**FOR FURTHER INFORMATION CONTACT:** Karen Key at (202) 268–7492, Vicki Bosch at (202) 268–4978, or Garry Rodriguez at (202) 268–7281.

**SUPPLEMENTARY INFORMATION:** The Postal Service published a notice of proposed rulemaking on July 23, 2018 (83 FR 34807–34811) to amend DMM section 505.3.0, *Merchandise Return Service (MRS),* to remove the references to traditional MRS processes and introduce an enhanced USPS Returns service. One formal response was received relating only to terminology used to describe users of the Enterprise Payment System (EPS).

The Postal Service elected to issue a revised proposed rule on December 19, 2019 (84 FR 69688–69695) in order to further clarify our proposal and provide a revised effective date. No formal responses were received.

The USPS Returns service's new methodology was deployed January 27, 2019, allowing existing customers to migrate to the automated returns process and new customers to establish automated returns service. Current USPS Returns service and MRS customers must migrate to the new automated methodology by August 28, 2020.

Under the Package Platform initiative, the Postal Service has leveraged devices that were installed as part of the Automated Package Verification system to enhance the capability of equipment used for the processing of package-size mailpieces. The upgraded equipment captures near real-time data on package dimensions, weight, mail class or product, and other attributes, and transmits the data to Postal Service information systems. The Postal Service will use this new technology to streamline its processes for the identification and postage assessment of each return package, and enable account holders to pay the postage for their returns electronically. Mailers will receive detailed reports to monitor package level pricing as their returns are processed and delivered through the Postal Service network. This improved functionality will significantly reduce the need to manually weigh and invoice returns or to estimate postage via sampling under the Postage Due Weight Averaging Program for MRS packages, and will eliminate the scan-based payment process currently used with USPS Returns services.

The USPS Returns service automated methodology will use the same commercial prices as those currently applied to USPS Returns services and MRS: Priority Mail® Commercial Base and Commercial Plus (as applicable to the qualifying USPS Returns account holders), First-Class Package Service®—Commercial, and Parcel Select Ground™, and will apply those prices to each individual return package. Negotiated Service Agreement (NSA) prices will be available for eligible customers using the USPS Returns service automated process.

USPS Returns service account holders will pay postage and fees through an Enterprise Payment System (EPS)

account. EPS is a relatively new payment system designed to provide a single point for all payment-related activities. Returns customers of any type will be required to set up an EPS account for electronic funds transfer for payment of USPS Returns service postage. USPS Returns service account customers can view payment information in a consolidated format in their EPS account accessed through the Business Customer Gateway at *https://gateway.usps.com.* The available information includes account balances, postage activity reports, transactions history, and other information. For EPS account set up or support, contact *Postalone@usps.gov* or call the *PostalOne!* Helpdesk at 800–522–9085, or the USPS Mailing and Shipping Solution Center at 1–877–MRC–0007 (1–877–672–0007).

USPS Tracking® service is included as part of the service for any USPS Returns service product, and the Extra Services available for a fee for the USPS Returns service automated methodology include Insurance service, Signature Confirmation™ service, and Certificate of Mailing service. In cases where the USPS Returns service account holder must sign for multiple returns bearing accountable Extra Services, the Postal Service will create an electronic firm sheet to capture the recipient's signature at the time of delivery and append it to the applicable associated returns. If all or part of the Intelligent Mail® package barcode (IMpb®) is unreadable, or the package is unable to be priced based on the availability of data collected, postage will be based on historical data, or default data determined at the time of enrollment.

While moving forward with the substantive changes to the returns options described in this final rule, the Postal Service will consolidate the new USPS Returns automated methodology material and the existing returns sections into one section.

Additionally, the Postal Service will remove the references to ''Merchandise Return Service'', both in section 505.3.0 and in the other sections that refer to Merchandise Return Service. When appropriate, these references are being replaced with references to USPS Returns service.

In addition, the Postal Service will update Quick Service Guides 220, 503, and 800, to reflect these DMM revisions.

We believe these revisions to our returns package product offerings will provide customers who choose the Postal Service for return services a more efficient process and a superb customer experience.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Accordingly, 39 CFR part 111 is amended as follows:

## PART 111—[AMENDED.]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

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

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

**Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)**

* * * * *

**100 Retail Mail Letters, Cards, Flats, and Parcels**

**101 Physical Standards**

* * * * *

**6.0 Additional Physical Standards for First-Class Mail and First-Class Package Service—Retail**

* * * * *

**6.2 Cards Claimed at Card Prices**

* * * * *

**6.2.9 Double Cards**

* * * Double cards are subject to these standards:

* * * * *

*[Revise the last sentence of item b to read as follows:]*

b. * * * The address side of the reply half may be prepared as Business Reply Mail, Courtesy Reply Mail, meter reply mail, or as a USPS Returns service label.

* * * * *

**200 Commercial Letters, Flats, and Parcels Design Standards**

**201 Physical Standards**

**1.0 Physical Standards for Machinable Letters and Cards**

* * * * *

**1.2 Physical Standards for Cards Claimed at Card Prices**

* * * * *

**1.2.9 Double Cards**

* * * Double cards are subject to these standards:

* * * * *

*[Revise the last sentence of item b to read as follows:]*

b. * * * The address side of the reply half may be prepared as business reply mail, courtesy reply mail, meter reply mail, or as a USPS Returns service label.

* * * * *

**202 Elements on the Face of a Mailpiece**

* * * * *

**3.0 Placement and Content of Mail Markings**

* * * * *

**3.3 Priority Mail Express and Priority Mail Markings**

* * * * *

**3.3.3 Additional Markings for Priority Mail Express and Priority Mail**

*[Revise the first sentence of the introductory text of 3.3.3 to read as follows:]*

In addition to the basic price marking in 3.3.1 and 3.3.2, except for pieces paid using a USPS Corporate Account, USPS Returns service, or permit imprint, Priority Mail Express and Priority Mail pieces claiming Commercial Base or Commercial Plus prices also must bear the appropriate commercial price marking, printed on the piece or produced as part of the meter imprint or PC Postage indicia. * * *

* * * * *

**204 Barcode Standards**

* * * * *

**2.0 Standards for Package and Extra Service Barcodes**

**2.1 Intelligent Mail Package Barcode**

**2.1.1 Definition**

*[Revise the fourth sentence of 2.1.1 to read as follows:]*

* * * All mailers generating Intelligent Mail package barcodes (IMpb) must also submit piece-level information to the USPS via an approved electronic file format (except for mailers generating barcodes for use on return services products, such as uninsured USPS Returns service packages). * * *

* * * * *

**2.1.7 Electronic File**

*[Revise the first sentence of the introductory text of 2.1.7 to read as follows:]*

All mailers generating Intelligent Mail package barcodes (IMpb) must transmit

piece-level information to USPS in an approved electronic file format (except for mailers generating barcodes for use on return services products, such as uninsured USPS Returns service packages). * * *

* * * * *

**220 Commercial Mail Priority Mail**

**223 Prices and Eligibility**

**1.0 Prices and Fees**

* * * * *

**1.2 Commercial Base Prices**

* * * The Commercial Base prices are available for:

* * * * *

*[Revise the text of item e to read as follows:]*

e. Permit holders using USPS Returns service for packages returned at Priority Mail prices when all requirements are met under 505.3.0.

* * * * *

**1.3 Commercial Plus Prices**

**1.3.1 Basic Eligibility**

* * * Commercial Plus prices are available to Priority Mail customers who qualify for Commercial Base prices and whose cumulative account volume exceeds a combined total of 5,000 letter-size and flat-size pieces (including Flat Rate Envelopes, but not the Padded Flat Rate Envelope) or 50,000 total pieces in the previous calendar year (except Priority Mail Open and Distribute) and who have a customer commitment agreement with USPS (new Priority Mail customers see 1.3.2), and are:

* * * * *

*[Revise the text of item d to read as follows:]*

d. Permit holders using USPS Returns service for packages returned at Priority Mail prices when all requirements are met under 505.3.0.

* * * * *

**1.4 Commercial Plus Cubic**

**1.4.1 Commercial Plus Cubic Eligibility**

* * * The Commercial Plus cubic prices are available for:

* * * * *

*[Revise the text of item c to read as follows:]*

c. Permit holders using USPS Returns service for packages returned at Priority Mail prices when all requirements are met under 503.3.0.

* * * * *

**224 Postage Payment and Documentation**

**1.0 Basic Standards for Postage Payment**

**1.1 Postage Payment Options**

**1.1.1 Commercial Base Pricing**

Priority Mail Commercial Base and Regional Rate Box postage may be paid with:

* * * * *

*[Revise the text of item e to read as follows:]*

e. Permit holders using USPS Returns service for Priority Mail packages when all requirements are met under 505.3.0.

**1.1.2 Commercial Plus Pricing**

Commercial Plus Priority Mail postage may be paid with:

* * * * *

*[Revise the text of item c to read as follows:]*

c. Permit holders using USPS Returns service for Priority Mail packages who qualify for Commercial Base prices and whose account volumes exceed 100,000 pieces in the previous calendar year or who have a customer commitment agreement with the USPS (see 223.1.3.2).

* * * * *

**1.1.3 Commercial Plus Cubic Pricing**

Commercial Plus cubic prices may be paid with:

* * * * *

*[Revise the text of item c to read as follows:]*

c. Permit holders using USPS Returns service when packages are returned at Priority Mail prices and all requirements are met under 505.3.0.

* * * * *

**280 Commercial Mail First-Class Package Service—Commercial**

**283 Prices and Eligibility**

**1.0 Prices and Fees**

* * * * *

**1.2 Commercial Prices**

Commercial prices are available when paid by one of the following methods:

* * * * *

*[Revise the text of item d to read as follows:]*

d. Permit holders using USPS Returns service for First-Class Package Service—Commercial packages when all requirements are met under 505.3.0.

* * * * *

**500 Additional Mailing Services**

**503 Extra Services**

**1.0 Basic Standards for All Extra Services**

* * * * *

**1.4 Eligibility for Extra Services**

* * * * *

**1.4.3 Eligibility—Domestic Returns**

Extra services for return packages under 505.3.0 and 505.4.0 are available as follows:

**Exhibit 1.4.3 Eligibility—Domestic Returns**

*[Revise Exhibit 1.4.3 by inserting a new table to read as follows:]*

| Return services | Eligible extra services (paid EPS account or by permit holder) | | | Eligible extra services (paid by sender) | | | |
|---|---|---|---|---|---|---|---|
| | Insurance $500 or less | Insurance more than $500 | Signature confirmation | Insurance $500 or less | Insurance more than $500 | Signature confirmation | Certificate of mailing |
| USPS Returns: | | | | | | | |
| Priority Mail Return Service | 1 | 1, 2, 3 | ✓ | 1 | 1, 2 | ✓ | 4 |
| First-Class Package Return Svs | 3 | 2, 3 | ✓ | ✓ | 2 | ✓ | 4 |
| Ground Return Service | 3 | 2, 3 | ✓ | ✓ | 2 | ✓ | 4 |
| Parcel Return Service | ✓ | 2 | | ✓ | 2 | | 4 |

1. Insurance is not included for Priority Mail Return Service, it must be purchased.
2. A signature is not provided as part of the delivery record for USPS Returns service items insured for more than $500.
3. Insurance being purchased by the EPS account holder must be accompanied by electronic data that supports the value of the merchandise and the associated fee paid (see 4.3.1).

4. Individual pieces using Form 3817 or Form 3665 by sender only.

* * * * *

**2.0 Registered Mail**

* * * * *

**2.2 Fees and Liability**

* * * * *

*[Delete 2.2.4, Merchandise Return, in its entirety and renumber 2.2.5 as 2.2.4.]*

**2.2.4 Indemnity**

*[Revise the text of renumbered 2.2.4 to read as follows:]*

No indemnity is paid for any matter registered without prepayment of postage and fees.

* * * * *

**2.5 Inquiry on Uninsured Article**

**2.5.1 Who, When and How To File**

*[Revise the second sentence of 2.5.1 to read as follows:]*

* * * Only the mailer may file an inquiry for Registered Mail items with no declared value. * * *

* * * * *

**4.0 Insured Mail**

* * * * *

**4.2 Insurance Coverage—Priority Mail**

Priority Mail pieces bearing an Intelligent Mail package barcode (IMpb) or USPS retail tracking barcode (see 4.3.4) are insured against loss, damage, or missing contents, up to a maximum of $50.00 or $100.00, subject to the following:

* * * * *

*[Revise the text of item e to read as follows:]*

e. Insurance coverage under 4.2a or 4.2b is not provided for Priority Mail packages mailed as USPS Returns service, Priority Mail Open and Distribute, or Premium Forwarding Service.

* * * * *

**4.3 Basic Standards**

**4.3.1 Description**

Insured mail is subject to the basic standards in 1.0; see 1.4 for eligibility. The following additional standards apply to insured mail:

*[Revise the text of item a by adding a new third sentence to read as follows:]*

a. * * * For customer-generated integrated barcodes used for USPS Returns service or Parcel Return Service, the returns account holder must provide USPS with electronic data in a shipping services file version 1.6 or higher that identifies the USPS Tracking number of the insured return package, total postage paid, insurance fee paid, declared value, mailing date, origin ZIP Code, and delivery ZIP Code, along with the recipient name and address information. * * *

* * * * *

**505 Return Services**

* * * * *

*[Revise the heading and text of 3.0 to read as follows:]*

**3.0 USPS Returns Service**

**3.1 Basic Standards**

**3.1.1. Description**

USPS Returns service allows an authorized account holder to pay the postage and fees on single-piece priced commercial Priority Mail, First-Class Package Service—Commercial, or Parcel Select Ground packages returned to the account holder by senders (mailers) via a return label, meeting the standards in 3.1.4, produced by the account holder. Unless otherwise restricted, any mailable matter may be mailed using any of the USPS Returns service options (Priority Mail Return Service, First-Class Package Return Service, and Ground Return Service (Parcel Select Ground)). Any content that constitutes First-Class Mail matter may only be mailed using Priority Mail Return Service. USPS Returns service is subject to the following conditions:

a. *Availability.* USPS Returns service is available to the account holder for mailing to the account holder's designated address on the USPS Returns label(s).

b. *Payment Guarantee.* The account holder must guarantee payment of the proper postage and fees, including any fees for Extra Services requested by the account holder, on all packages returned bearing a valid barcoded USPS Returns label produced by the account holder. The account holder must have sufficient funds in their associated Electronic Payment Account to pay the postage and fees on an ongoing basis.

c. *Where Service Established.* USPS Returns service accounts may be established at any Post Office in the United States and its territories and possessions or at any overseas U.S. military Post Office (APO/FPO/DPO). USPS Returns service is not available for returns from any foreign country.

**3.1.2 Accounts**

USPS Returns service accounts are subject to the following:

a. *Account Enrollment.* An approved USPS Returns service account may be established by calling the Mailing and Shipping Solutions Center at 1–877–672–0007.

b. *Advance Deposit Account.* The account holder must pay postage and fees through an Enterprise Payment System (EPS) account, accessed through the Business Customer Gateway (BCG) at *https://gateway.usps.com* and agree to the terms and conditions for use of such EPS account as the EPS account holder.

c. *Mailer Identification Code (MID).* Applicants must request a new MID via the BCG, select the product type of nonmanifested returns, and select the applicable Service Type Codes (STCs) for the desired USPS Returns service products.

d. *Application Process.* Applicants must have a valid Enterprise Payment Account and be registered in the Business Customer Gateway (BCG).

e. *Canceled Accounts.* If the account is cancelled by the EPS account holder, USPS Returns service packages bearing the sender's return address are returned to the sender; otherwise, they are treated as dead mail.

f. *Account Cancellation.* The USPS may cancel an account if the EPS account holder refuses to accept and pay postage and fees for USPS Returns service packages, fails to keep sufficient funds in the advance deposit account to cover postage and fees, or distributes return labels that do not meet USPS standards.

g. *Reapplying After Cancellation.* To receive a new account after a previous USPS Returns service account is canceled, the applicant must re-register in the Business Customer Gateway and obtain and new mailer identification code (MID) for USPS Returns service use. If not using labels generated by the USPS Application Program Interface (API) *https://www.usps.com/business/web-tools-apis/welcome.htm* or Merchant Return Application (MRA), applicants must submit for approval two samples for each label format to the National Customer Support Center (NCSC). In addition, applicants must provide evidence that the reasons for the account cancellation are corrected, and maintain funds in their advance deposit account sufficient to cover normal returns for at least two weeks.

h. *Using Other Post Offices.* The authorized Enterprise Payment System (EPS) account holder using USPS Returns may distribute USPS Returns labels for return through other Post Office locations.

### 3.1.3 Postage and Prices

Postage and prices are subject to the following:

a. Postage is calculated based on the weight of the return package and zone associated with the point of origin and delivery ZIP Code subject to the eligibility for commercial prices and fees based on the class of mail under 220, 250, and 280, except that postage for USPS Returns in flat-rate packaging is based on the packaging type used and the associated Universal Product Code (UPC) on the packaging. USPS Returns service packages are charged postage and fees based on the service type code (STC) embedded in the Intelligent Mail Package barcode (IMpb) and as provided under 3.1.3c. If all or part of the IMpb is unreadable, or the package is unable to be priced based on the data collected, postage will be determined by the Postal Service based on historical data, or default data determined at time of enrollment.

b. Prices for Priority Mail Return Service, First-Class Package Return Service, and Ground Return Service (Parcel Select Ground) packages are charged as follows:

1. Priority Mail Commercial Base prices are available for account holders using Priority Mail Return Service, when all applicable requirements are met.

2. Priority Mail Commercial Plus prices are available for Priority Mail Return Service packages that qualify for Commercial Base prices and for which the account holder has a customer commitment agreement with the USPS (see 223.1.3).

3. First-Class Package Service—Commercial prices are available for First-Class Package Return Service packages when all applicable requirements are met.

4. Parcel Select Ground prices are available for Ground Return Service packages when all applicable requirements are met.

c. The account holder or mailer may obtain extra and additional services as follows:

1. Insurance—is available for USPS Returns service (see 503.0). Insurance is not included with the postage for Priority Mail Return Service. Insurance is available to the account holder for a fee on packages that have the applicable STC imbedded into the IMpb on the label, and for which the account holder has provided electronic data that supports the value of the merchandise (see 503.4.3.1a). Only the account holder may file a claim (see 609). Mailers mailing a USPS Returns service package may obtain insurance at their own expense at the time of mailing by presenting the labeled USPS Returns package at a Post Office retail unit to obtain the service.

2. Signature Confirmation is available for USPS Returns service (see 503.0). Signature Confirmation is available for a fee to the account holder for packages that have the applicable STC for Signature Confirmation imbedded into the IMpb on the label. Mailers mailing a USPS Returns package may obtain Signature Confirmation at their own expense at the time of mailing by presenting the labeled USPS Return package at a Post Office retail unit to obtain the service.

3. Certificate of Mailing is available only to mailers at their own expense at the time of mailing by presenting the certificate at a Post Office retail unit to obtain the receipt.

4. Pickup on Demand Service is available for a fee with USPS Returns service (see 507.7.0).

### 3.1.4 Labels

Distribution and preparation of labels are subject to the following:

a. *Distribution of Labels.* USPS Returns labels may be distributed to customers as an enclosure with merchandise, as a separate package (including when requested electronically through the *Business Customer Gateway* for printing and delivery to the customer by USPS), as an electronic transmission for customer downloading and printing (including through Label Broker™ which allows customers to have the pre-paid returns label printed for them at a USPS Retail System Software (RSS) enabled retail location via a Label ID and/or QR code on a smart phone, on a piece of paper, or written directly on a package presented to the retail associate), or through one of the account holder's designated pickup facilities.

b. *Label Preparation.* USPS Returns labels must meet the standards in the Parcel Labeling Guide available on the PostalPro website at *https://postalpro.usps.com/parcellabelingguide.* The label must include an IMpb, accommodate all required information, be legible, and be prepared in accordance with Publication 199, *Intelligent Mail Package Barcode (IMpb) Implementation Guide,* available on the PostalPro website. Standard label sizes are 3 inches by 6 inches, 4 inches by 4 inches, or 4 inches by 6 inches, and must be certified by the USPS for use prior to distribution. Except for USPS Returns labels generated by the USPS Application Program Interface (API) or Merchandise Return Application (MRA), all returns labels must have a properly constructed (C01, C05, N02, or N05, as applicable) IMpb approved by the National Customer Support Center (NCSC). EPS account holders or their agents may distribute approved return labels and instructions by means specified in 3.1.4b. EPS account holders or their agents must provide written instructions to the label end-user (mailer) as specified in 3.1.4c. Labels cannot be faxed. If all applicable content and format standards are met, USPS Returns labels may be produced by any of the following methods:

1. As an impression printed by the EPS account holder directly onto the package to be returned.

2. As a separate label preprinted by the EPS account holder to be affixed by the customer onto the package to be returned. The reverse side of the label must bear an adhesive strong enough to bond the label securely to the package. Labels must be printed and delivered by USPS to the customer when requested electronically by the EPS account holder or its agents through the Business Customer Gateway, or provided as an electronic file created by the EPS account holder for local output and printing by the customer. The electronic file must include instructions that explain how to affix the label securely to the package, and that caution against covering with tape or other material any part of the label where postage and fee information is to be recorded.

c. *Labeling Instructions.* Written instructions must be provided with the label that, at a minimum, directs the customer to do the following:

1. ''If your name and address are not already preprinted in the return address area, print them neatly in that area or attach a return address label there.''

2. ''Attach the label squarely onto the largest side of the package, centered if possible. Place the label so that it does not fold over to another side. Do not place tape over any barcodes on the label or any part of the label where postage and fee information will be recorded.''

3. ''Remove or obliterate any other addresses, barcodes or price markings on the outside packaging.''

4. ''Mail the labeled USPS Returns service package at a Post Office, drop it in a collection box, leave it with your USPS carrier, or schedule a package pickup at *www.usps.com.*''

### 3.1.5 Noncompliant Labels

USPS Returns account holders must use USPS-certified labels meeting the standards in 3.1.4. When noncompliant labels are affixed to USPS Returns service packages, the permit holder will

be assessed the appropriate USPS Retail Ground price calculated from the package's initial entry point (first physical scan) in the USPS network to its delivery address.

**3.1.6 Enter and Deposit**

The EPS account holder's customers may mail the USPS Returns service package at any Post Office; any associated office, station, or branch; in any collection box (except a Priority Mail Express box); with any rural carrier; by package pickup; on business routes during regular mail delivery if prior arrangements are made with the carrier; as part of a collection run for other mail (special arrangements might be required); or at any place designated by the Postmaster for the receipt of mail. USPS Returns service packages with extra services must be mailed either with the rural carrier or at the main Post Office or any associated office, station, or branch. Any such packages deposited in collection boxes may be returned to the sender for the extra service to be purchased appropriately, or it will be processed and charged postage and fees based on the service type code (STC) embedded in the Intelligent Mail Package barcode (IMpb) on the label and as provided under 3.1.3c.

**3.1.7 Additional Standards**

Additional mailing standards applicable to each service option are as follows:

a. Priority Mail Return service may contain any mailable matter meeting the standards in 201.8.0 and 220.2.0. APO/FPO/DPO mail is subject to 703.2.0 and 703.4.0, and Department of State mail is subject to 703.3.0. Priority Mail Return service receives expeditious handling and transportation, with service standards in accordance with Priority Mail. Priority Mail Return service mailed under a specific customer agreement is charged postage according to the individual agreement. Commercial Base and Commercial Plus prices are the same as for outbound Priority Mail in Notice 123, *Price List.*

b. First-Class Package Return service may contain mailable matter meeting the standards in 201.8.0 and 280.2.0. First-Class Package Return service handling, transportation, and eligibility of contents are the same as for outbound First-Class Package Service—Commercial parcels under 283. First-Class Package Return service packages may not contain documents or personal correspondence, except that such packages may contain invoices, receipts, incidental advertising, and other documents that relate in all substantial respects to merchandise contained in the package.

c. Ground Return (Parcel Select Ground) service provides ground transportation for parcels containing mailable matter meeting the standards in 201.8.0 and 153.3.0. Ground Return (Parcel Select Ground) service is required for restricted and hazardous materials mailed using USPS Returns service and as provided in Publication 52, *Hazardous, Restricted, and Perishable Mail.* Ground Return (Parcel Select Ground) service assumes the handing and transportation and service objectives for delivery of USPS Retail Ground.

* * * * *

**507 Mailer Services**

* * * * *

**7.0 Pickup on Demand Service**

**7.1 Postage and Fees**

**7.1.1 Postage**

*[Revise the text of 7.1.1 to read as follows:]*

The correct amount of postage must be affixed to each piece except for a Priority Mail Express label paid with a corporate account, packages with a USPS Returns label affixed (under 505.3.0), pieces with a Parcel Return Service permit label affixed (under 505.4.0), and manifest mailings paid by permit imprint indicia approved by Business Mailer Support (BMS).

* * * * *

**7.1.3 Fee Not Charged**

The customer is not charged for:

* * * * *

*[Revise the text of item c to read as follows:]*

c. Pickup on Demand when the item bears a USPS Returns service label that indicates that the permit holder will pay for Pickup on Demand service.

* * * * *

**508 Recipient Services**

* * * * *

**7.0 Premium Forwarding Services**

* * * * *

**7.3 Premium Forwarding Service Commercial**

* * * * *

**7.3.3 Conditions**

* * * PFS-Commercial service is subject to these conditions:

* * * * *

*[Revise the text of item f to read as follows:]*

f. The mailer must keep a postage-due account or business reply mail (BRM) account at the originating postal facility where the PO Box or business street address is located. Any short paid, BRM pieces will be charged to the mailer's account prior to shipment.

* * * * *

**7.4 Premium Forwarding Service Local**

* * * * *

**7.4.3 Conditions**

* * * PFS-Local service is subject to these conditions:

* * * * *

*[Revise the text of item f to read as follows:]*

f. A business must keep a postage-due account or business reply mail (BRM) account at the originating postal facility where the PO Box or business street address is located. Any short paid, BRM pieces will be charged to the mailer's account prior to reshipment.

* * * * *

**600 Basic Standards for All Mailing Services**

* * * * *

**602 Addressing**

**1.0 Elements of Addressing**

* * * * *

**1.3 Address Elements**

All mail not bearing a simplified address must bear a delivery address that contains at least the following elements in this order from the top line:

* * * * *

e. ZIP Code where required:

*[Revise the text of item e1 to read as follows:]*

1. ZIP Codes are required on Priority Mail Express, commercial First-Class Mail, First-Class Package Service—Commercial, Periodicals, USPS Marketing Mail, Package Services and Parcel Select mailpieces, all mail sent to military addresses within the United States and to APO and FPO addresses, official mail, Business Reply Mail, and USPS Returns service packages.

* * * * *

**604 Postage Payment Methods and Refunds**

* * * * *

**6.0 Payment of Postage**

* * * * *

**6.4 Advance Deposit Account**

*[Revise the last sentence of 6.4 to read as follows:]*

* * * Mailers may use a single advance deposit account to pay postage due charges for more than one return

service (*e.g.,* business reply mail and Bulk Parcel Return Service).

* * * * *

**10.0 Postage Due Weight Averaging Program**

**10.1 Basic Information**

**10.1.1 Description**

*[Revise the second sentence of 10.1.1 to read as follows:]*

* * * This program, subject to application, approval, and authorization, is available for customers who receive a minimum of 50,000 combined postage due parcels and flats or Bulk Parcel Return Service (BPRS) pieces. * * *

**10.1.2 General Qualification**

*[Revise the second sentence of 10.1.2 to read as follows:]*

* * * Returns can include all classes of mail where postage due fees are assessed, including BPRS return pieces. * * *

* * * * *

*[Delete 11.0, Scan-Based Payment, in its entirety.]*

* * * * *

**609 Filing Indemnity Claims for Loss or Damage**

**1.0 General Filing Instructions**

* * * * *

**1.3 Who May File**

A claim may be filed by:

* * * * *

*[Revise the text of items c and d to read as follows:]*

c. Only the account holder, for USPS Returns packages that are insured as identified by the account holder's mailer identification (MID) and the applicable STC for insurance imbedded into the IMpb on the label, and for which the account holder has provided electronic data that supports the value of the merchandise being returned (see 503.4.3.1a).

d. Only the mailer, when the mailer has added and paid for insurance on USPS Returns service packages.

* * * * *

**3.0 Providing Evidence of Insurance and Value**

**3.1 Evidence of Insurance**

* * * Examples of acceptable evidence are:

* * * * *

*[Revise the introductory text of item e to read as follows:]*

e. For insured mail or COD mail paid using MMS or eVS under 705.2.0, or for insured mail paid using an EPS account for USPS Returns service under 503.3.0, the mailer must use one of the following:

*[Revise the text of item e1 to read as follows:]*

1. A Detail Record in their Shipping Services file version 1.6 or higher (which includes the USPS Tracking number of the insured item, total postage paid, insurance fee paid, declared value, mailing date, origin ZIP Code, delivery ZIP Code) along with the recipient name and address information for the accountable extra services pieces.

* * * * *

**Index**

* * * * *

**M**

* * * * *

*[Revise the heading and text under ''merchandise return service'' to read as follows (re-alphabetize heading and text after revision):]*

**USPS Returns Service, 505.3.0**

accounts 505.3.1.2

adding extra services (by the mailer), 505.3.1.3

adding extra services (by the permit holder), 505.3.1.3

advanced deposit account, 505.3.1.2

applying for a permit, 505.3.1.2

format for label, 505.3.1.4

general information, 505.3.1.1

* * * * *

**R**

* * * * *

**Reply Mail**

* * * * *

*[Revise the ''merchandise return service'' entry to read as follows (re-alphabetize entry after revision):]*

USPS Returns service, 505.3.0

* * * * *

**Return Services**

* * * * *

*[Delete ''merchandise return service''.]*

* * * * *

*[Revise the ''USPS return services'' entry to read as follows:]*

USPS Returns service, 505.3.0

* * * * *

**Joshua J. Hofer,**

*Attorney, Federal Compliance.*

[FR Doc. 2020–03170 Filed 2–24–20; 8:45 am]

**BILLING CODE 7710–12–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2019–0556; FRL–10004–14–Region 9]**

## Air Plan Approval; California; San Diego County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a revision to the San Diego County Air Pollution Control District (SDCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) from adhesive material application operations. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the ''Act'').

**DATES:** This rule is effective on March 26, 2020.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2019–0556. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4125 or by email at *vineyard.christine@epa.gov*.

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

**Table of Contents**

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

## I. Proposed Action

On October 21, 2019 (84 FR 56156), the EPA proposed to approve the following rule into the California SIP.

| Local agency | Rule No. | Rule title | Amended | Submitted |
|---|---|---|---|---|
| SDCAPCD | 67.21 | Adhesive Material Application Operations | 05/14/08 | 08/09/17 |

We proposed to approve this rule because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

## II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received 2 comments supporting EPA's approval of Rule 67.21 for the protection of human health and the environment.

## III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP.

## IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the SDCAPCD rule described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 27, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

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

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

Dated: December 11, 2019.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(503)(i)(B) to read as follows:

**§ 52.220 Identification of plan-in part.**

* * * * *

(c) * * *

(503) * * *

(i) * * *

(B) San Diego County Air Pollution Control District.

(*1*) Rule 67.21, ''Adhesive Material Application Operations,'' amended on May 14, 2008.

(*2*) [Reserved]

* * * * *

[FR Doc. 2020–03403 Filed 2–24–20; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2019–0553; FRL–10005–49–Region 3]**

### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; 2019 Amendments to West Virginia's Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of West Virginia. This revision updates the effective date of the national ambient air quality standards (NAAQS) and the associated monitoring reference and equivalent methods for those NAAQS which West Virginia incorporates into its State regulations and the SIP. EPA is approving this revision to the West Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on March 26, 2020.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2019–0553. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Joseph Schulingkamp, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2021. Mr. Schulingkamp can also be reached via electronic mail at *schulingkamp.joseph@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On December 23, 2019 (84 FR 64243), EPA published a notice of proposed rulemaking (NPRM) for the State of West Virginia. In the NPRM, EPA proposed approval of a formal SIP revision submitted on May 6, 2019. The formal SIP revision updates the version of the NAAQS and the associated monitoring reference and equivalent methods for those NAAQS that West Virginia incorporates by reference into the State's legislative rules and the SIP.

### II. Summary of SIP Revision and EPA Analysis

This SIP revision was submitted by the West Virginia Department of Environmental Protection (WVDEP) in order to update the State's incorporation by reference of the primary and secondary NAAQS and the ambient air monitoring reference and equivalent methods, found in 40 CFR parts 50 and 53, respectively. Currently, West Virginia's EPA-approved SIP includes the older version of West Virginia regulation 45CSR8 which incorporates by reference 40 CFR parts 50 and 53 as these Federal regulations existed on June 1, 2017. West Virginia has since adopted at the State level a revision to 45CSR8 which now incorporates by reference the Federal regulations at 40 CFR parts 50 and 53 as these regulations existed on June 1, 2018. Following EPA approval of this SIP revision, the EPA-approved West Virginia SIP will reflect that 40 CFR parts 50 and 53, as they existed on June 1, 2018, are part of the EPA-approved West Virginia SIP. EPA notes that since June 1, 2017, EPA reviewed the primary standards for oxides of nitrogen ($NO_X$), as required by CAA section 109(d), but chose to retain the 1-hour and annual nitrogen dioxide ($NO_2$) standards without revision. *See* 83 FR 17226. Thus, EPA has not made any changes to the ambient air quality standards, ambient air monitoring reference methods, or any ambient air monitoring equivalent methods in 40 CFR parts 50 and 53 since West Virginia last incorporated by reference into 45CSR8 the NAAQS and monitoring methods in 40 CFR parts 50 and 53 as they existed on June 1, 2017. Other specific requirements and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

### III. Response to Comments

EPA received five sets of anonymous comments in response to the NPRM. Three of the commenters supported West Virginia's updating of its incorporation by reference of the NAAQS. EPA thanks these commenters but will otherwise only respond to the question contained in one of these comments. Two of the comments were difficult to interpret but did not appear to support the rulemaking. EPA's best effort to interpret and respond to these two comments is represented in this section of this rulemaking action.

*Comment 1:* The first commenter was generally supportive of the action but also asked when the revision of the effective date in this rulemaking would take place.

*Response 1:* The provisions of West Virginia's amended regulation, 45CSR8, became effective at the State level on June 1, 2019. EPA's approval of this revision into the SIP will become effective 30 days after this final rule is published in the **Federal Register**. For the specific effective date of EPA's approval, see the **DATES** section of this document.

*Comment 2:* One commenter asked why EPA was requiring rules about the NAAQS and asked why EPA requires the NAAQS. The commenter suggested that EPA stop requiring states like West Virginia to adopt rules like this and allow West Virginia to remove these rules. The commenter also generally expressed opinions irrelevant to this rulemaking.

*Response 2:* The Clean Air Act is a Federal law (statute) adopted by Congress and approved by the President. Section 109 of the CAA *requires* that the Administrator adopt NAAQS for certain air pollutants which, in the judgment of the Administrator, are necessary to protect the public

health and welfare, with an adequate margin of safety. CAA section 109(a), (b); 42 U.S.C. 7409(a), (b). While the Administrator has some discretion in setting the safe level for these pollutants in the ambient air, the CAA *requires* that the Administrator set and review these levels every five years. CAA section 109; 42 U.S.C. 7409. Section 107 of the CAA gives states the primary responsibility for assuring air quality within each state by submitting an implementation plan for the state (a ''SIP'') that specifies how the NAAQS will be achieved and maintained in the state. 42 U.S.C. 7407. Thus, Federal law requires NAAQS in order to protect public health and the environment, and the Administrator must implement this law. Also, although the CAA allows states some discretion in how to attain and maintain compliance with the ambient air quality standards, states are required by section 110(a) of the CAA to submit implementation plans for achieving and maintaining the ambient air quality standards. 42 U.S.C. 7410(a). Therefore, it is a Federal law, the CAA, which requires NAAQS and not a requirement created by EPA.

EPA disagrees with the commenter with regards to the Agency ''requiring rules about the NAAQS.'' When a state incorporates into its state regulations a Federal rule or standard by reference to that Federal rule, the state is formally adopting the standard or rule into its own state rules without having to rewrite the entirety of the referenced rule or standard. States typically incorporate Federal rules by reference to maintain consistency between state and Federal requirements and for ease of adoption, implementation, and enforcement by the state. While nothing in the CAA or EPA's regulations requires that West Virginia incorporate by reference the Federal regulations setting forth the NAAQS in order to adopt the NAAQS into the State's SIP, West Virginia has made the choice to incorporate by reference the NAAQS into its SIP. West Virginia is exercising its discretion to adopt State regulations incorporating the NAAQS. Because West Virginia chooses to incorporate by reference the NAAQS, and because West Virginia incorporates by reference the NAAQS in its State regulations by referring to Federal regulations as published on a certain date, West Virginia periodically updates its State regulations to refer to the most up-to-date NAAQS in current Federal regulations.

The SIP revision in this rulemaking was submitted by West Virginia because the State's rule, 45CSR8—Ambient Air Quality Standards, incorporated the NAAQS and the ambient air monitoring reference and equivalent methods found in 40 CFR parts 50 and 53, respectively, as of June 1, 2017. Because West Virginia wants to ensure the most recent ambient air quality standards and air monitoring methods are enforceable at the State level, West Virginia routinely revises 45CSR8 to update the date by which the rule incorporates the Federal standards by reference. In this case, West Virginia revised the date of incorporation by reference from June 1, 2017 to June 1, 2018. By revising this date, West Virginia's ambient air quality standards and air monitoring methods would match the NAAQS and air monitoring methods in 40 CFR parts 50 and 53 as of June 1, 2018.

*Comment 3:* Another commenter also asked why EPA was requiring rules about the NAAQS and suggested that these rules ''are to be voluntary, in order to reduce undue administrative burdens on states to make the NAAQS optional.''

*Response 3:* As stated in response to comment 2 of this preamble, the purpose of the NAAQS is to protect human health and the environment, and Federal law (the CAA) requires that the Administrator establish the NAAQS and requires that states adopt plans to ensure the NAAQS are achieved and maintained. It is not within EPA's authority to make the NAAQS voluntary. EPA also notes that West Virginia has voluntarily chosen to use the method of incorporation by reference to adopt the NAAQS into its State regulations and the SIP. West Virginia could have directly adopted the NAAQS standards into West Virginia's regulations without using the incorporation by reference method. As stated previously, states often choose to incorporate the Federal regulations by reference in order to ensure the state's regulations (and therefore the SIP) are identical to Federal standards for implementation and enforcement purposes.

## IV. Final Action

EPA is approving the West Virginia SIP revision updating the date of incorporation by reference as a revision to the West Virginia SIP. The SIP revision was submitted on May 6, 2019.

## V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of 45CSR8, as effective on June 1, 2019. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

## VI. Statutory and Executive Order Reviews

### *A. General Requirements*

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

[1] 62 FR 27968 (May 22, 1997).

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

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

*B. Submission to Congress and the Comptroller General*

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

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 27, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving the West Virginia SIP revision incorporation by reference the NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: February 7, 2020.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (c) entitled ''EPA-Approved Regulations in the West Virginia SIP'' is amended by revising entries under the heading ''[45 CSR] Series 8 Ambient Air Quality Standards'' to read as follows:

**§ 52.2520 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

| State citation [Chapter 16–20 or 45 CSR] | Title/subject | State effective date | EPA approval date | Additional explanation/ citation at 40 CFR 52.2565 |
|---|---|---|---|---|
| * | * | * | * | * |
| **[45 CSR] Series 8 Ambient Air Quality Standards** | | | | |
| Section 45–8–1 | General | 6/1/19 | 2/25/20, [Insert **Federal Register** citation]. | Docket #2019–0553. Filing and effective dates are revised; Sunset provision added. |
| Section 45–8–2 | Definitions | 6/1/19 | 2/25/20, [Insert **Federal Register** citation]. | Docket #2019–0553. Previous Approval 10/5/18. |
| Section 45–8–3 | Adoption of Standards | 6/1/19 | 2/25/20, [Insert **Federal Register** citation]. | Docket #2019–0553. Effective date is revised. |
| Section 45–8–4 | Inconsistency Between Rules. | 6/1/19 | 2/25/20, [Insert **Federal Register** citation]. | Docket #2019–0553. Previous Approval 10/5/18. |
| * | * | * | * | * |

* * * * *

[FR Doc. 2020–03153 Filed 2–24–20; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 721

**[EPA–HQ–OPPT–2018–0627 and EPA–HQ–OPPT–2018–0697; FRL–10003–45]**

**RIN 2070–AB27**

## Significant New Use Rules on Certain Chemical Substances (18–1 and 18–4); Technical Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical correction.

**SUMMARY:** EPA issued final significant new use rules (SNURs) in the **Federal Register** of November 25, 2019 for 22 chemical substances that were the subject of premanufacture notices (PMNs) (SNUR batch 18–1), and in in the **Federal Register** of December 5, 2019 for 29 chemical substances that were the subject of PMNs (SNUR batch 18–4). In SNUR batch 18–1, for the chemical substance that was the subject of PMN P–15–114, EPA made errors in the SNUR requirements for hazard

communication and protection in the workplace, resulting in inconsistencies with the same requirements in the associated TSCA Order. For SNUR batch 18–4, for one of the two chemical substances that are subject to the SNUR, EPA made a typographical error when identifying the associated PMN number in the SNUR. Additionally, for two other SNURs, language in the SNURs incorrectly refers to requirements in ''the TSCA Order'' rather than in the SNUR itself. This document is being issued to correct these errors.

**DATES:** This technical correction is effective on February 25, 2020.

**ADDRESSES:** The dockets for this action, identified by docket identification (ID) numbers EPA–HQ–OPPT–2018–0627 and EPA–HQ–OPPT–2018–0697, are 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 dockets available at *http://www.epa.gov/dockets*.

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* Kenneth Moss, Chemical Control Division, 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. What does this technical correction do?

EPA issued a final rule (referred to as SNUR Batch 18–1) in the **Federal Register** of November 25, 2019 (84 FR 64754) (FRL–10001–30) for significant new uses for 22 chemical substances that were the subject of PMNs. EPA also issued a final rule (SNUR Batch 18–4) in the **Federal Register** of December 5, 2019 (84 FR 66599) (FRL–10002–30) for significant new uses for 29 chemical substances that were the subject of PMNs. In SNUR Batch 18–1, EPA made errors when specifying worker protection and hazard communication requirements for the chemical substance 2-butanone 1,1,1,3,4,4,4-heptafluoro-3-(trifluoromethyl)- (PMN P–15–114, CAS No. 756–12–7), listed in the significant new use rule (SNUR) codified at 40 CFR 721.11151, resulting in inconsistencies between the SNUR and the associated TSCA 5(e) Order for the PMN. This action corrects these errors as follows:

- The worker protection requirements in paragraph (a)(2)(i) of the SNUR are corrected to refer to 40 CFR 721.63(a)(1) and (3) rather than 721.63(a)(1) through (3), thereby removing the reference to 40 CFR 721.63(a)(2).
- The hazard communication requirements in paragraph (a)(2)(ii) of the SNUR are corrected to change the reference to 40 CFR 721.72(g)(3) from ''(g)(3)(ii)(harmful to fish)'' to ''(g)(3)(harmful to aquatic organisms)(harmful to fish).''

In SNUR Batch 18–4, EPA made a typographical error in the SNUR at 40 CFR 721.11236 when identifying the PMN number associated with the chemical B component of P–17–373. It was mislabeled as P–13–373. EPA also made errors in paragraph (a)(1) of the SNURs at 40 CFR 721.11236 and 721.11237 when describing an exemption from SNUR terms after the chemicals are completely reacted (cured). Language in paragraph (a)(1) of the SNURs incorrectly refers to requirements of ''the TSCA Order'' rather than the SNUR itself. This action corrects these errors as follows:

- Paragraph (a)(1) of the SNUR at 40 CFR 721.11236 is corrected to identify the PMN number for chemical B as P–17–373.
- The final sentence of paragraph (a)(1) for the SNURs at 40 CFR 721.11236 and 721.11237 is corrected to refer to ''The requirements of this section'' rather than ''The requirements of the TSCA Order.''

## II. Why is this correction issued as a final rule?

Section 553 of the Administrative Procedure Act (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 final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment. Correcting the worker protection and hazard communication requirements specified in the November 25, 2019 SNUR is necessary for (1) the proper identification of the human health and environmental hazards associated with PMN substance; and (2) the proper identification of protective measures required to be employed in the workplace, consistent with the associated TSCA section 5(e) Order for the PMN substance. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

## III. Do any of the statutory and Executive Order reviews apply to this action?

No. For a detailed discussion concerning the statutory and Executive Order review, refer to Unit XII. of the November 25, 2019 final rule.

## IV. 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 in 40 CFR Part 721

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

Dated: January 30, 2020.

**Tala Henry,**

*Deputy Director, Office of Pollution Prevention and Toxics.*

Therefore, 40 CFR part 721 is corrected as follows:

## PART 721—[AMENDED]

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

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

■ 2. In § 721.11151, revise paragraphs (a)(2)(i) and (ii) to read as follows:

**§ 721.11151 2-Butanone 1,1,1,3,4,4,4-heptafluoro-3-(trifluoromethyl)-.**

(a) * * *

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) (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), (b) (concentration set at 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1)(i), (g)(2)(i)(v), (g)(3) (harmful to aquatic organisms) (harmful to fish), (g)(4)(iii), and (g)(5). It is a significant new use unless containers of the PMN substance are labeled with the statement: ''Contains a dielectric fluid which should not be mixed or used in conjunction with sulfur hexafluoride (SF6)''. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

* * * * *

■ 3. In § 721.11236, revise paragraph (a)(1) to read as follows:

**§ 721.11236 Heteromonocycle, homopolymer, alkyl substituted carbamate, alkyl ester (generic).**

(a) * * *

(1) The chemical substances identified generically as heteromonocycle, homopolymer, alkyl substituted carbamate, alkyl ester (PMN P–17–373 chemical A and P–17–373 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 this section do not apply to quantities of the substance after they have been completely reacted (cured).

* * * * *

■ 4. In § 721.11237, revise paragraph (a)(1) to read as follows:

**§ 721.11237 Polysiloxanes, di alkyl, substituted alkyl group terminated, alkoxylated, reaction products with alkanoic acid, isocyanate substituted-alkyl carbomonocycle and polyol (generic).**

(a) * * * (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 this section do not apply to quantities of the PMN substance after they have been completely reacted (cured).

* * * * *

[FR Doc. 2020–02906 Filed 2–24–20; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## 43 CFR Part 3160

**[LLWO310000 L13100000 PP0000 19X]**

**RIN 1004–AE67**

## Onshore Oil and Gas Operations—Annual Civil Penalties Inflation Adjustments

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule adjusts the level of civil monetary penalties contained in the Bureau of Land Management's (BLM) regulations governing onshore oil and gas operations as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and consistent with applicable Office of Management and Budget (OMB) guidance. The adjustments made by this final rule constitute the 2020 annual inflation adjustments, accounting for 1 year of inflation spanning the period from October 2018 through October 2019.

**DATES:** This rule is effective on February 25, 2020.

**FOR FURTHER INFORMATION CONTACT:** Jully McQuilliams, Acting Division Chief, Fluid Minerals Division, telephone: 202–912–7156, email: *jmcquilliams@blm.gov* for information regarding the BLM's Fluid Minerals Program. For questions relating to regulatory process issues, please contact Jennifer Noe, Division of Regulatory Affairs, at telephone: 202–912–7442, email: *jnoe@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, 7 days a week to contact the above individuals.

**SUPPLEMENTARY INFORMATION:**

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II. Calculation of 2020 Adjustments
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K. National Environmental Policy Act
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### I. Background

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (the 2015 Act) became law, amending the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410).

The 2015 Act requires agencies to:

1. Adjust the level of civil monetary penalties for inflation with an initial ''catch-up'' adjustment through an interim final rulemaking in 2016;

2. Make subsequent annual adjustments for inflation beginning in 2017; and

3. Report annually in Agency Financial Reports on these inflation adjustments.

The purpose of these adjustments is to maintain the deterrent effect of civil monetary penalties and promote compliance with the law (*see* Sec. 1, Pub. L. 101–410).

As required by the 2015 Act, the BLM issued an interim final rule that adjusted the level of civil monetary penalties in BLM regulations with the initial ''catch-up'' adjustment (RIN 1004–AE46, 81 FR 41860), which was published on June 28, 2016, and became effective on July 28, 2016. On January 19, 2017, the BLM published a final rule (RIN 1004–AE49, 82 FR 6305) updating the civil penalty amounts to the 2017 annual adjustment levels. Final rules updating the civil penalty amounts to the 2018 and 2019 annual adjustment levels were published in subsequent years (RIN 1004–AE51, 83 FR 3992; and RIN 1004–AE56, 84 FR 22379, respectively).

OMB issued Memorandum M–20–05 on December 16, 2019 (Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015) explaining agency responsibilities for identifying applicable penalties and calculating the annual adjustment for 2020 in accordance with the 2015 Act.

### II. Calculation of 2020 Adjustment

In accordance with the 2015 Act and OMB Memorandum M–20–05, the BLM has identified applicable civil monetary penalties in its regulations and calculated the annual adjustments. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, nor does

it include fees for services, licenses, permits, or other regulatory review. The calculated annual inflation adjustments are based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI–U) for the October preceding the date of the adjustment, and the prior year's October CPI–U. Consistent with guidance in OMB Memorandum M–20–05, the BLM divided the October 2019 CPI–U by the October 2018 CPI–U to calculate the multiplier. In this case, October 2019 CPI–U (257.346)/October 2018 CPI–U (252.885) = 1.01764. OMB Memorandum M–20–05 confirms that this is the proper multiplier. (OMB Memorandum M–20–05 at 1 and n.4.)

The 2015 Act requires the BLM to adjust the civil penalty amounts in 43 CFR 3163.2. To accomplish this, the BLM multiplied the current penalty amounts in 43 CFR 3163.2 subparagraphs (b)(1) and (b)(2) and paragraphs (d), (e), and (f) by the multiplier set forth in OMB Memorandum M–20–05 (1.01764) to obtain the adjusted penalty amounts. The 2015 Act requires that the resulting amounts be rounded to the nearest $1.00 at the end of the calculation process.

The adjusted penalty amounts will take effect immediately upon publication of this rule. Pursuant to the 2015 Act, the adjusted civil penalty amounts apply to civil penalties assessed after the date the increase takes effect, even if the associated violation predates such increase. This final rule adjusts the following civil penalties:

| CFR citation | Description of the penalty | Current penalty | Adjusted penalty |
|---|---|---|---|
| 43 CFR 3163.2(b)(1) | Failure to comply | $1,096 | $1,115 |
| 43 CFR 3163.2(b)(2) | If corrective action is not taken | 10,967 | 11,160 |
| 43 CFR 3163.2(d) | If transporter fails to permit inspection for documentation. | 1,096 | 1,115 |
| 43 CFR 3163.2(e) | Failure to permit inspection, failure to notify. | 21,933 | 22,320 |
| 43 CFR 3163.2(f) | False or inaccurate documents; unlawful transfer or purchase. | 54,833 | 55,800 |

## III. Procedural Requirements

### *A. Administrative Procedure Act*

In accordance with the 2015 Act, agencies must adjust civil monetary penalties ''notwithstanding Section 553 of the Administrative Procedure Act'' (sec. 4(b)(2), 2015 Act). The BLM is promulgating this 2020 inflation adjustment for civil penalties as a final rule pursuant to the provisions of the 2015 Act and OMB guidance. A proposed rule is not required because the 2015 Act expressly exempts the annual inflation adjustments from the notice and comment requirements of the Administrative Procedure Act. In addition, since the 2015 Act does not give the BLM any discretion to vary the amount of the annual inflation adjustment for any given penalty to reflect any views or suggestions provided by commenters, it would serve no purpose to provide an opportunity for public comment on this rule.

### *B. Regulatory Planning and Review (Executive Orders 12866, 13563, and 13771)*

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the OMB will review all significant rules. OIRA has determined that this rule is not significant. (*See* OMB Memorandum M–20–05 at 3).

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability and to reduce uncertainty and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science, and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements to the extent permitted by the 2015 Act.

E.O. 13771 of January 30, 2017, directs Federal agencies to reduce the regulatory burden on regulated entities and control regulatory costs. E.O. 13771, however, applies only to significant regulatory actions, as defined in Section 3(f) of E.O. 12866. OIRA has determined that agency regulations exclusively implementing the annual adjustment are not significant regulatory actions under E.O. 12866, provided they are consistent with OMB Memorandum M–20–05 (*See* OMB Memorandum M–20–05 at 3). Therefore, E.O. 13771 does not apply to this final rule.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). The 2015 Act expressly exempts these annual inflation adjustments from the requirement to publish a proposed rule for notice and comment (*see* sec. 4(b)(2), 2015 Act). Because the final rule in this case does not include publication of a proposed rule, the RFA does not apply to this final rule.

### *D. Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of $100 million or more;

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rule will potentially affect individuals and companies who conduct operations on oil and gas leases on Federal or Indian lands. The BLM believes that the vast majority of potentially affected entities will be small businesses as defined by the Small Business Administration. However, the BLM does not believe the rule will pose a significant economic impact on the industry, including any small entities, as any lessee can avoid being assessed civil penalties by operating in compliance with BLM rules and regulations.

*E. Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

*F. Takings (E.O. 12630)*

This rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

*G. Federalism (E.O. 13132)*

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. Therefore, a federalism summary impact statement is not required.

*H. Civil Justice Reform (E.O. 12988)*

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

**I. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)**

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

*J. Paperwork Reduction Act*

This rule does not contain information collection requirements, and a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*K. National Environmental Policy Act*

A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because, as a regulation of an administrative nature, the rule is covered by a categorical exclusion (*see* 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

*L. Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

**List of Subjects 43 CFR Part 3160**

Administrative practice and procedure; Government contracts; Indians—lands; Mineral royalties; Oil and gas exploration; Penalties; Public lands—mineral resources; Reporting and recordkeeping requirements.

For the reasons given in the preamble, the BLM amends chapter II of title 43 of the Code of Federal Regulations as follows:

## PART 3160—ONSHORE OIL AND GAS OPERATIONS

■ 1. The authority citation for part 3160 continues to read as follows:

**Authority:** 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; 43 U.S.C. 1732(b), 1733, 1740; and Sec. 701, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

### Subpart 3163—Noncompliance, Assessments, and Penalties

**§ 3163.2 [Amended]**

■ 2. In § 3163.2:

■ a. In paragraph (b)(1), remove ''$1,096'' and add in its place ''$1,115'';

■ b. In paragraph (b)(2), remove ''$10,967'' and add in its place ''$11,160'';

■ c. In paragraph (d), remove ''$1,096'' and add in its place ''$1,115'';

■ d. In paragraph (e) introductory text, remove ''$21,933'' and add in its place ''$22,320''; and

■ e. In paragraph (f) introductory text, remove ''$54,833'' and add in its place ''$55,800''.

**Casey B. Hammond,**

*Acting Assistant Secretary—Land and Minerals Management, U.S. Department of the Interior.*

[FR Doc. 2020–03134 Filed 2–24–20; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary of Transportation

### 49 CFR Part 93

**RIN 2105–AE86**

## Repeal of Aircraft Allocation Regulations

**AGENCY:** Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule rescinds DOT regulations regarding aircraft allocation from the Code of Federal Regulations. The regulations prescribe procedures for the allocation of aircraft to the Civil Reserve Air Fleet (CRAF) program. The Department of Transportation (the Department or DOT) has concluded that the regulations are unnecessary and obsolete because they are inconsistent with the contractual nature of the current CRAF program and the Department's current procedures for allocation of civil transportation resources under the Defense Production Act.

**DATES:** This rule is effective on February 25, 2020.

**FOR FURTHER INFORMATION CONTACT:** Donna O'Berry, Office of Intelligence, Security, and Emergency Response, Department of Transportation, 1200 New Jersey Avenue SE, Room W56–302, Washington, DC 20590; telephone: (202) 366–6136; email: *donna.o'berry@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

**Electronic Access and Filing**

This document may be viewed online through the Federal eRulemaking portal at *http://www.regulations.gov.* Retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days a year. An electronic copy of this document may also be downloaded from the Office of the Federal Register website at: *https://www.archives.gov/federal-register* and the Government Publishing Office website at: *https://www.gpo.gov.*

**Background**

Under the Defense Production Act, which governs the CRAF program, aircraft may be added to the CRAF either by allocation by DOT or made available to Department of Defense (DOD) under a contract.[1] 10 U.S.C. 9511(6). The Department's Aircraft Allocation regulations to implement this provision were published in part 93 of title 49 of the Code of Federal Regulations on December 23, 1967,[2] and amended on May 29, 1968.[3] Part 93 includes two requirements. Section 93.1 provides that the Department will issue planning orders allocating aircraft to DOD for the CRAF Program and that the current listing of allocations may be obtained upon request. Section 93.3 provides that the owners and operators of aircraft identified in the allocations must notify the Department when aircraft is damaged, destroyed, or transferred.

The requirements in part 93 are inconsistent with the current regulatory framework and practices surrounding the CRAF Program. Under current DOD practice, all aircraft in the CRAF are made available for use by DOD through contracts between DOD and air carriers, and allocations by DOT are not needed. Further, allocations under the Defense Production Act for all civil transportation resources are now governed by the Department's Transportation Priorities and Allocation System (TPAS) regulation at 49 CFR part 33. If DOD needs to augment the CRAF fleet, DOT may allocate aircraft to CRAF under section 101 of the Defense Production Act of 1950 (50 U.S.C. 4511) under the Department's TPAS regulations. Part 93 is not necessary to facilitate these allocation actions. The procedures in part 93 are inconsistent with the TPAS regulations. Part 93 also imposes reporting requirements on the owners of aircraft identified in an allocation. However, the Department does not have a need for the information prescribed in § 93.3.

In light of the above, the Department has determined that part 93 is outdated and inconsistent with current practice and procedures. Accordingly, this rulemaking rescinds part 93 of title 49 of the CFR in its entirety.

**Good Cause To Dispense With Notice and Comment and Delayed Effective Date**

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive notice and comment procedures if it finds, for good cause, that notice and comment would be impracticable, unnecessary, or contrary to the public interest. The Department finds that notice and comment for this rule is unnecessary because the regulations are inconsistent with the current administration of the CRAF program and the regulations prescribing DOT's allocation process under the Defense Production Act. Further, neither the Department, nor CRAF carriers are currently complying with these outdated regulations. Therefore, the removal of these regulations will have no impact on the aviation industry or the public. Accordingly, the Department finds good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment. For the same reasons, the Department finds good cause to dispense with the requirement for a delayed effective date.

**Rulemaking Analyses and Notices**

*Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review)*

The Department has determined that this rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011). The Office of Management and Budget (OMB) did not, therefore, review this document. This rule is not expected to have any costs because it will be conforming the regulations to current practice. There may be *de minimis* cost savings as a result of increased clarity in the regulations.

*DOT Rulemaking Procedures*

This rulemaking is being promulgated consistent with the Department's rulemaking procedures, outlined at 49 CFR part 5.

*Executive Order 13711 (Reducing Regulation and Controlling Regulatory Cost)*

This final rule is considered an E.O. 13771 deregulatory action.

*Regulatory Flexibility Act*

Since the Department finds good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) do not apply. However, the Department evaluated the effects of this action on small entities and determined the action would not have a significant economic impact on a substantial number of small entities. This final rule removes an outdated reporting requirement for air carriers participating in the CRAF program, and does not create new requirements for air carriers.

*Unfunded Mandates Reform Act of 1995*

The Department has determined that this rule does not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule does not include a Federal mandate that may result in expenditures of $155.1 million or more in any single year (when adjusted for inflation) in 2012 dollars for either State, local, and Tribal governments in the aggregate, or by the private sector.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. DOT determined that no new information collection requirements are associated with this rule.

*Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations.

The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 49 CFR Part 93**

Aircraft, Reporting and recordkeeping requirements.

**Authority and Issuance**

## PART 93—[REMOVED AND RESERVED]

■ Therefore, under the authority of 50 U.S.C. 4511, DOT removes and reserves 49 CFR part 93.

Issued in Washington, DC, under the authority provided by 49 CFR 1.23 on February 6, 2020.

**Steven G. Bradbury,**

*General Counsel.*

[FR Doc. 2020–02757 Filed 2–24–20; 8:45 am]

**BILLING CODE 4910–9X–P**

[1] Section 9511 of Title 10, U.S.C. defines the ''Civil Reserve Air Fleet'' as ''those aircraft allocated, or identified for allocation, to the Department of Defense under section 101 of the Defense Production Act of 1950 (50 U.S.C. 4511), or made available (or agreed to be made available) for use by the Department of Defense under a contract made under this title, as part of the program developed by the Department of Defense through which the Department of Defense augments its airlift capability by use of civil aircraft.''

[2] See 32 FR 20778 (December 23, 1967).

[3] See 33 FR 7821 (May 29, 1968).

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 21**

**[Docket No. FWS–HQ–MB–2018–0080; FF09M21200–190–FXMB1231099BPP0]**

**RIN 1018–BD74**

## Migratory Bird Permits; Regulations for Managing Resident Canada Goose Populations; Agricultural Facilities in the Atlantic Flyway

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), amend the depredation order that allows take of resident Canada geese at agricultural facilities by authorized personnel between May 1 and August 31. This period is too restrictive in portions of the Atlantic Flyway where specific crops are now being planted and depredated prior to May 1. This final rule allows take of resident Canada geese at agricultural facilities in the Atlantic Flyway States of Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia between April 1 and August 31.

**DATES:** This rule is effective March 26, 2020.

**ADDRESSES:** Comments we received on the proposed rule, as well as the proposed rule itself, the related environmental assessment, and this final rule, are available at *http://www.regulations.gov* in Docket No. FWS–HQ–MB–2018–0080.

**FOR FURTHER INFORMATION CONTACT:** Ken Richkus, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, Falls Church, VA 22041; (703) 358–2376.

**SUPPLEMENTARY INFORMATION:**

### Authority and Responsibility

Migratory birds are protected under four bilateral migratory bird treaties that the United States entered into with Great Britain (for Canada in 1916, as amended in 1999), the United Mexican States (1936, as amended in 1972 and 1999), Japan (1972, as amended in 1974), and the Soviet Union (1978). Regulations allowing the take of migratory birds are authorized by the Migratory Bird Treaty Act (Act; 16 U.S.C. 703–712), which implements the above-mentioned treaties. The Act provides that, subject to and to carry out the purposes of the treaties, the Secretary of the Interior is authorized and directed to determine when, to what extent, and by what means allowing hunting, killing, and other forms of taking of migratory birds, their nests, and eggs is compatible with the conventions. The Act requires the Secretary to implement a determination by adopting regulations permitting and governing those activities.

Canada geese are federally protected by the Act because they are listed as migratory birds in all four treaties. Because all four treaties cover Canada geese, regulations must meet the requirements of the most restrictive of the four. For Canada geese, this is the treaty with Canada. All regulations concerning resident Canada geese are compatible with its terms, with particular reference to Articles II, V, and VII.

Each treaty not only permits sport hunting, but also permits the take of migratory birds for other reasons, including scientific, educational, propagative, or other specific purposes consistent with the conservation principles of the various Conventions. More specifically, Article VII, Article II (paragraph 3), and Article V of ''The Protocol Between the Government of the United States of America and the Government of Canada Amending the 1916 Convention between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States'' provides specific limitations on allowing the take of migratory birds for reasons other than sport hunting. Article VII authorizes permitting the take, killing, etc., of migratory birds that, under extraordinary conditions, become seriously injurious to agricultural or other interests. Article V relates to the taking of nests and eggs, and Article II, paragraph 3, states that, in order to ensure the long-term conservation of migratory birds, migratory bird populations shall be managed in accord with listed conservation principles.

The other treaties are less restrictive. The treaties with both Japan (Article III, paragraph 1, subparagraph (b)) and the Soviet Union (Article II, paragraph 1, subparagraph (d)) provide specific exceptions to migratory bird take prohibitions for the purpose of protecting persons and property. The treaty with Mexico requires, with regard to migratory game birds, only that there be a ''closed season'' on hunting and that hunting be limited to 4 months in each year.

Regulations governing the issuance of permits to take, capture, kill, possess, and transport migratory birds are promulgated at title 50 of the Code of Federal Regulations (CFR), parts 13, 21, and 22, and are issued by the Service. The Service annually promulgates regulations governing the take, possession, and transportation of migratory game birds under sport hunting seasons at 50 CFR part 20. Regulations regarding all other take of migratory birds (except for eagles) are published at 50 CFR part 21, and typically are not changed annually.

### Background

In November 2005, the Service published a final environmental impact statement (FEIS) on management of resident Canada geese that documented resident Canada goose population levels ''that are increasingly coming into conflict with people and causing personal and public property damage'' (see the FEIS' notice of availability at 70 FR 69985; November 18, 2005).

On August 10, 2006, we published in the **Federal Register** (71 FR 45964) a final rule establishing regulations at 50 CFR parts 20 and 21 authorizing State wildlife agencies, private landowners, and airports to conduct (or allow) indirect and/or direct population control management activities to reduce, manage, and control resident Canada goose populations in the continental United States and to reduce related damages. Those activities include a depredation order that allows take of resident Canada geese at agricultural facilities by authorized personnel between May 1 and August 31, at 50 CFR 21.51. However, the time periods set forth at 50 CFR 21.51(d)(4) for take of resident Canada geese at agricultural facilities are too restrictive in portions of the Atlantic Flyway where specific crops are now being planted and depredated prior to May 1.

On June 25, 2019, we published in the **Federal Register** (84 FR 29835) a proposed rule to amend the depredation order at 50 CFR 21.51 to allow authorized personnel to take resident Canada geese at agricultural facilities in the Atlantic Flyway States of Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia between April 1 and August 31, thereby enabling agricultural producers to protect crops planted in early spring from depredation by resident Canada geese. This final rule adopts the changes set forth in that proposed rule.

**Environmental Assessment**

We prepared an environmental assessment (EA) that is tiered to the 2005 FEIS, specifically to the actions pertaining to control of resident Canada geese at agricultural facilities that were proposed under Alternative E (Control and Depredation Order Management; pages II–12—II–13). Those actions were subsequently implemented through the depredation order at 50 CFR 21.51, under Alternative F (Integrated Damage Management and Population Control; pages II–13—II–15). The EA analyzed three alternative courses of action to address crop depredation by resident Canada geese in Atlantic Flyway States in April:

(1) Maintain the current date restrictions on the take of geese as specified in regulations at 50 CFR 21.51(d)(4) (No action);

(2) Expand the time period during which Canada geese may be taken under 50 CFR 21.51(d)(4) to April 1 through August 31, in the Atlantic Flyway States of Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, and West Virginia; and

(3) Expand the time period during which Canada geese may be taken under 50 CFR 21.51(d)(4) to April 1 through August 31, in the Atlantic Flyway States of Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia (Proposed action).

The full EA can be found on our website at *http://www.fws.gov/birds* or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2018–0080.

**Review of Public Comments**

We accepted comments on our June 25, 2019, proposed rule (84 FR 29835) for 60 days, ending August 26, 2019. During the public comment period on the proposed rule, we received public comments from three private individuals.

*Summary of Comments*

One individual expressed support for the proposed action in order to protect agricultural lands. Another commenter objected to killing Canada geese and urged the Service to only allow nonlethal control methods. The third commenter adamantly expressed opposition to the killing of any animals, and asked why proven nonlethal methods are not being used.

*Service Response to Comments*

The Service has a responsibility to prevent serious injuries to agricultural crops that are caused by resident Canada geese. We favor nonlethal control methods, but if those fail to resolve an identified conflict, we do allow lethal take. Direct control measures such as nest and egg destruction and lethal removal are usually employed to alleviate local conflicts; thus, whether to conduct such measures is a local decision. Therefore, this final rule does not make any changes in response to these comments to the actions we proposed on June 25, 2019 (84 FR 29835).

**Required Determinations**

*Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We developed this rule in a manner consistent with these requirements.

*Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b).

The economic impacts of this rule will primarily affect agricultural producers, but the impacts will be beneficial to those entities because their crops will be afforded better protection. Data are not available to estimate the exact number of agricultural facilities that will benefit from this rule, but it is unlikely to be a substantial number at the Atlantic Flyway-wide scale. Therefore, we certify that this rule will not have a significant economic impact on a substantial number of small entities.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It will not have a significant impact on a substantial number of small entities.

This rule will not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Finally, this rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the abilities of U.S.-based enterprises to compete with foreign-based enterprises.

*Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs*

This final rule is an Executive Order (E.O.) 13771 (82 FR 9339, February 3, 2017) deregulatory action because it relieves a restriction in 50 CFR part 21.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule will not ''significantly or uniquely'' affect small government activities. A small government agency plan is not required.

b. This rule will not produce a Federal mandate on local or State government or private entities. Therefore, this action is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

*Takings*

In accordance with E.O. 12630, this rule does not contain a provision for taking of private property, and will not have significant takings implications. A takings implication assessment is not required.

*Federalism*

This rule does not interfere with the States' abilities to manage themselves or their funds. We do not expect any economic impacts to result from this revision to the regulations. This rule will not have sufficient Federalism effects to warrant preparation of a federalism summary impact statement under E.O. 13132.

*Civil Justice Reform*

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act*

This rule does not contain new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements associated with the control and management of resident Canada geese at 50 CFR part 20 and 50 CFR part 21, and assigned OMB Control Number 1018–0133 (expires June 30, 2022). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

We have analyzed this rule in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and U.S. Department of the Interior regulations at 43 CFR part 46. We have completed an environmental assessment of the amendment of the depredation order that allows take of resident Canada geese at agricultural facilities in Atlantic Flyway States from April 1 through August 31; that environmental assessment is included in the docket for this rule. We conclude that our action will have the impacts listed below under *Environmental Consequences of the Action.* The docket for this rule is available at *http://www.regulations.gov* under Docket No. FWS–HQ–MB–2018–0080.

*Environmental Consequences of the Action*

The expected additional take of resident Canada geese will have minimal impact to the overall population status of resident Canada geese in any participating State and the Atlantic Flyway as a whole. Based on the current average annual take (in the listed States) of 2,233 Canada geese under 50 CFR 21.51, we expect an additional 558 Canada geese to be taken during the month of April in participating States. This is based on an assumed average of a similar number of geese taken each month. There is the potential for take of migrant Canada geese in more northern areas of the flyway. Assuming that 50 percent of the expected additional take in April are migrants, the take of migrant Canada geese under this alternative will be 279 geese. Population-level impacts to any individual population of migrant geese will be minimal.

*Socioeconomic.* This action is expected to have a net positive impact on the socioeconomic environment by reducing crop depredation at localized agricultural sites. Individual agricultural producers in participating States will be afforded some additional relief from injurious Canada geese.

*Endangered and threatened species.* The rule will not affect endangered or threatened species or critical habitats.

*Compliance With Endangered Species Act Requirements*

Section 7 of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (16 U.S.C. 1536(a)(1)). It further states that ''[e]ach Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat'' (16 U.S.C. 1536(a)(2)). The rule will not affect endangered or threatened species or critical habitats.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. This rule will not interfere with the tribes' abilities to manage themselves or their funds or to regulate migratory bird activities on tribal lands.

*Energy Supply, Distribution, or Use (E.O. 13211)*

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under E.O. 13211, and will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action. No Statement of Energy Effects is required.

**List of Subjects in 50 CFR Part 21**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

**Regulation Promulgation**

For the reasons stated in the preamble, we hereby amend part 21, of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 21—MIGRATORY BIRD PERMITS

■ 1. The authority citation for part 21 continues to read as follows:

**Authority:** 16 U.S.C. 703–712.

■ 2. Amend § 21.51 by revising paragraph (d)(4) to read as follows:

**§ 21.51 Depredation order for resident Canada geese at agricultural facilities.**

* * * * *

(d) * * *

(4) Under this section, authorized agricultural producers and their employees and agents may:

(i) Conduct management and control activities, involving the take of resident Canada geese, as follows:

| Where | When |
|---|---|
| In the Atlantic Flyway States of Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia. | Between April 1 and August 31. |

| Where | When |
|---|---|
| In the Mississippi and Central Flyway portions of these States: Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming. | Between May 1 and August 31. |

(ii) Destroy the nests and eggs of resident Canada geese at any time of year.

* * * * *

Dated: January 6, 2020.

**Rob Wallace,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2020–03034 Filed 2–24–20; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 121004518–3398–01; RTID 0648–XS023]**

## Reef Fish Fishery of the Gulf of Mexico; 2020 Recreational Accountability Measure and Closure for Gulf of Mexico Gray Triggerfish

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements an accountability measure (AM) for the gray triggerfish recreational sector in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) for the 2020 fishing year through this temporary rule. NMFS has projected that the 2020 recreational annual catch target (ACT) for Gulf gray triggerfish will be reached by May 2, 2020. Therefore, NMFS closes the recreational sector for Gulf gray triggerfish on May 2, 2020, and it will remain closed through the end of the fishing year on December 31, 2020. This closure is necessary to protect the Gulf gray triggerfish resource.

**DATES:** This temporary rule is effective from 12:01 a.m., local time, on May 2, 2020, until 12:01 a.m., local time, on January 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Daniel Luers, NMFS Southeast Regional Office, telephone: 727–551–5719, email: *Daniel.luers@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** NMFS manages the Gulf reef fish fishery, which includes gray triggerfish, under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) through regulations at 50 CFR part 622. All gray triggerfish weights discussed in this temporary rule are in round weight.

The recreational annual catch limit (ACL) for Gulf gray triggerfish is 241,200 lb (109,406 kg), and the recreational ACT is 217,100 lb (98,475 kg) (50 CFR 622.41(b)(2)(iii)).

As specified in 50 CFR 622.41(b)(2)(i), NMFS is required to close the recreational sector for gray triggerfish when the recreational ACT is reached or is projected to be reached by filing a notification to that effect with the Office of the Federal Register. NMFS has determined the 2020 recreational ACT for Gulf gray triggerfish will be reached by May 2, 2020. Accordingly, this temporary rule closes the recreational sector for Gulf gray triggerfish effective at 12:01 a.m., local time, on May 2, 2020, and it will remain closed through the end of the fishing year on December 31, 2020.

During the recreational closure, the bag and possession limits for gray triggerfish in or from the Gulf EEZ are zero. The prohibition on possession of Gulf gray triggerfish also applies in Gulf state waters for any vessel issued a valid Federal charter vessel/headboat permit for Gulf reef fish.

Additionally, as specified in 50 CFR 622.34(f), there is a seasonal closure for Gulf gray triggerfish at the beginning of each fishing year from January 1 through the end of February. Therefore, after the closure implemented by this temporary rule becomes effective on May 2, 2020, the recreational harvest or possession of Gulf gray triggerfish will be prohibited until March 1, 2021.

### Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Gulf gray triggerfish and is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws.

This action is taken under 50 CFR 622.41(b)(2)(i) and is exempt from review under Executive Order 12866.

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

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to implement this action to close the recreational sector for gray triggerfish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule establishing the closure provisions was subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to implement this action to protect gray triggerfish and to provide advance notice to the recreational sector. Many for-hire operations book trips for clients in advance and need as much advance notice as NMFS is able to provide to adjust their business plans to account for the closure.

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

Dated: February 19, 2020.

**Karyl K. Brewster-Geisz,**

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

[FR Doc. 2020–03560 Filed 2–20–20; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 85, No. 37
Tuesday, February 25, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2020–0023; Airspace Docket No. 19–ANM–7]**

**RIN 2120–AA66**

## Proposed Establishment of Class E Airspace; Harlowton, MT

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish Class E airspace extending upward from 700 feet or more above the surface at the Wheatland County at Harlowton Airport, Harlowton, MT. The FAA proposes to establish two Class E airspace areas. The first area extends upward from 700 feet above the surface and the second area extends upward from 1,200 feet above the surface. The establishment of the Class E airspace will, to the extent possible, contain the new area navigation (RNAV) approach procedure and instrument flight rules (IFR) departures. The new procedures facilitate the airport's transition from visual flight rules (VFR) to IFR operations. This action would ensure the safety and management of IFR operations at the airport.

**DATES:** Comments must be received on or before April 10, 2020.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0023; Airspace Docket No. 19–ANM–7, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

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

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace to support a new RNAV procedure and IFR departures at Wheatland County at Harlowton Airport, Harlowton, MT.

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0023; Airspace Docket No. 19–ANM–7''. The postcard will be date/time stamped and returned to the commenter.

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

### Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov//air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours, except federal holidays, at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

### Availability and Summary of Documents for Incorporation by Reference

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

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing two Class E airspace extending upward from 700 feet or more above the surface at the Wheatland County at Harlowton Airport, Harlowton, MT. The establishment of the Class E airspace area will facilitate the airport's transition from VFR to IFR operations. Specifically, to the extent possible, it will contain IFR departures until reaching 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface.

The first airspace area will extend upward from 700 feet above the surface within a 7.4-mile radius of the airport, and within 2 miles each side of the 279° bearing from the airport, extending from the 7.4-mile radius to 9.3 miles west of the Wheatland County at Harlowton.

The second airspace area will extend upward from 1,200 feet above the surface within a 20-mile radius of the Wheatland County at Harlowton Airport.

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

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

**Regulatory Notices and Analyses**

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

**Environmental Review**

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

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

* * * * *

**ANM MT E5 Harlowton, MT**

Wheatland County at Harlowton Airport, MT
(Lat. 46°26′55″ N, long. 109°51′10″ W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the airport, and within 2.0 miles each side of the 279° bearing from the airport, extending from the 7.4-mile radius to 9.3 miles west of the airport; and that airspace extending upward from 1,200 feet above the surface within a 20-mile radius of the Wheatland County at Harlowton Airport.

Issued in Seattle, Washington, on February 18, 2020.

**Stephanie C. Harris,**

*Group Manager (Acting), Operations Support Group, Western Service Center.*

[FR Doc. 2020–03564 Filed 2–24–20; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2019–1023; Airspace Docket No. 19–ANM–94]**

**RIN 2120–AA66**

## Proposed Establishment of Class E Airspace; Port Angeles, WA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish a Class E surface area, Class E airspace as an extension to the surface area and Class E airspace extending upward from 700 feet above the surface at Port Angeles CGAS, Port Angeles, WA. Following a review of the airspace serving Port Angeles CGAS and William R Fairchild International Airport, the FAA found it necessary to provide Port Angeles CGAS with airspace independent of the airspace for William R Fairchild Airport. A microclimate at Port Angeles CGAS causes weather patterns to vary from the weather at William R Fairchild Airport. The difference in weather between the two locations can negatively impact operations at Port Angeles CGAS, impeding training and mission accomplishment. This action would establish new airspace for the safety and management of Instrument Flight Rules (IFR) operations at Port Angeles CGAS, Port Angeles, WA.

**DATES:** Comments must be received on or before April 10, 2020.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2019–1023; Airspace Docket No. 19–ANM–94, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal_register/cfr/ibr_locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th Street, Des Moines, WA 98198–6547; telephone (206) 231–2245.

**SUPPLEMENTARY INFORMATION:**

**Authority for This Rulemaking**

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

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2019–1023; Airspace Docket No. 19–ANM–94) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–1023; Airspace Docket No. 19–ANM–94.'' The postcard will be date/time stamped and returned to the commenter.

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

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspaceamendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th St., Des Moines, WA 98198–6547.

**Availability and Summary of Documents for Incorporation by Reference**

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

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing a Class E surface area, Class E airspace as an extension to the surface area and Class E airspace extending upward from 700 feet above ground level at Port Angeles CGAS, Port Angeles, WA.

This action is being submitted coincidental with FAA proposal, Docket No. FAA–2019–1022; 19–ANM–81 to modify Class E airspace for William R Fairchild International Airport, Port Angeles, WA. That action would modify the airspace at William R Fairchild International Airport, Port Angeles, WA, to only that needed for their operations and remove the airspace that was previously used to support operations at Port Angeles CGAS.

This action would provide the airspace needed for Port Angeles CGAS operations to facilitate training and mission accomplishment.

The Class E surface area would be established to within 1.5 miles of the airport. A Class E extension to the surface area would be established 2.1 miles both sides of the 80° bearing from the Port Angeles CGAS, extending from William R Fairchild surface area 4.1-mile radius to 5.6 miles east of the Port Angeles CGAS. This area would provide airspace for the Copter NDB 242 approach, as aircraft descend through 1000 feet AGL.

The Class E airspace extending upward from 700 feet AGL would be established to 3 miles south and 7.5 miles north of the 80° bearing from the Port Angeles CGAS Airport to 11 miles east, excluding that portion in Canadian airspace.

This area would provide airspace for the Copter 242 approach, as aircraft descend through 1500 feet. This airspace would support IFR operations at Port Angeles CGAS, Port Angeles, WA.

Class E airspace designations are published in paragraph 6002, 6004 and 6005 of FAA Order 7400.11D, dated August 8, 2019 and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order. FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

**Regulatory Notices and Analyses**

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

impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Environmental Review**

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

* * * * *

**AWP WA E2 Port Angeles, WA [NEW]**

Port Angeles CGAS
(Lat. 48°08′29″ N, long. 123°24′50″ W)

That airspace extending upward from the surface to and including 2500 feet within a 1.5-mile radius of Port Angeles CGAS, Port Angeles, WA.

*Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.*

* * * * *

**AWP WA E4 Port Angeles, WA [NEW]**

Port Angeles CGAS, WA
(Lat. 48°08′29″ N, long. 123°24′50″ W)

That airspace extending upward from the surface within 2.1 miles both sides of the Port Angeles CGAS 80° bearing extending from William R Fairchild surface area 4.1-mile radius to 5.6 miles east of the Port Angeles CGAS airport.

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

* * * * *

**AWP WA E5 Port Angeles, WA [NEW]**

Port Angeles CGAS, WA
(Lat. 48°08′29″ N, long. 123°24′50″ W)

The Class E airspace extending upward from 700 feet 3 miles south and 7.5 miles north of the of Port Angeles CGAS Airport 80° bearing extending from the William R Fairchild 4.1-mile radius to 11 miles east, excluding that portion in Canadian airspace.

Issued in Seattle, Washington, on February 19, 2020.

**Stephanie C. Harris,**

*Manager (Acting), Operations Support Group, Western Service Center.*

[FR Doc. 2020–03580 Filed 2–24–20; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

## Bureau of Economic Analysis

## 15 CFR Part 801

**[200219–0058]**

**RIN 0691–AA90**

## International Services Surveys: BE–180 Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would amend regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to renew reporting requirements for the mandatory BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons. This survey will apply to the 2019 fiscal reporting year. This mandatory benchmark survey, conducted under the authority of the International Investment and Trade in Services Survey Act, covers the universe of transactions in financial services and is BEA's most comprehensive survey of such transactions. For the 2019 benchmark survey, BEA proposes several changes in the data items collected and the design of the survey form.

**DATES:** Comments on this proposed rule will receive consideration if submitted in writing on or before 5:00 p.m. April 27, 2020.

**ADDRESSES:** You can submit comments, identified by RIN 0691–xxxx, and referencing the agency name (Bureau of Economic Analysis), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. For Keyword or ID, enter ''EAB–2019–0003.''
- *Email: christopher.stein@bea.gov.*
- *Fax:* Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, (301) 278–9507.
- *Mail:* Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233.
- *Hand Delivery/Courier:* Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Rd., Suitland, MD 20746.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA through any of the methods above and to the Office of Management and Budget (OMB), OIRA, Paperwork Reduction Project 0608–0062, Attention PRA Desk Officer for BEA, via email at *Robert_G_Sivinski@omb.eop.gov,* or by fax at 202–395–7245.

*Public Inspection:* All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. BEA will accept anonymous comments (enter N/A in required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable document file (pdf) formats only.

**FOR FURTHER INFORMATION CONTACT:** Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; email *christopher.stein@bea.gov* or phone (301) 278–9189.

**SUPPLEMENTARY INFORMATION:** The BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons is a mandatory survey and is conducted once every five years by BEA under the authority provided by the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended) (the Act), and by Section

5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908(b)). The Act provides that data reported to BEA on this survey are confidential and may be used only for analytical and statistical purposes. Without prior written permission from the survey respondent, the data collected cannot be presented in a manner that allows individual responses to be identified. An individual respondent's report cannot be used for purposes of taxation, investigation, or regulation. Copies retained by BEA are exempt from legal process. Per the Federal Cybersecurity Enhancement Act of 2015 (Division N, Title II, Subtitle B, Pub. L. 114–113), a respondent's data are protected from cybersecurity risks through security monitoring of the BEA information systems.

A response is required from persons subject to the reporting requirements of the BE–180, whether or not they are contacted by BEA, to ensure complete coverage of transactions in financial services between U.S. persons (any individual or organization subject to the jurisdiction of the United States) and foreign persons.

In 2012, BEA established regulatory guidelines for collecting data on international trade in services and direct investment (77 FR 24373; April 24, 2012). This proposed rule, as published, would amend those regulations to require a response from persons subject to the reporting requirements of the BE–180, whether or not they are contacted by BEA.

The BE–180 benchmark survey is intended to cover the universe of financial services transactions of U.S. financial services companies with foreign persons and is BEA's most comprehensive survey of such transactions. In nonbenchmark years, the universe of estimates covering these transactions are derived from the sample data reported on BEA's BE–185 Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons. The BE–185 and the BE–180 collect similar information. BEA uses cutoff sampling for the BE–185, meaning that respondents must report on the BE–185 only if they had combined sales to foreign persons that exceeded $20 million or combined purchases from foreign persons that exceeded $15 million in any one of the 10 covered financial services transaction categories during fiscal year 2019. The sample of respondents that file on a quarterly basis throughout fiscal year 2019 will also be required to report on the 2019 BE–180 survey. BEA reconciles the annual data from the BE–180 survey with the quarterly data reported on the BE–185 survey by comparing quarterly to annual submissions that are typically completed using audited information.

The benchmark data, which include data from respondents not subject to filing on an ongoing quarterly basis, will be used, in conjunction with quarterly data collected on the companion BE–185 survey, to produce quarterly estimates of financial services transactions for BEA's international transactions accounts, national income and product accounts, and industry accounts. If this information is not collected on the BE–180 survey, BEA would need to expand the scope of the BE–185 quarterly survey in order to collect additional data items and reduce reporting thresholds. Expanding the BE–185 quarterly survey in this way would result in an increased number of respondents and a measurable increase in the reporting burden each quarter. The data collected through the BE–180 are needed to monitor U.S. trade in financial services, to analyze the impact of U.S. trade in financial services on the U.S. economy and on foreign economies, to compile and improve the U.S. economic accounts, to support U.S. commercial policy on trade in services, to conduct trade promotion activities, and to improve the ability of U.S. businesses to identify and evaluate market opportunities.

This proposed rule would amend 15 CFR part 801 by adding new § 801.13 to set forth the reporting requirements for the BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons. A full list of the financial services transactions covered by the BE–180 survey can be found in the regulatory text of this proposed rule in new § 801.13(d). This includes brokerage services, underwriting and private placement services related to equity transactions and debt transactions, financial management services, credit-related services, credit card services, financial advisory and custody services, securities lending services, electronic funds transfer services, and other financial services.

**Description of Changes**

The proposed changes would amend the regulations and the survey form for the BE–180 benchmark survey. These amendments include several changes in data items collected and the design of the survey form relative to the 2014 benchmark survey.

BEA proposes to change the reporting requirements for respondents with transactions in covered services below the threshold for mandatory reporting on the schedule(s) of the survey ($3 million in combined sales and/or purchases for fiscal year 2019). While responding to benchmark surveys is always mandatory, for the previous BE–180 survey, respondents with transactions below these thresholds were required only to provide a figure for total sales and/or total purchases for all covered transactions, combined. These respondents had the option of providing additional detail for each covered transaction by transaction type, by country, and by affiliation; such additional detail was voluntary rather than required. For the 2019 BE–180, however, *all* respondents, regardless of the amount of their transactions in covered services would be required to provide a total dollar amount for their sales and purchases, as applicable, *by transaction type.* This information would allow BEA to improve the accuracy of the trade statistics.

This change would impose minimal additional burden for respondents because the additional information to be reported is information that respondents would have needed to compile or estimate previously in order to apply the reporting requirements. Under the prior approach, respondents would have needed to compile or estimate the dollar amount of their sales to and/or purchases from foreigners by transaction type in order to determine if their transactions met the threshold for mandatory reporting on the schedules. Under the new approach, BEA would simply be requiring that respondents report those transaction totals.

BEA proposes to add five items to the survey. The changes are proposed in response to suggestions from data users and to allow BEA to more closely align its statistics with international guidelines and publish more information on U.S. trade in financial services.

The following items would be added to the BE–180 benchmark survey:

(1) *Question to request the Legal Entity Identifier (LEI) of the survey respondent.* Respondents would be asked to provide their 20-digit LEI, if they have one. Obtaining an LEI will not be required for the purpose of filing the survey. This information will assist in matching entities across databases, enabling better verification of data and more direct linking to other surveys and publicly available data.

(2) *Questions to collect financial management transactions by type of account.* Respondents who had financial management transactions during the fiscal year would be required

to disaggregate these transactions, for both sales and purchases, as applicable, by type of account (for example, mutual funds; pension funds; exchange-traded funds; private equity funds; corporate portfolio; individual portfolio; hedge funds; and trusts). This additional information can be used to better understand the nature of cross-border financial services transactions.

(3) *Questions about the timing of performance fees.* Respondents who had financial management transactions during fiscal year 2019 would be required to provide additional information about whether these transactions included fees that are tied to performance and, if so, about the timing of those performance fees. Respondents with performance fees (receipts and/or payments) during fiscal year 2019 would be required to distribute them, in a table, based on the quarter(s) in which they were received and/or paid. The additional detail will be used to improve quarterly estimates.

(4) *Mandatory questions to collect information on financial services that were conducted remotely, e.g., where both the supplier and the consumer were in different territories when the service is delivered.* This information would be collected for both sales of services performed remotely for foreign persons and for purchases of services performed remotely by foreign persons. For transactions in the financial services categories covered by the survey, respondents would be required to check one of several boxes identifying the percentage of their transactions that were conducted remotely, and to identify if this information was sourced from their accounting records or from recall/general knowledge. Respondents would also be required to check one of two boxes identifying how the remainder of the services not reported as 100% remotely transacted were typically performed (*e.g.,* by the provider traveling to the consumer or by the consumer traveling to the provider). This additional detail will allow BEA to break down U.S. financial services transactions by the various paths (modes of supply) businesses take to access foreign markets. This information is important to trade negotiators and other policymakers because trade agreements are structured around these modes of supply.

(5) *A question to identify respondents engaged in transactions related to cryptocurrency.* BEA will add a single question asking respondents to identify, of their 2019 cross-border financial services reported in the required transaction categories, any that were related to cryptocurrency activities. The question would identify respondents involved in these transactions without a significant increase in reporting burden and ensure accurate reporting within the existing transaction categories.

In addition to the changes described above, BEA proposes to redesign the format and wording of the survey. The new survey design would incorporate improvements that have been made to other BEA surveys. Some improvements are the result of a recent review conducted with selected survey respondents during the planning for the 2017 BE–120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons. BE–180 Benchmark Survey instructions and data item descriptions would be changed to improve clarity and ensure that the survey form is consistent with other BEA surveys.

**Executive Order 12866**

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant for purposes of Executive Order 12866.

**Executive Order 13132**

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

**Paperwork Reduction Act**

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520 (PRA). The requirement will be submitted to OMB for approval as a reinstatement, with change, of a previously approved collection under OMB control number 0608–0062, for which approval has expired. Surveys were collected for the 2014 BE–180 in calendar years 2015 and 2016. No survey submissions were solicited by BEA after the expiration and discontinuance of the collection in August of 2018.

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

The BE–180 survey, as proposed, is expected to result in the filing of reports from approximately 7,000 respondents. Approximately 5,500 respondents would report mandatory data on the survey, and approximately 1,500 would file exemption claims. The respondent burden for this collection of information would vary from one respondent to another, but is estimated to average (1) 11 hours for the 1,875 respondents that file mandatory or voluntary data by country and affiliation for relevant transaction types on the mandatory schedules; (2) 2 hours for the 3,625 respondents that file mandatory data by transaction type but not by country or affiliation; and (3) 1 hour for the 1,500 exemption claims. These burden-hour estimates consider time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total respondent burden for this survey is estimated at 29,375 hours, or approximately 4 hours per response (29,375 hours/7,000 respondents), compared to 27,500 hours, or about 3 hours per response (27,500 hours/8,750 respondents) for the 2014 BE–180 benchmark survey. The increase in burden hours is due to estimated changes in the expected response composition of the respondent universe from 2014 to 2019, as well as changes in the content of the survey.

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Commerce invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the PRA. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA and OMB following the instructions given in the **ADDRESSES** section above.

**Regulatory Flexibility Act**

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this

proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The changes proposed in this rule are discussed in the preamble and are not repeated here.

A BE–180 report would be required of any U.S. company that is a financial services provider who had financial services transactions, sales to, or purchases from foreign persons in any of the covered types of financial services listed in 15 CFR 801.13(d). This includes brokerage services, underwriting and private placement services related to equity transactions and debt transactions, financial management services, credit-related services, credit card services, financial advisory and custody services, securities lending services, electronic funds transfer services, and other financial services. While the survey would not collect data on total sales or other measures of the overall size of the respondents to the survey, historically the respondents to the existing quarterly survey of financial services transactions and to the previous benchmark surveys were mostly major U.S. corporations. A completed benchmark survey, as proposed, would be required from U.S. financial companies that had financial services transactions in any of the covered categories with foreign persons. For U.S. financial services companies that had combined sales and/or purchases transactions exceeding $3 million in the financial services covered by the survey for fiscal year 2019, a completed benchmark survey would include data on each of the covered types of financial services transactions with totals disaggregated by country and by relationship to the foreign transactor (foreign affiliate, foreign parent group, or unaffiliated). For U.S. financial services companies that had combined sales and/or purchases transactions of $3 million or less in the financial services covered by the survey for fiscal year 2019, a completed benchmark would include totals for each type of transaction in which they engaged. This abbreviated benchmark requirement would exclude most small businesses from mandatory reporting of detail by country and by affiliation. Any small businesses that would be required to report would likely have engaged in a small number of covered transactions and would be less likely to report detail by country and affiliation, and, therefore, would be expected to have below the average burden of 4 hours per response. Even if the responses for small businesses took the expected average burden of 4 hours per response, that would likely apply to a small number of transactions, and, as such, would not constitute a significant impact on any small business or other entity. Because this proposed rule would not have a significant economic impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

**List of Subjects in 15 CFR Part 801**

Economic statistics, Foreign trade, International transactions, Penalties, Reporting and recordkeeping requirements.

Dated: January 17, 2020.

**Paul W. Farello,**

*Associate Director of International Economics, Bureau of Economic Analysis.*

For reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801 as follows:

## PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS AND SURVEYS OF DIRECT INVESTMENT

■ 1. The authority citation for 15 CFR part 801 continues to read as follows:

**Authority:** 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp. p. 173); and E.O. 12518 (3 CFR, 1985 Comp. p. 348).

■ 2. Revise § 801.3 to read as follows:

**§ 801.3 Reporting requirements.**

Except for surveys subject to rulemaking in §§ 801.7, 801.8, 801.9, 801.10, 801.11, 801.12, and 801.13, reporting requirements for all other surveys conducted by the Bureau of Economic Analysis shall be as follows:

(a) Notice of specific reporting requirements, including who is required to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be published by the Director of the Bureau of Economic Analysis in the **Federal Register** prior to the implementation of a survey;

(b) In accordance with section 3104(b)(2) of title 22 of the United States Code, persons notified of these surveys and subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act; and

(c) Persons not notified in writing of their filing obligation by the Bureau of Economic Analysis are not required to complete the survey.

■ 3. Add § 801.13 to read as follows:

**§ 801.13 Rules and regulations for the BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons—2019.**

The BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons will be conducted covering fiscal year 2019. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and §§ 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE–180 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report form and in instructions accompanying the report form.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons—2019, contained herein, whether or not they are contacted by BEA. Also, a person, or its agent, that is contacted by BEA about reporting on this survey, either by sending a report form or by written inquiry, must respond in writing pursuant to this section. This may be accomplished by:

(1) Completing and returning the BE–180 by the due date of the survey; or

(2) If exempt, by completing the determination of reporting status section of the BE–180 survey and returning it to BEA by the due date of the survey.

(b) *Who must report.* A BE–180 report is required of each U.S. person that is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary, or part, that is a financial services provider or intermediary, and that had financial services transactions with foreign persons in the categories covered by the survey during its 2019 fiscal year.

(c) *BE–180 definition of financial services provider.* The definition of financial services provider used for this survey is identical to the definition of the term as used in the North American Industry Classification System, United States, 2012, Sector 52—Finance and Insurance, and holding companies that own or influence, and are principally engaged in making management decisions for these firms (part of Sector 55—Management of Companies and Enterprises). For example, companies and/or subsidiaries and other separable parts of companies in the following

industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, savings institutions, credit unions, and other depository credit intermediation); non-depository credit intermediation (including credit card issuing, sales financing, and other non-depository credit intermediation); activities related to credit intermediation (including mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearinghouse activities, and other activities related to credit intermediation); securities and commodity contracts intermediation and brokerage (including investment banking and securities dealing, securities brokerage, commodity contracts and dealing, and commodity contracts brokerage); securities and commodity exchanges; other financial investment activities (including miscellaneous intermediation, portfolio management, investment advice, and all other financial investment activities); insurance carriers; insurance agencies, brokerages, and other insurance related activities; insurance and employee benefit funds (including pension funds, health and welfare funds, and other insurance funds); other investment pools and funds (including open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts, and other financial vehicles); and holding companies that own, or influence the management decisions of, firms principally engaged in the aforementioned activities.

(d) *What must be reported.* (1) A U.S. person that had combined sales to, or purchases from foreign persons that exceeded $3 million in the financial services categories covered by the survey during its 2019 fiscal year, on an accrual basis, is required to provide data on total sales and/or purchases of each of the covered types of financial services and must disaggregate the totals by country and by relationship to the foreign transactor (foreign affiliate, foreign parent group, or unaffiliated). The determination of whether a U.S. financial services provider is subject to this reporting requirement can be based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(2) A U.S. person that had combined sales to, or purchases from foreign persons that were $3 million or less in the financial services categories covered by the survey during its 2019 fiscal year, on an accrual basis, is required to provide the total sales and/or purchases for each type of transaction in which they engaged. The $3 million threshold for sales and purchases should be applied to financial services transactions with foreign persons by all parts of the consolidated domestic U.S. Reporter. Because the $3 million threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both.

(e) *Voluntary reporting of financial services transactions.* If, during fiscal year 2019, combined sales and purchases were $3 million or less, on an accrual basis, the U.S. person may, in addition to providing the required total for each type of transaction, report sales at a country and affiliation level of detail on the applicable mandatory schedule(s). The estimates can be judgmental, that is, based on recall, without conducting a detailed records search.

(f) *Exemption claims.* Any U.S. person that receives the BE–180 survey form from BEA, but is not subject to the reporting requirements, must file an exemption claim by completing the determination of reporting status section of the BE–180 survey and returning it to BEA by the due date of the survey. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(g) *Covered types of financial services.* Financial services covered by the BE–180 survey consist of transactions between U.S. financial services companies and foreign persons for:

(1) Brokerage services related to equity transactions;

(2) Other brokerage services;

(3) Underwriting and private placement services related to equity transactions;

(4) Underwriting and private placement services related to debt transactions;

(5) Financial management services;

(6) Credit-related services, except credit card services;

(7) Credit card services;

(8) Financial advisory and custody services;

(9) Securities lending services;

(10) Electronic funds transfer services; and

(11) Other financial services.

(h) *Due date.* A fully completed and certified BE–180 report, or qualifying exemption claim with the determination of reporting status section completed, is due to be filed with BEA not later than July 31, 2020 (or by August 31, 2020 for respondents that use BEA's eFile system).

[FR Doc. 2020–03727 Filed 2–24–20; 8:45 am]

**BILLING CODE 3510–06–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 172

**[Docket No. 2020–F–0268]**

### Unilever; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notification of petition.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Unilever, proposing that the food additive regulations be amended to provide for the safe use of potassium iodate in salt added to select food categories as a source of dietary iodine.

**DATES:** The food additive petition was filed on November 25, 2019.

**ADDRESSES:** For access to the docket to read background documents or 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:** Jason Downey, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–9241.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), we are giving notice that we have filed a food additive petition (FAP 0A4824), submitted on behalf of Unilever by Exponent, Inc., 1150 Connecticut Ave. NW, Suite 1100, Washington, DC 20036. The petition proposes to amend the food additive regulations in 21 CFR part 172 *Food Additives Permitted for Direct Addition to Food for Human Consumption* to provide for the safe use of potassium iodate added to salt in the following select food categories: (1) Potato dumpling and pancake mixes, (2) matzo ball mix, (3) falafel mix, (4) select spreads and salad dressings, (5) margarine and margarine-like spreads, (6) tuna sandwich spread, (7) seasoned noodles/rice dry mixes, and (8) dry

soup, broth, bouillon, and stock, as a source of dietary iodine at a maximum level of 40 milligrams potassium iodate per kilogram of salt (sodium chloride).

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(k) because the substance is intended to remain in food through ingestion by consumers and is not intended to replace macronutrients in food. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist. If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: February 19, 2020.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2020–03728 Filed 2–24–20; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 917

**[SATS No. KY–262–FOR; Docket ID: OSM–2019–0014; S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520]**

### Kentucky Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Kentucky regulatory program (hereinafter, Kentucky program), under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through this program amendment, Kentucky seeks changes to its administrative regulations that involve definitions pertaining to bond and insurance requirements.

This document gives the times and locations that the Kentucky program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.), March 26, 2020. If requested, we may hold a public hearing or meeting on the amendment on March 23, 2020. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on March 11, 2020.

**ADDRESSES:** You may submit comments, identified by SATS No. KY–262–FOR, by any of the following methods:

- *Mail/Hand Delivery:* Mr. Michael Castle, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, KY 40503.
- *Fax:* (859) 260–8410.
- *Federal eRulemaking Portal:* This amendment has been assigned Docket ID: OSM–2019–0014. If you would like to submit comments, go to *https://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Lexington Field Office or the full text of the program amendment is available for you to read at *https://www.regulations.gov.*

Mr. Michael Castle, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, KY 40503, Telephone: (859) 260–3900, Email: *mcastle@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. Michael Mullins, Regulation Coordinator, Department for Natural Resources, Kentucky Energy and Environment Cabinet, 3000 Sower Boulevard, Frankfort, KY 40601, Telephone: (502) 782–6720, Email: *michael.mullins@ky.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Castle, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, KY 40503. Telephone: (859) 260–3900; email: *mcastle@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Kentucky Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Statutory and Executive Order Reviews

## I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program effective May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning the Kentucky program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

## II. Description of the Proposed Amendment

By letter dated November 25, 2019, (Administrative Record No. KY–2005), Kentucky sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative. With this amendment, Kentucky seeks to revise its administrative regulations at Title 405 of the Kentucky Administrative Regulations (KAR), Chapter 10:001, *Bond and Insurance Requirements, Definitions for 405 KAR Chapter 10,* as summarized below.

A. *Definition of* ''*Adjacent Area*''*:* Kentucky seeks to revise Section 1, *Definitions,* subsection (4), definition of ''*adjacent area,*'' by adding ''surface water'' to the list of resources on land located outside the affected area or permit area that could be adversely impacted by surface coal mining and reclamation operations.

B. *Definition of* ''*Long Term Treatment*''*:* Kentucky seeks to add the definition of ''l*ong term treatment*'' at subsection (26) to mean:

''. . . the use of any active or passive water treatment necessary to meet water quality effluent standards at the time a permit or any affected permit increment attains phase one (1) bond release

standards as determined by the cabinet pursuant to 405 KAR 10:040.''

Other minor changes such as paragraph renumbering are also included. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *http://www.regulations.gov.*

**III. Public Comment Procedures**

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

*Electronic or Written Comments*

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

*Public Availability of Comments*

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on March 11, 2020. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

*Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

**IV. Statutory and Executive Order Reviews**

*Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

*Other Laws and Executive Orders Affecting Rulemaking*

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

**List of Subjects in 30 CFR Part 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 30, 2020.

**Thomas D. Shope,**

*Regional Director, North Atlantic-Appalachian Region.*

[FR Doc. 2020–03745 Filed 2–24–20; 8:45 am]

**BILLING CODE 4310–05–P**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 917

**[SATS No. KY–261–FOR; Docket ID: OSM–2019–0013; S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520]**

## Kentucky Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Kentucky regulatory program (hereinafter, the Kentucky program), under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through this program amendment, Kentucky seeks to revise administrative regulations that pertain to bond calculation requirements for long-term treatment of surface water discharges.

This document gives the times and locations that the Kentucky program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.), March 26, 2020. If requested, we may hold a public hearing or meeting on the amendment on March 23, 2020. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on March 11, 2020.

**ADDRESSES:** You may submit comments, identified by SATS No. KY–261–FOR, by any of the following methods:

- *Mail/Hand Delivery:* Mr. Michael Castle, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, KY 40503.
- *Fax:* (859) 260–8410.
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID OSM–2019–0013. If you would like to submit comments, go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Lexington Field Office or the full text of the program amendment is available for you to read at *https://www.regulations.gov*.

Mr. Michael Castle, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, KY 40503, Telephone: (859) 260–3900, Email: *mcastle@osmre.gov*.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. Michael Mullins, Regulation Coordinator, Department for Natural Resources, Kentucky Energy and Environment Cabinet, 3000 Sower Boulevard, Frankfort, KY 40601, Telephone: (502) 782–6720, Email: *michael.mullins@ky.gov*.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Castle, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, KY 40503. Telephone: (859) 260–3900; email: *mcastle@osmre.gov*.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Kentucky Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Statutory Orders and Executive Review

## I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program effective May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning the Kentucky program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

## II. Description of the Proposed Amendment

By letter dated November 25, 2019, (Administrative Record No. KY 2004), Kentucky sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). This submission is in response to an amendment OSMRE required at 30 CFR 917.16(p), *Required regulatory program amendments.* We required the amendment after our review of Kentucky's bonding provisions under Program Amendment No. KY–256–FOR as published in the January 29, 2018, **Federal Register** (83 FR 3948). The required amendment was related to post-mining discharges and how operators will provide sufficient financial assurances for the treatment of post-mining discharges. Kentucky was required to either notify us of how it will require operators to address the financial assurances, or submit an amendment to its program or a description of the amendment and a timetable for enactment.

With this amendment, Kentucky seeks to revise its administrative regulations at Title 405 of the Kentucky Administrative Regulations (KAR), Chapter 10:015, *Bond and Insurance Requirements, General bonding provisions.* The revisions at this chapter pertain to bond calculation requirements for long-term treatment of surface water discharges from the permit area at Section 8, *Bonding Rate of Additional Areas,* as well as reference changes and other minor revisions. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *http://www.regulations.gov.*

## III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

*Electronic or Written Comments*

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

*Public Availability of Comments*

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on March 11, 2020. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

*Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

## IV. Statutory and Executive Order Reviews

*Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

*Other Laws and Executive Orders Affecting Rulemaking*

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

**List of Subjects in 30 CFR Part 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 30, 2020.

**Thomas D. Shope,**

*Regional Director, North Atlantic—Appalachian Region.*

[FR Doc. 2020–03744 Filed 2–24–20; 8:45 am]

**BILLING CODE 4310–05–P**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 935

**[SATS No. OH–261–FOR; Docket ID: OSM–2019–0007; S1D1S SS08011000 SX064A000 20S180110 S2D2S SS08011000 SX064A000 20XS501520]**

## Ohio Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement, are announcing receipt of a proposed amendment to the Ohio (hereinafter, the Ohio program) regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio's proposed amendment is prompted by requirements within the Ohio statute that all agencies must review their administrative rules every five years. Consistent with this requirement, the Ohio Reclamation Commission, (the Commission), proposes an amendment to its procedural rules in order to ensure an orderly, efficient, and effective appeals process.

This document gives the times and locations that the Ohio program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.), March 26, 2020. If requested, we will hold a public hearing on the amendment on March 23, 2020. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on March 11, 2020.

**ADDRESSES:** You may submit comments, identified by SATS No. OH–258–FOR, by any of the following methods:

- *Mail/Hand Delivery:* Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220.
- *Fax:* (412) 937–2177.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to review copies of the Ohio program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Pittsburgh Field Office or the full text of the program amendment is available for you to read at *www.regulations.gov*.

Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2827, Email: *bowens@osmre.gov*.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. Dave Crow, Acting Chief, Ohio Department of Natural Resources, Division of Mineral Resources Management, 2045 Morse Road, Building H2, Telephone: (614) 265–1020, Email: *dave.crow@dnr.state.oh.us*.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, 3 Parkway Center, Pittsburgh, Pa. 15220. Telephone: (412) 937–2827, Email: *bowens@osmre.gov*.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Ohio Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

## I. Background on the Ohio Program

Section 503(a) of the Act permits a state to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal

and non-Indian lands within its borders by demonstrating that its approved, State program includes, among other things, state laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program on August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Ohio program in the August 10, 1982, **Federal Register** (47 FR 34717). You can also find later actions concerning the Ohio program and program amendments at 30 CFR 935.10, State Regulatory Program Approval; and 935.11, Conditions of State Regulatory Program Approval; and 935.15, Approval of Ohio Regulatory Program Amendments.

## II. Description of the Proposed Amendment

By letter dated June 13, 2018 (Administrative Record No. OH–2197–01), Ohio sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) The Commission is an adjudicatory board established pursuant to Ohio Revised Code (ORC) section 1513.05. The function of the Commission is to provide an administrative appeal to any person claiming to be aggrieved or adversely affected by a decision of the Ohio Department of Natural Resources, Chief of the Division of Mineral Resources Management (DMRM), relating to mining and reclamation issues. Following an adjudicatory hearing, the Commission affirms, vacates, or modifies the DMRM Chief's decision. The Commission is comprised of eight members appointed by the Governor of Ohio. Four Commission members constitute a quorum and seven members must be present for any appeal. Members represent a variety of interests relevant to mining and reclamation issues. The Commission adopts rules to govern its procedures. These rules are found at Ohio Administrative Code (OAC) sections 1513–3–01 through 1513–3–22. As discussed above, all Ohio agencies must review applicable administrative rules every five years pursuant to ORC section 119.032. Therefore, the Commission conducted a review of its procedural rules in 2018. During this review, the Commission recommended several modifications to its rules, most of which are viewed as non-substantive. The Commission intended these modifications to ensure an orderly, efficient, and effective appeal process. The proposed changes are the subject of this proposed amendment and are discussed herein in the order as they are found in the proposed, modified OAC.

*1. Ohio Revised Code Section 1513–3–01: Definitions*

Ohio proposes changes to clarify existing definitions and to provide additional definitions. Specifically, the following definitions are added: ''Amicus curiae'' means a ''friend of the court.'' The participation of a non-party amicus curiae is addressed under paragraph (F) of rule 1513–3–07 of the Administrative Code; ''Ex parte communication'' means a communication between the commission and one party to an appeal, without the inclusion of other parties to the appeal. Ex parte contacts and communications are addressed, and prohibited, under paragraph (G) of rule 1513–3–03 of the Administrative Code; ''In camera'' means in private rather than in open hearing. In camera procedures are addressed under paragraph (C) of rule 1513–3–16 of the Administrative Code.; ''Pro hac vice'' means ''for one particular case,'' and addresses the ability of an out-of state attorney to appear in an appeal before the commission pursuant to paragraphs (A) and (C) of rule 1513–3–03 of the Administrative Code; ''Subpoena ad testificandum'' means a subpoena for the appearance and testimony of a witness; and is addressed under paragraph (I) of rule 1513–3–02 of the Administrative Code; ''Subpoena duces tecum'' means a subpoena requiring a witness to produce documents or other items at hearing and is addressed under paragraph (I) of rule 1513–3–02 of the Admininstrative Code. The definition of ''discovery'' is proposed to be modified to remove the word ''made''. The definition of ''Regular business hours'' added as defined in section 124.19 of the Revised Code. The remaining modifications are renumbering to facilitate the addition of new terms.

*2. Minor Amendments are Proposed to the Following*

Minor changes and non-substantive are proposed to the following sections: 1513–3–02 Internal Regulations; 1513–3–04 Appeals to the Reclamation Commission; 1513–3–05 Filing and Service of Papers; 1513–3–06 Computation and Extension of Time; 1513–3–11 Motions 1513–3–14; Site Views and Location of Hearings; 1513–3–16 Conduct of Evidentiary Hearings; and 1513–3–22 Appeals from Commission Decisions.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov.*

## III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

*Electric or Written Comments*

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

*Public Availability of Comments*

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on March 11, 2020. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible,

that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

*Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

## IV. Procedural Determinations

*Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

*Other Laws and Executive Orders Affecting Rulemaking*

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

**List of Subjects in 30 CFR Part 935**

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 18, 2019.

**Thomas D. Shope,**

*Regional Director, North Atlantic—Appalachian Region.*

[FR Doc. 2020–03752 Filed 2–24–20; 8:45 am]

**BILLING CODE 4310–05–P**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 935

**[SATS No. OH–256–FOR; Docket ID: OSM–2017–0004; S1D1S SS08011000 SX064A000 201S180110 S2D2S SS08011000 SX064A000 20XS501520]**

## Ohio Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Ohio regulatory program (the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through this proposed amendment, Ohio seeks to revise its program to require that an applicant acquire legal right to enter during the term of the permit, in addition Ohio is asking for approval of the implementation of offsite mitigation guidelines.

This document gives the times and locations that the Ohio program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.), March 26, 2020. If requested, we will hold a public hearing on the amendment on March 23, 2020. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on March 11, 2020.

**ADDRESSES:** You may submit comments, identified by SATS No. OH–256–FOR, by any of the following methods:

- *Mail/Hand Delivery:* Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, Pa 15220.
- *Fax:* (412) 937–2177.
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID: OSM–2017–004. If you would like to submit comments go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to review copies of the Ohio program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Pittsburgh Field Office, or the full text of the program amendment is available for you to read at *www.regulations.gov.*

Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, Pa 15220, Telephone: (412) 937–2827, Email: *bowens@osmre.gov*

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. Dave Crow, Acting Chief, Ohio Department of Natural Resources, Division of Mineral Resources Management, 2045 Morse Road, Building H2, Telephone: (614) 265–1020, Email: *dave.crow@dnr.state.oh.us*

**FOR FURTHER INFORMATION CONTACT:** Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, 3 Parkway Center, Pittsburgh, Pa. 15220. Telephone: (412) 937–2827, email: *bowens@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Ohio Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Statutory and Executive Order Reviews

## I. Background on the Ohio Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders

by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program on August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Ohio program in the August 10, 1982, **Federal Register** (47 FR 34717). You can also find later actions concerning the Ohio program and program amendments at 30 CFR 935.10, 935.11, and 935.15.

## II. Description of the Proposed Amendment

By letter dated October 5, 2015 (Administrative Record No. OH–2193–01), Ohio sent us an amendment to its program, known as Ohio Program Amendment No. 84, which includes statutory changes to its Ohio Revised Code (ORC). The statutory revision in Ohio House Bill 64 of the 131st General Assemble was signed and became effective September 29, 2015. The proposed amendment included changes to Section 1513.06 to allow the off-site mitigation of the unavoidable loss of streams and wetlands which cannot be restored on site. Section 1513.07 includes two changes to the Right of Entry (ROE) requirements: (1) To change the mapping section which currently requires maps to identify lands to be affected, lands where applicants has legal ROE, and adds a section for lands for which the applicant will acquire ROE during the term of the permit, and (2) to allow acceptance of an application as administratively complete as long as the applicant has ROE for at least 67% of the area for which coal mining operations are proposed.

By letter dated November 20, 2017 (Administrative Record No. OH–2193–06), Ohio sent OSMRE an addendum to its program, known by Ohio as Program Amendment No. 84, which includes statutory changes to its Ohio Revised Code (ORC). The statutory revision in Ohio House Bill 49 of the 132nd General Assemble was signed and became effective June 20, 2017. The proposed addendum includes changes Section 1501:13–4–03(D)(1) changing the word description to Notarized statement; (D)(2) is added to require that the application include a notarized statement identifying the specific land for which the applicant is negotiating to acquire the legal right to enter and begin coal mining in the permit area, for surface mining operations, or in the permit and shadow areas, for underground mining operations, during the term of the permit.

Section 1501:13–5–01 (A)(1)(g) is proposed to be added to state that if the application for a coal mining permit, permit renewal, or permit revision includes a request for restoration off the permit area by means of mitigation, this must be specified in the public notice; (G)(3) is revised to add a provision from Section 1513.07(I)(4) enacted by HB 64, effective September 29, 2015: The permit shall contain a specific condition to prohibit the commencement of coal mining operations on any land that is located within the permit area or the shadow area if the permittee has not provided to the chief documents that form the basis of the permittee's legal right to enter and conduct coal mining operations on that land.

Section 1501:13–9–04 (E)(1) is proposed to clarify how to measure the distance from the stream: ''measured horizontally.'' (E)(1)(c) is proposed to add a provision regarding restoration off the permit area by means of mitigation. (F)(2)(d) is proposed to be add a new paragraph to mirror a requirement of 30 CFR 816.43(b)(4). (H)(1)(a) is proposed to update addresses.

Section 1501:13–13–08 is proposed to be added to implement and amplify ORC Section 1513.16(A)(25), enacted by HB 64 of the 131st General Assembly, effective September 29, 2015.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov.*

## III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

*Electric or Written Comments*

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

*Public Availability of Comments*

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on March 11, 2020. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

*Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

### IV. Statutory and Executive Order Reviews

*Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

*Other Laws and Executive Orders Affecting Rulemaking*

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

### List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 14, 2019.

**Thomas D. Shope,**

*Regional Director, North Atlantic—Appalachian Region.*

**Editorial Note:** The Office of the Federal Register received this document on February 20, 2020.

[FR Doc. 2020–03750 Filed 2–24–20; 8:45 am]

**BILLING CODE 4310–05–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2020–0103]**

**RIN 1625–AA00**

## Safety Zone; Ohio River, Troy, IN

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for all navigable waters of the Ohio River from mile marker (MM) 731.0 to MM 734.0. This action is necessary to provide for the safety of life on these navigable waters near Troy, IN, during a wire-crossing event. Entry into, transiting through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before March 26, 2020.

**ADDRESSES:** You may submit comments identified by docket number USCG–2020–0103 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST3 Riley Jackson, Waterways Department Sector Ohio Valley, U.S. Coast Guard; telephone 502–779–5347, email *SECOHV-WWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background, Purpose, and Legal Basis

On July 22, 2019, the Coast Guard was notified of a wire crossing event that will take place on the Ohio River, between Mile Marker (MM) 731.0 & 734.0 from 7 a.m. through 6 p.m. each day from April 14, 2020, through April 23, 2020. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the wire crossing would be a safety concern for anyone within a three mile radius of the construction area.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the three-mile stretch of the Ohio River before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### III. Discussion of Proposed Rule

The COTP is proposing to establish a temporary safety zone from 7 a.m. through 6 p.m. on each day from April 14, 2020 through April 23, 2020. The temporary safety zone would cover all navigable waters on the Ohio River extending from MM 731.0 to MM 734.0. The duration of the zone is intended to ensure the safety of life & property within the three-mile stretch of the Ohio River before, during, and after the scheduled wire crossing. No vessel or person would be permitted to enter the temporary safety zone without obtaining permission from the COTP or a designated representative.

### IV. Regulatory Analyses

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

*A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size, location, and duration of the temporary safety zone. The temporary safety zone would only be in effect for 11 hours each day over ten days and limit access to a three-mile stretch of the Ohio River. The Coast Guard expects minimum adverse impact to mariners. Also, mariners would be permitted to request authorization from the COTP or a designated representative to transit the temporary safety zone.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions

with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

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

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

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 11 hours each day over 10 days, which would prohibit entry within a 3-mile stretch of the Ohio River. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*G. Protest Activities*

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

## V. Public Participation and Request for Comments

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

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

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

**List of Subjects in 33 CFR Part 165**

Harbors, Marine Safety, Navigation (water), Reporting and Recordkeeping Requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0103 to read as follows:

**§ 165.T08–0103 Safety Zone; Ohio River, Troy, IN.**

(a) *Location.* The following area is a temporary safety zone: All navigable

waters of the Ohio River between MM 731.0 to MM 734.0 in Troy, IN.

(b) *Effective period.* This temporary safety zone will be in effect from April 14, 2020 through April 23, 2020.

(b) *Period of enforcement.* This temporary safety zone will be enforced from 7 a.m. through 6 p.m. each day from April 14, 2020, through April 23, 2020.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM radio channel 16 or phone at 1–800–253–7465.

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

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners and the Local Notice to Mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

Dated: February 13, 2020.

**A.M. Beach,**

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

[FR Doc. 2020–03202 Filed 2–24–20; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2019–0384; FRL–10000–85]**

## Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (PP 8F8708)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of filing of petition and request for comment.

**SUMMARY:** This document announces the Agency's receipt of a corrected filing of a pesticide petition requesting the establishment of regulations for residues of indoxacarb in or on certain popcorn commodities.

**DATES:** Comments must be received on or before March 26, 2020.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2019–0384, 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 Confidential Business Information (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.*

**FOR FURTHER INFORMATION CONTACT:** Michael L. Goodis, Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue 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. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

### II. What action is the Agency taking?

In the **Federal Register** of August 2, 2019 (84 FR 37818) (FRL–9996–78), EPA issued a document pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8F8708) by E.I. DuPont de Nemours and Company, 974 Centre Road, Wilmington, DE 19805. EPA's notice stated that the petition requested that the Agency establish tolerances for residues of the insecticide indoxacarb in or on corn, pop, grain at 0.02 parts per million (ppm) and corn, pop, stover at 15 ppm.

In a comment submitted to the docket for that notice, FMC Corporation informed the Agency that although the August 2, 2019 notice identified E.I. DuPont de Nemours and Company as the petitioner, FMC Corporation had actually submitted the petition to the Agency requesting the indoxacarb tolerances. In addition, FMC Corporation noted that the summary of the petition included in the docket for this action was not the petition that FMC Corporation had submitted requesting tolerances for residues of indoxacarb on popcorn, but rather, it was a resubmission of the 2016

summary of the petition from E.I. DuPont de Nemours and Company for the other corn commodities. Subsequently, FMC Corporation submitted a revised petition requesting tolerances for residues of indoxacarb in or on corn, pop, grain at 0.02 ppm and corn, pop, stover at 15 ppm. Upon receiving the corrected petition, EPA determined that the petition contains the data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2). EPA is now publishing notice of that receipt for public comment pursuant to section 408(d)(3) of FFDCA. The summary of the petition (pesticide petition 8F8708) as drafted and submitted by FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104, is included in the docket for this petition, at *http://www.regulations.gov* with the docket identification number EPA–HQ–OPP–2019–0384. After considering public comments, EPA intends to evaluate whether and what action may be warranted.

**Authority:** 21 U.S.C. 346a.

Dated: January 3, 2020.

**Michael L. Goodis,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2020–03637 Filed 2–24–20; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

**[EPA–R04–RCRA–2019–0673; FRL–10005–60–Region 4]**

## Florida: Proposed Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Florida has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA has reviewed Florida's application and has determined, subject to public comment, that these changes satisfy all requirements needed to qualify for final authorization. Therefore, we are proposing to authorize the State's changes. EPA seeks public comment prior to taking final action.

**DATES:** Comments must be received on or before March 26, 2020.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2019–0673, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Leah Davis, RCRA Programs and Cleanup Branch, LCR Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; telephone number: (404) 562–8562; fax number: (404) 562–9964; email address: *davis.leah@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Why are revisions to state programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, EPA will implement those requirements and prohibitions in Florida, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

### B. What decisions has EPA made in this proposed rule?

Florida submitted a final complete program revision application, dated September 16, 2019, seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between July 1, 2017 and June 30, 2019 (including RCRA Clusters [1] XXVI, XXVII, and the May 30, 2018 Amendments to Checklist [2] 233 from Cluster XXIV, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule).[3] EPA concludes that Florida's application to revise its authorized program meets all of the statutory and regulatory requirements established under RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA proposes to grant Florida final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in Section F of this document.

Florida has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country, as defined at 18 U.S.C. 1151) and for carrying out the aspects of the RCRA program described in its program revision application, subject to the limitations of HSWA, as discussed above.

### C. What is the effect of this proposed authorization decision?

If Florida is authorized for the changes described in Florida's authorization application, these changes will become part of the authorized State hazardous waste program, and will therefore be federally enforceable. Florida will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA would maintain its authorities under RCRA sections 3007,

[1] A ''cluster'' is a grouping of hazardous waste rules that EPA promulgates from July 1st of one year to June 30th of the following year.

[2] A ''checklist'' is developed by EPA for each Federal rule amending the RCRA regulations. The checklists document the changes made by each Federal rule and are presented and numbered in chronological order by date of promulgation.

[3] Florida was originally authorized for Checklist 233 on May 10, 2019, but deemed to be broader in scope than the Federal program given that it only adopted the 2015 Revisions to the Definition of Solid Waste Rule. With Florida's adoption of the May 2018 revisions, it is now equivalent to the Federal program.

3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses, and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which EPA is proposing to authorize Florida are already effective under State law, and are not changed by today's proposed action.

**D. What happens if EPA receives comments that oppose this action?**

EPA will evaluate any comments received on this proposed action and will make a final decision on approval or disapproval of Florida's proposed authorization. Our decision will be published in the **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

**E. What has Florida previously been authorized for?**

Florida initially received final authorization on January 29, 1985, effective February 12, 1985 (50 FR 3908), to implement the RCRA hazardous waste management program. EPA granted authorization for changes to Florida's program on the following dates: December 1, 1987, effective March 3, 1988 (52 FR 45634); December 16, 1988, effective January 3, 1989 (53 FR 50529); December 14, 1990, effective February 12, 1991 (55 FR 51416); February 5, 1992, effective April 6, 1992 (57 FR 4371); February 7, 1992, effective April 7, 1992 (57 FR 4738); May 20, 1992, effective July 20, 1992 (57 FR 21351); November 9, 1993, effective January 10, 1994 (58 FR 59367); July 11, 1994, effective September 9, 1994 (59 FR 35266); April 16, 1994, effective October 17, 1994 (59 FR 41979); October 26, 1994, effective December 27, 1994 (59 FR 53753); April 1, 1997, effective June 2, 1997 (62 FR 15407); January 20, 1998, effective March 23, 1998 (63 FR 2896); September 18, 2000, effective November 18, 2000 (65 FR 56256); August 23, 2001, effective October 22, 2001 (66 FR 44307); August 20, 2002, effective October 21, 2002 (67 FR 53886 and 67 FR 53889); October 14, 2004, effective December 13, 2004 (69 FR 60964); August 10, 2007, effective October 9, 2007 (72 FR 44973); February 7, 2011, effective April 8, 2011 (76 FR 6564); October 8, 2014, effective December 8, 2014 (79 FR 60756); and May 10, 2019, effective May 10, 2019 (84 FR 20549). The authorized Florida program, through RCRA Cluster IV, was incorporated by reference into the CFR on January 20, 1988, effective March 23, 1998 (63 FR 2896).

**F. What changes is EPA proposing with today's action?**

Florida submitted a final complete program revision application, dated September 16, 2019, seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. This application included changes associated with Checklists 233, 238, 239, 240, and 241. EPA proposes to determine, subject to receipt of written comments that oppose this action, that Florida's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, EPA is proposing to authorize Florida for the following program changes:

| Description of Federal requirement | **Federal Register** date and page | Analogous State Authority [4] |
|---|---|---|
| Checklist 233, Response to Vacatur of Certain Provisions of the Definition of Solid Waste. | 83 FR 24664<br>5/30/18 | F.A.C. 62–730.021 and 62–730.030(1). |
| Checklist 238, Confidentiality Determinations for Hazardous Waste Export and Import Documents. | 82 FR 60894<br>12/26/17 | F.A.C. 62–730.021; 62–730.030(1); and 62–730.160(1). |
| Checklist 239, Hazardous Waste Electronic Manifest User Fee. | 83 FR 420<br>1/3/18 | F.A.C. 62–730.160(1); 62–730.170(1); and 62–730.180(1) and (2). |
| Checklist 240, Safe Management of Recalled Airbags. | 83 FR 61552<br>11/30/18 | F.A.C. 62–730.020(1); 62–730.030(1); and 62–730.160(1). |
| Checklist 241, Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the PO75 Listing for Nicotine. | 84 FR 5816<br>2/22/19 | F.A.C. 62–730.030(1); 62–730.160(1); 62–730.180(1) and (2); 62–730.181(1); 62–730.183; 62–730.220(1); and 62–730.185. |

**G. Where are the revised State rules different from the Federal rules?**

When revised state rules differ from the Federal rules in the RCRA state authorization process, EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to RCRA section 3009, 42 U.S.C. 6929, state programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent states from adopting regulations that are broader in scope than the Federal program, states cannot receive federal authorization for such regulations, and they are not federally enforceable.

There are no State requirements in the program revisions listed above that are considered to be more stringent or broader in scope than the Federal requirements.

States cannot administer certain Federal regulatory functions, such as the user fee provisions, included in the regulations associated with the Hazardous Waste Electronic Manifest User Fee Rule (Checklist 239). Although Florida has adopted these regulations to maintain its equivalency with the Federal program, it has appropriately maintained the Federal references in order to reserve EPA's authority to implement these non-delegable provisions (see F.A.C. 62–730.020(3)(b)).

States also cannot administer certain Federal regulatory functions involving international shipments (*i.e.,* import and export provisions) associated with the Confidentiality Determinations for Hazardous Waste Export and Import Documents Rule (Checklist 238). Although Florida has adopted these regulations to maintain its equivalency with the Federal program, it has appropriately maintained the Federal references in order to reserve EPA's authority to implement these non-

[4] The Florida regulatory citations are from the Florida Administrative Code (F.A.C.), effective August 16, 2019.

delegable provisions (see F.A.C. 62–730.020(3)(b)).

**H. Who handles permits after the final authorization takes effect?**

When final authorization takes effect, Florida will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that EPA issued prior to the effective date of authorization until they expire or are terminated. EPA will not issue any new permits or new portions of permits for the provisions listed in the table above after the effective date of the final authorization. EPA will continue to implement and issue permits for HSWA requirements for which Florida is not yet authorized. EPA has the authority to enforce State-issued permits after the State is authorized.

**I. How does today's proposed action affect Indian country in Florida?**

Florida is not authorized to carry out its hazardous waste program in Indian country within the State, which includes the Indian lands associated with the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida. Therefore, this proposed action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

**J. What is codification and will EPA codify Florida's hazardous waste program as proposed in this rule?**

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. EPA is not proposing to codify the authorization of Florida's changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart K for the authorization of Florida's program changes at a later date.

**K. Statutory and Executive Order Reviews**

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today's proposed authorization of Florida's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to authorize pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in proposing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action proposes authorization of pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this proposed rule is not subject to Executive Order 12898.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: February 2, 2020.

**Mary S. Walker,**

*Regional Administrator, Region 4.*

[FR Doc. 2020–03668 Filed 2–24–20; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[WC Docket Nos. 17–287, 11–42 and 09–197; FRS 16517]**

### Petitions for Reconsideration of Action in Rulemaking Proceeding

**AGENCY:** Federal Communications Commission.

**ACTION:** Petitions for Reconsideration; correction.

**SUMMARY:** The Federal Communications Commission (Commission) published a document in the **Federal Register** of February 14, 2020, regarding Petitions for Reconsideration filed in the Commission's rulemaking proceeding. The document contained the incorrect deadline for filing replies to an opposition to the Petitions. This document corrects the deadline for replies to an opposition to the Petitions.

**DATES:** The proposed rule published on February 14, 2020, at 85 FR 8533, is corrected as of February 25, 2020.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Page, Attorney Advisor, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–2783.

**SUPPLEMENTARY INFORMATION:**

### Correction

In the **Federal Register** of February 14, 2020, in FR Doc. 2020–02926, on page 8533, in the third column, correct the **DATES** section to read:

**DATES:** Oppositions to the Petitions must be filed on or before March 2, 2020. Replies to an opposition must be filed on or before March 12, 2020.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2020–03709 Filed 2–24–20; 8:45 am]

**BILLING CODE 6712–01–P**

# Notices

Federal Register
Vol. 85, No. 37
Tuesday, February 25, 2020

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.

## UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

### 30-Day Notice of Proposed Information Collection: Title II Vegetable Oil Packaging Survey

**AGENCY:** Office of Food for Peace (FFP), United States Agency for International Development (USAID).

**ACTION:** Notice of request for public comment.

**SUMMARY:** The U.S. Agency for International Development (USAID) seeks Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, USAID request public comment on this collection from all interested individuals and organizations. This proposed information collection was published in the **Federal Register** on December 16, 2019, allowing for a 60-day public comment period. No comments were received regarding the **Federal Register** Notice. The purpose of this notice is to allow an additional 30 days for public comment.

**DATES:** Comments must be received no later than March 26, 2020.

**ADDRESSES:** Interested persons are invited to submit comments regarding the proposed information collection to Angela Roberts, USAID, Bureau for Democracy, Conflict & Humanitarian Assistance, Office of Food for Peace at *angroberts@usaid.gov.*

**FOR FURTHER INFORMATION CONTACT:** Angela Roberts, 703–775–6140, *angroberts@usaid.gov*

**Jamie Fisher,**

*Food for Peace Program Operations Team Leader.*

[FR Doc. 2020–03704 Filed 2–24–20; 8:45 am]

BILLING CODE 6116–01–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

February 20, 2020.

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

Comments regarding this information collection received by March 26, 2020 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Rural Housing Service

*Title:* 7 CFR part 1924–A, Planning and Performing Construction and Other Development.

*OMB Control Number:* 0575–0042.

*Summary of Collection:* The Rural Housing Service (RHS) is the credit agency for rural housing and community development within the Rural Development mission area of the United States Department of Agriculture. RHS offers a supervised credit program to build modest housing and essential community facilities in rural areas. Section 501, section 506 and section 509 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, alter, repair, replace, or rehabilitate dwellings, farm buildings and/or related facilities to provide decent, safe sanitary living conditions and adequate farm building and other structures in rural areas.

*Need and Use of the Information:* RHS provides several forms to assist in the collection and submission of information. The information will be used to determine whether a loan/grant can be approved; to ensure that RHS has adequate security for the loans financed; to monitor compliance with the terms and conditions of the agency loan/grant and to monitor the prudent use of Federal funds. If the information is not collected and submitted, RHS would have no control over the type and quality of construction and development work planned and performed with Federal funds.

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

*Number of Respondents:* 12,425.

*Frequency of Responses:* Recordkeeping; Report: On occasion.

*Total Burden Hours:* 51,572.

#### Rural Housing Service

*Title:* 7 CFR 1927–B, ''Real Estate Title Clearance and Loan Closing''.

*OMB Control Number:* 0575–0147.

*Summary of Collection:* Rural Housing Service is a credit agency for the Department of Agriculture. The Agency offers a supervised credit program to build family farms, modest housing, sanitary water and sewer systems, essential community facilities, businesses and industries in rural areas. Section 501 of Title V of the Housing Act of 1949, as amended, provides authorization to extend financial assistance to construct, improve, alter,

repair, replace or rehabilitate dwellings and to provide decent, safe and sanitary living conditions in rural areas. The Secretary of Agriculture is authorized to prescribe regulations to ensure that these loans, made with federal funds, are legally secured.

*Need and Use of the Information:* The approved attorney/title company (closing agent) and the field office staff collect the required information. Forms and or guidelines are provided to assist in the collection, certification and submission of this information. Most of the forms collect information that is standard in the industry. If the information is collected less frequently, the agency would not obtain the proper security position on the properties being taken as security and would have no evidence that the closing agents and agency meet the requirements of this regulations.

*Description of Respondents:* Individuals or households; Business or other for-profit, Not-for-profit institutions; Farms.

*Number of Respondents:* 10,250.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 2,957.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2020–03720 Filed 2–24–20; 8:45 am]

**BILLING CODE 3410–XV–P**

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2020–0004]**

### Notice of Request for Renewal of an Approved Information Collection (Procedures for the Notification of New Technology and Requests for Waivers)

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request renewal of the approved information collection regarding the procedures for notifying the Agency about new technology and requests for waivers. There are no changes to the existing information collection. The approval for this information collection will expire on May 31, 2020.

**DATES:** Submit comments on or before April 27, 2020.

**ADDRESSES:** FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2020–0004. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

*Docket:* For access to background documents or comments received, call (202) 720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

**FOR FURTHER INFORMATION CONTACT:** Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

**SUPPLEMENTARY INFORMATION:**

*Title:* Procedures for the Notification of New Technology and Requests for Waivers

*OMB Number:* 0583–0127.

*Expiration Date of Approval:* 5/31/2020.

*Type of Request:* Renewal of an approved information collection.

*Abstract:* FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18 and 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is announcing its intention to request renewal of the approved information collection regarding the procedures for notifying the Agency about new technology and requests for waivers. There are no changes to the existing information collection. The approval for this information collection will expire on May 31, 2020.

FSIS has established procedures for notifying the Agency of any new technology intended for use in official meat and poultry establishments and egg products plants (68 FR 6873). To follow the procedures, establishments, plants, and firms that manufacture and sell technology to official establishments and egg products plants notify the Agency by submitting documents describing the operation and purpose of the new technology. The documents should explain why the new technology will not (1) adversely affect the safety of the product, (2) jeopardize the safety of Federal inspection personnel, (3) interfere with inspection procedures, or (4) require a waiver of any Agency regulation. If use of the new technology will require a waiver of any Agency regulation, the notice must also identify the regulation and explain why a waiver would be appropriate (9 CFR 303.1(h), 381.3(b), and 590.10). If the new technology could affect FSIS regulations, product safety, inspection procedures, or the safety of inspection program personnel, the establishment or plant would need to submit a written protocol for an in-plant trial as part of a pre-use review. The submitter of a written protocol should provide data to the Agency throughout the duration of the in-plant trial.

FSIS has made the following estimates based upon an information collection assessment:

*Estimate of Burden:* FSIS estimates that it will take respondents an average of 8 hours to complete a notification of intent to use new technology if no in-plant trial is necessary. If an in-plant trial is necessary, FSIS estimates that it will take an average of 80 hours to develop a protocol and an average of 80 additional hours to collect data and keep records during the in-plant trial. FSIS estimates it will take respondents an average of 120 hours to collect data and conduct recordkeeping under a waiver.

*Respondents:* Official meat and poultry establishments and egg product plants; firms that manufacture or sell technology to official establishments and plants.

*Estimated Number of Respondents:* 75 respondents will submit notifications of intent to use new technology. 50 respondents will develop a protocol for

and conduct an in-plant trial. 50 respondents will collect data and conduct recordkeeping for the duration of the in-plant trial. 35 respondents will collect data and conduct recordkeeping under the waiver.

*Estimated Number of Annual Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 12,800 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

**USDA Non-Discrimination Statement**

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

*How to File a Complaint of Discrimination*

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

*Mail:* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

*Fax:* (202) 690–7442.

*Email: program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

**Paul Kiecker,**

*Deputy Administrator.*

[FR Doc. 2020–03764 Filed 2–24–20; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Ozark-Ouachita Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Ozark-Ouachita Resource Advisory Committee (RAC) will meet in Russellville, Arkansas. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following website: *https://cloudapps-usda-gov.secure.force.com/FSSRS/RAC_Page?id=001t0000002JcwBAAS.*

**DATES:** The meeting will be held on Tuesday, March 10, 2020, beginning at 1:00 p.m. (CST). All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** The meeting will be held at Ozark-St. Francis National Forests Supervisor's Office, 605 West Main Street, Russellville, AR 72801. The meeting will be held via teleconference. For anyone who would like to attend by teleconference, please see the contacts listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 100 Reserve Street, Hot Springs, Arkansas. Please call ahead to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Caroline Mitchell, Committee Coordinator, by phone at 501–321–5318 or via email at *caroline.mitchell@usda.gov.* Craig McBroome, DFO, by phone at 479–964–7248 or via email at *craig.mcbroome@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is:

1. To review Title II proposals.

The meeting is open to the public. Interested persons may attend in person or by teleconference. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral

statement should request in writing by Friday, March 6, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Caroline Mitchell, Committee Coordinator, P.O. Box 1270, Hot Springs, Arkansas 71902, or via facsimile to 501–321–5399.

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 19, 2020.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2020–03691 Filed 2–24–20; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Humboldt Nevada Resource Advisory Committee; Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Humboldt Nevada Resource Advisory Committee (RAC) will meet in Winnemucca, Nevada. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *http://fs.usda.gov/goto/htnf/rac.*

**DATES:** The meeting will be held on Wednesday, April 1, 2020 at 2:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

**ADDRESSES:** The meeting will be held at 3275 Fountain Way, Winnemucca, Nevada 89445, in the large conference room. A conference line will be set up for those unable to attend in person. The conference line is (888) 844–9904—access code: 7727626#.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 3275 Fountain Way, Winnemucca, Nevada. Please call ahead to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Joseph Garrotto, District Ranger by phone at 775–352–1215 or via email *at joseph.garrotto@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to:

1. Review and recommend project proposals for Title II funds.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Friday, March 13, 2020 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Joseph Garrotto, District Ranger by phone at 775–352–1215 or via email at *joseph.garrotto@usda.gov.*

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: February 19, 2020.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2020–03690 Filed 2–24–20; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Sanders Resource Advisory Committee; Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Sanders Resource Advisory Committee (RAC) will meet in Thompson Falls, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcwJAAS.*

**DATES:** The meeting will be held on Wednesday, April 8, 2020 at 7:00 p.m.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

**ADDRESSES:** The meeting will be held at the Sanders County Courthouse, 1111 Main Street, Thompson Falls, Montana, 59873.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Plains/Thompson Falls Ranger District. Please call ahead at 406–826–4305 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Robin Jermyn, RAC Coordinator, by phone at 406–826–4305 or via email at *robin.jermyn@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to:

1. Approve minutes from previous meeting;

2. Address outstanding questions regarding project proposals reviewed;

3. Discuss, recommend and vote on Title II projects;

4. Discuss, recommend and vote on Lolo National Forest recreation fee proposals;

5. Open forum for public discussion.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Friday, April 3, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Robin Jermyn, RAC Coordinator, P.O. Box 429, Plains, Montana 59859; by email to *robin.jermyn@usda.gov,* or via facsimile to 406–826–4358.

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: February 19, 2020.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2020–03693 Filed 2–24–20; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Southern Montana Resource Advisory Committee; Meetings

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Southern Montana Resource Advisory Committee (RAC) will meet in Big Timber, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *https://www.fs.usda.gov/main/custergallatin/workingtogether/advisorycommittees.*

**DATES:** The meeting will be held on Wednesday, March 25, 2020, at 9:00 a.m.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under *For Further Information Contact.*

**ADDRESSES:** The meeting will be held at the Sweet Grass County Ambulance Station Meeting Room at 220 West 1st Avenue in Big Timber, MT.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Custer Gallatin National Forest Supervisor's Office. Please call ahead at 406–587–6701 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Karen Tuscano, RAC Coordinator, by phone at 406–932–5155 ext 115 or via email at *karen.tuscano@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to:

1. Approve minutes from November 13, 2019 meeting;

2. Discuss, recommend, and approve new Title II projects; and

3. Discuss next meeting for the Southern Montana RAC which will provide feedback on recreation fee proposals.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Wednesday, March 11, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Karen Tuscano, RAC Coordinator, P.O. Box 1130, Big Timber, Montana 59011; by email to *karen.tuscano@usda.gov,* or via facsimile to 406–587–6758.

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: February 19, 2020.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2020–03692 Filed 2–24–20; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Economic Development Administration (EDA), Department of Commerce.

*Title:* Semi-Annual and Annual Data Collection Instruments for EDA Grant and Cooperative Agreement Award Recipients.

*OMB Control Number:* 0610–0098.

*Form Number(s):* ED–915, ED–916, ED–917, and ED–918.

*Type of Request:* Revision of currently approved information collections (Forms ED–916, ED–917, and ED–918) and extension without revision of a currently approved information collection (Form ED–915).

*Number of Respondents:* 2,150 (revised Forms ED–916, ED–917, and ED–918: 550 semiannual respondents and 550 annual respondents; extended Form ED–915: 500 respondents).

*Average Hours per Response:* 2.5 to 8 hours (revised Forms ED–916, ED–917, and ED–918: 2.5 hours semiannually and 6 hours annually; extended Form ED–915: 8 hours).

*Burden Hours:* 10,050 hours (revised Forms ED–916, ED–917, and ED–918: 2,750 hours semiannually and 3,300 hours annually; extended Form ED–915: 4,000 hours).

*Needs and Uses:* EDA must comply with the Government Performance and Results Act of 1993 (Pub. L. 103–62) and the GPRA Modernization Act of 2010 (Pub. L. 111–352), which require Federal agencies to develop performance measures and report to Congress and stakeholders the results of the agency's performance. EDA's diverse portfolio of programs, the changing economy, and advances in the field of program evaluation make updates to

EDA's methods for performance measurement and program evaluation necessary in order to ensure transparency, accountability, and effectiveness of EDA investments. The recently passed Foundations for Evidence-Based Policymaking Act of 2018 (Pub. L. 115–435) further emphasizes the importance of updating existing methodologies for performance measurement and program evaluation to align with evolving best practices.

EDA proposes revising Forms ED–916, ED–917, and ED–918, which are currently used to collect limited performance information on sponsored activities and resulting outcomes from the grantees receiving assistance under just three of EDA's non-infrastructure programs: Partnership Planning, University Center, and the Trade and Adjustment Assistance for Firms, respectively. The revised Forms ED–916, ED–917, and ED–918 would instead comprehensively cover all of EDA's non-infrastructure programs: Economic Adjustment Assistance (non-infrastructure projects), including new Revolving Loan Funds; Planning, including Partnership Planning; Local Technical Assistance, including University Centers; Build to Scale (formerly Regional Innovation Strategies); Research and National Technical Assistance; and Trade Adjustment Assistance for Firms. The data on program-sponsored activities and associated outcomes will be collected on semi-annual and annual bases, respectively.

The revised data collection instruments were developed through cooperative agreements with a number of leading research institutions, most notably SRI International. The methodology and applications for the instruments are described in the *Innovative Metrics for Economic Development report* and *Toolkit for Economic Development Practitioners* that are available on EDA's website at *www.eda.gov/performance/.*

EDA does not propose to revise the remaining fourth form under this information collection, Form ED–915, which is used to collect information on infrastructure and existing revolving loan fund (RLF) projects funded through awards from EDA's Public works and Economic Adjustment Assistance programs. Form ED–915 would instead be extended without change; however, EDA plans to revise Form ED–915 in the future to update the information collected on infrastructure projects. Note that all RLF awards made after the implementation of the revised Forms ED–916, ED–917, and ED–918 will be required to report performance information using those Forms; this requirement may be extended to all RLF awards when Form ED–915 is revised.

*Affected Public:* State and local governments; Development Organizations; Indian Tribes; Institutions of higher education; and Nonprofit organizations.

*Frequency:* Semi-annual and Annual.

*Respondent's Obligation:* Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or faxed to (202) 395–5806.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2020–03685 Filed 2–24–20; 8:45 am]

**BILLING CODE 3510–34–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Industry and Security.

*Title:* Foreign Availability Procedures.

*Form Number(s):* N/A.

*OMB Control Number:* 0694–0004.

*Type of Review:* Regular submission.

*Estimated Total Annual Burden Hours:* 510.

*Estimated Number of Respondents:* 2.

*Estimated Time per Response:* 255 hours.

*Needs and Uses:* This information is collected in order to respond to requests by Congress and industry to make foreign availability determinations in accordance with Section 768 of the Export Administration Regulations. Exporters are urged to voluntarily submit data to support the contention that items controlled for export for national security reasons are available-in-fact, from a non-U.S. source, in sufficient quantity and of comparable quality so as to render the control ineffective.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* On Occasion.

*Respondent's Obligation:* Voluntary.

This information collection request may be viewed at *reginfo.gov http://www.reginfo.gov/public/.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2020–03700 Filed 2–24–20; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Industry and Security.

*Title:* Report of Requests for Restrictive Trade Practice or Boycott.

*Form Number(s):* BIS–621P, BIS–6051P, BIS–6051 P–a.

*OMB Control Number:* 0694–0012.

*Type of Review:* Regular submission.

*Estimated Total Annual Burden Hours:* 1,171.

*Estimated Number of Respondents:* 892.

*Estimated Time Per Response:* 1 to 1 ½ hours.

*Needs and Uses:* This information is used to monitor requests for participation in foreign boycotts against countries friendly to the U.S. The information is analyzed to note changing trends and to decide upon appropriate action to be taken to carry out the United States' policy of discouraging United States persons from participating in foreign restrictive trade practices and boycotts directed against countries friendly to the United States.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory

This information collection request may be viewed at *reginfo.gov, http://www.reginfo.gov/public/.* Follow the

instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2020–03686 Filed 2–24–20; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Industry and Security.

*Title:* Procedure for Parties on the Entity List and Unverified List to Request Removal or Modification of Their Listing

*Form Number(s):* N/A.

*OMB Control Number:* 0694–0134.

*Type of Review:* Regular submission.

*Estimated Total Annual Burden Hours:* 15.

*Estimated Number of Respondents:* 5.

*Estimated Time Per Response:* 3 hours.

*Needs and Uses:* This collection is needed to provide a procedure for persons or organizations listed on the Entity List and Unverified List to request removal or modification of the entry that affects them. The Entity List appears at 15 CFR part 744, Supp. No. 4, and the Unverified List appears at 15 CFR part 744, Supp. No. 6. The Entity List and Unverified List are used to inform the public of certain parties whose presence in a transaction that is subject to the Export Administration Regulations (15 CFR parts 730–799) requires a license from the Bureau of Industry and Security (BIS). Requests for removal from the Entity List would be reviewed by the Departments of Commerce, State, and Defense, and Energy and Treasury as appropriate. The interagency decision, as communicated to the requesting entity by BIS, would be the final agency action on such a request. Requests for removal from the Unverified List would be reviewed by the Department of Commerce. The decision, as communicated to the requesting entity by BIS, would be the final agency action on such a request. This is a voluntary collection.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* On Occasion.

*Respondent's Obligation:* Voluntary.

This information collection request may be viewed at *reginfo.gov, http://www.reginfo.gov/public/.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2020–03688 Filed 2–24–20; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–953]**

### Narrow Woven Ribbons with Woven Selvedge From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2017

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

**SUMMARY:** The Department of Commerce (Commerce) determines that Yama Ribbons and Bows Co., Ltd (Yama) an exporter/producer of narrow woven ribbons with woven selvedge (Ribbons) from the People's Republic of China (China), received countervailable subsidies during the period of review (POR) January 1, 2017 through December 31, 2017.

**DATES:** Applicable February 25, 2020.

**FOR FURTHER INFORMATION CONTACT:** Terre Keaton Stefanova or Ian Hamilton AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–4798, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

The events that occurred since Commerce published the *Preliminary Results* [1] on August 23, 2019 are discussed in the Issues and Decision Memorandum, which is hereby adopted this notice.[2]

In October 2019, we verified Yama's questionnaire responses.[3] On December 10, 2019, Commerce extended the deadline for the final results of this administrative review until February 19, 2020.[4]

#### Scope of the Order

The merchandise covered by the order is narrow woven ribbons with woven selvedge from China.[5] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 5806.32.1020, 5806.32.1030, 5806.32.1050, 5806.32.1060, 5806.31.00, 5806.32.20, 5806.39.20, 5806.39.30, 5808.90.00, 5810.91.00, 5810.99.90, 5903.90.10, 5903.90.25, 5907.00.60, 5907.00.80, 5806.32.1080, 5810.92.9080, 5903.90.3090, and 6307.90.9889. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

#### Analysis of Comments Received

All issues raised in interested parties' briefs are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues raised by interested parties and to which we responded in the Issues and Decision Memorandum is provided in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central

[1] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2017,* 84 FR 44281 (August 23, 2019) (*Preliminary Results*).

[2] *See* Memorandum, ''Decision Memorandum for the Final Results of 2017 Countervailing Duty Administrative Review: Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''2017 Administrative Review of the Countervailing Duty Order on Narrow Woven Ribbons from the People's Republic of China: Verification of the Questionnaire Responses of Yama Ribbons and Bows Co., Ltd.,'' dated November 6, 2019.

[4] *See* Memorandum, ''Narrow Woven Ribbons from the People's Republic of China: Extension of Deadline for the Final Results of Countervailing Duty Administrative Review,'' dated December 10, 2019.

[5] For a complete description of the scope of the order, *see Preliminary Results* and accompanying Preliminary Decision Memorandum.

Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be access directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

While we made no changes to the *Preliminary Results* as a result of our analysis of the comments received from the interested parties, we made corrections to our subsidy rate calculations for certain programs.[6]

**Final Results of Administrative Review**

In accordance with 19 CFR 351.221(b)(5), we calculated a countervailable subsidy rate for the producer/exporter under review as follows:

| Company | Subsidy rate (percent) |
|---|---|
| Yama Ribbons and Bows Co., Ltd. | 31.87 |

**Assessment Rates**

Consistent with 19 CFR 351.212(b)(2), we intend to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results of review. Commerce will instruct CBP to liquidate shipments of subject merchandise produced and/or exported by the company listed above, entered, or withdrawn from warehouse, for consumption, on or after January 1, 2017 through December 31, 2017, at the *ad valorem* rate listed above.

**Cash Deposit Instructions**

Commerce intends also to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above for Yama, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, Commerce will instruct CBP to continue to collect cash deposits at the most recent company-specific or all-others rate applicable to the company, as appropriate. Accordingly, the cash deposit requirements that will be applied to companies covered by this order, but not examined in this administrative review, are those established in the most recently completed segment of the proceeding for each company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Administrative Protective Orders**

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 19, 2020.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix**

**List of Topics Discussed in the Issues and Decision Memorandum**

I. Summary
II. Background
III. Use of Adverse Facts Available and Adverse Inferences
IV. Subsidies Valuation Information
V. Programs Determined to be Countervailable
VI. Programs Determined not to Provide Measurable Benefits During the POR
VII. Programs Determined not to be Used During the POR
VIII. Analysis of Comments
Comment 1: The Application of Adverse Facts Available (AFA) to the Provision of Synthetic Yarn and Caustic Soda for Less-than-Adequate Remuneration
Comment 2: The Application of AFA to the Export Buyer's Credit Program
IX. Recommendation

[FR Doc. 2020–03738 Filed 2–24–20; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–879]**

### Polyvinyl Alcohol From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2018–2019

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

**SUMMARY:** The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on polyvinyl alcohol (PVA) from the People's Republic of China (China) for the period of review October 1, 2018, through September 30, 2019, based on the timely withdrawal of the request for review.

**DATES:** Applicable February 25, 2020.

**FOR FURTHER INFORMATION CONTACT:** Charles Doss or Shanah Lee, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4474 and (202) 482–6386, respectively.

**Background**

On October 1, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on PVA from China for the period of review October 1, 2018, through September 30, 2019.[1] Pursuant to a timely filed request from Sekisui Specialty Chemical America, LLC (the petitioner),[2] in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the antidumping duty order on PVA from China on December 11, 2019, with respect to Sinopec Sichuan Vinylon Works and its successor-in-interest,[3] Sinopec Chongqing SVW Chemical Co., Ltd.[4] On February 11, 2020, the petitioner timely withdrew its request for an administrative review with respect to all of the companies for which it had requested a review in its October 31, 2019, submission.[5]

**Rescission of Review**

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication date of the

[6] *See* Memorandum, ''Final Results Calculation Memorandum for Yama Ribbons,'' dated concurrently with, and hereby adopted by, this notice (Final Calculation Memorandum).

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 52068 (October 1, 2019).

[2] *See* Petitioner's Letter, ''Polyvinyl Alcohol from the People's Republic of China: Request for Antidumping Duty Administrative Review,'' dated October 31, 2019.

[3] *See Polyvinyl Alcohol from the People's Republic of China: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 84 FR 16246 (April 18, 2019).

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 67712 (December 11, 2019).

[5] *See* Petitioner's Letter, ''Polyvinyl Alcohol from the People's Republic of China: Withdrawal of Request for Antidumping Duty Administrative Review,'' dated February 11, 2020.

notice of initiation of the requested review. The petitioner, who was the only party to request a review, withdrew its request within the 90-day deadline. Accordingly, we are rescinding the administrative review of the antidumping order on PVA from China covering the period October 1, 2018, through September 30, 2019, in its entirety.

**Assessment**

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of PVA from China. Antidumping duties shall be assessed at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

**Notification to Importers**

This notice serves as the only reminder to importers whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification Regarding Administrative Protective Order**

This notice also serves as the only reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: February 19, 2020.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2020–03737 Filed 2–24–20; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XQ008]**

### Spring Meeting of the Advisory Committee to the United States Delegation to the International Commission for the Conservation of Atlantic Tunas

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

**ACTION:** Notice of Advisory Committee meeting.

**SUMMARY:** The Advisory Committee (Committee) to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) announces its annual spring meeting to be held March 10–11, 2020.

**DATES:** The open sessions of the Committee meeting will be held on March 10, 2020, 9 a.m. to 3:15 p.m. and March 11, 2020, 9 a.m. to 1 p.m. Closed sessions will be held on March 10, 2020, 3:30 p.m. to 5:30 p.m., and on March 11, 2020, 8 a.m. to 9 a.m.

**ADDRESSES:** The meeting will be held at the Embassy Suites by Hilton Miami International Airport, 3974 NW South River Drive, Miami, Florida, 33142.

**FOR FURTHER INFORMATION CONTACT:** Terra Lederhouse at (301) 427–8360.

**SUPPLEMENTARY INFORMATION:** The Advisory Committee to the U.S. Section to ICCAT will meet in open session to receive and discuss information on management strategy evaluation and harvest control rule development at ICCAT; the 2019 ICCAT meeting results and U.S. implementation of ICCAT decisions; NMFS research and monitoring activities; global and domestic initiatives related to ICCAT; the results of the meetings of the Committee's Species Working Groups; and other matters relating to the international management of ICCAT species. The public will have access to the open sessions of the meeting, but there will be no opportunity for public comment. The agenda is available from the Committee's Executive Secretary upon request (see **FOR FURTHER INFORMATION CONTACT**).

The Committee will meet in its Species Working Groups for part of the afternoon of March 10, 2020, and for one hour on the morning of March 11, 2020. These sessions are not open to the public, but the results of the Species Working Group discussions will be reported to the full Advisory Committee during the Committee's open session on March 11, 2020.

**Special Accommodations**

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Terra Lederhouse at (301) 427–8360 at least 5 days prior to the meeting date.

Dated: February 19, 2020.

**Alexa Cole,**

*Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.*

[FR Doc. 2020–03730 Filed 2–24–20; 8:45 am]

**BILLING CODE 3510–22–P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### Community Bank Advisory Council Meeting

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice of public meeting.

**SUMMARY:** Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Community Bank Advisory Council (CBAC or Council) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Council.

**DATES:** The meeting date is Wednesday, March 11, 2020, from approximately 12:30 p.m. to 4:15 p.m. eastern daylight time and Thursday, March 12, 2020, from approximately 10:00 a.m. to 4:45 p.m.

**ADDRESSES:** The meeting location is the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

**FOR FURTHER INFORMATION CONTACT:** Kim George, Outreach and Engagement Associate, Consumer Advisory Board and Councils Office, External Affairs, at 202–435–7884, *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 2 of the CBAC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Director established the Community Bank Advisory Council under agency authority.

Section 3 of the CBAC Charter states: ''The purpose of the Advisory Council is to advise the Bureau in the exercise of its functions under the Federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less.''

### II. Agenda

The Council will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten (10) business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABand CouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CBAC members for consideration. Individuals who wish to join the Council must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_3Wa8E4HNv0rM4Xr* by noon, March 10, 2020. Members of the public must RSVP by the due date.

### III. Availability

The Council's agenda will be made available to the public on Tuesday, March 10, 2020, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Dated: February 20, 2020.

**Kirsten Sutton,**

*Chief of Staff, Bureau of Consumer Financial Protection.*

[FR Doc. 2020–03756 Filed 2–24–20; 8:45 am]

**BILLING CODE 4810–AM–P**

## CONSUMER FINANCIAL PROTECTION BUREAU

### Consumer Advisory Board Meetings

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice of public meeting.

**SUMMARY:** Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Consumer Advisory Board (CAB or Board) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Board.

**DATES:** The meeting date is Wednesday, March 11, 2020 from approximately 12:30 p.m. to 4:15 p.m. eastern daylight time and Thursday, March 12, 2020, from approximately 10:00 a.m. to 4:45 p.m.

**ADDRESSES:** The meeting location is the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

**FOR FURTHER INFORMATION CONTACT:** Kim George, Outreach and Engagement Associate, Advisory Board and Councils Office, External Affairs, at 202–435–7884, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 3 of the Charter of the Board states that: The purpose of the Board is outlined in section 1014(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which states that the Board shall ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.''

To carry out the Board's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the Bureau. The Board will generally serve as a vehicle for market intelligence and expertise for the Bureau. Its objectives will include identifying and assessing the impact on consumers and other market participants of new, emerging, and changing products, practices, or services.

### II. Agenda

The Board will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten (10) business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CAB members for consideration.

Individuals who wish to join the Board must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_3Wa8E4HNv0rM4Xr* by noon, March 10, 2020. Members of the public must RSVP by the due date.

### III. Availability

The Board's agenda will be made available to the public on Tuesday, March 10, 2020, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Dated: February 20, 2020.

**Kirsten Sutton,**

*Chief of Staff, Bureau of Consumer Financial Protection.*

[FR Doc. 2020–03759 Filed 2–24–20; 8:45 am]

**BILLING CODE 4810–AM–P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### Academic Research Council Meeting

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice of public meeting.

**SUMMARY:** Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Academic Research Council (ARC or Council) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Council.

**DATES:** The meeting date is Friday, March 13, 2020, from approximately

10:30 a.m. to 4:15 p.m. eastern daylight time.

**ADDRESSES:** The meeting location is the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

**FOR FURTHER INFORMATION CONTACT:** Kim George, Outreach and Engagement Associate, at 202–435–7884, or *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 2 of the of the ARC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director established the Academic Research Council under agency authority. Section 3 of the ARC Charter states: The committee will (1) provide the Bureau with advice about its strategic research planning process and research agenda, including views on the research that the Bureau should conduct relating to consumer financial products or services, consumer behavior, cost-benefit analysis, or other topics to enable the agency to further its statutory purposes and objectives; and (2) provide the Office of Research with technical advice and feedback on research methodologies, data collection strategies, and methods of analysis, including methodologies and strategies for quantifying the costs and benefits of regulatory actions.

### II. Agenda

The ARC will discuss methodology, direction for consumer finance research, and broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, l-855–233–0362, or 202–435–9742 (TTY) at least ten (10) business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the ARC members for consideration. Individuals who wish to join the ARC must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_6VAGaBjeOep2G8d* by noon, March 12, 2020. Members of the public must RSVP by the due date.

### III. Availability

The Council's agenda will be made available to the public on Thursday, March 12, 2020, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and transcript of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Dated: February 20, 2020.

**Kirsten Sutton,**

*Chief of Staff, Bureau of Consumer Financial Protection.*

[FR Doc. 2020–03758 Filed 2–24–20; 8:45 am]

**BILLING CODE 4810–AM–P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### Credit Union Advisory Council Meeting

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice of public meeting.

**SUMMARY:** Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Credit Union Advisory Council (CUAC or Council) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Council.

**DATES:** The meeting date is Wednesday, March 11, 2020, from approximately 12:30 p.m. to 4:15 p.m. eastern daylight time and Thursday, March 12, 2020, from approximately 10:00 a.m. to 4:45 p.m.

**ADDRESSES:** The meeting location is the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

**FOR FURTHER INFORMATION CONTACT:** Kim George, Outreach and Engagement Associate, Consumer Advisory Board and Councils Office, External Affairs, at 202–435–7884, *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 2 of the CUAC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director established the Credit Union Advisory Council under agency authority.

Section 3 of the CUAC Charter states: ''The purpose of the Advisory Council is to advise the Bureau in the exercise of its functions under the Federal consumer financial laws as they pertain to credit unions with total assets of $10 billion or less''.

### II. Agenda

The Council will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten (10) business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CUAC members for consideration. Individuals who wish to join the CUAC must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_3Wa8E4HNv0rM4Xr* by noon, March 10, 2020. Members of the public must RSVP by the due date.

### III. Availability

The Council's agenda will be made available to the public on Tuesday, March 10, 2020, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Dated: February 20, 2020.

**Kirsten Sutton,**

*Chief of Staff, Bureau of Consumer Financial Protection.*

[FR Doc. 2020–03757 Filed 2–24–20; 8:45 am]

**BILLING CODE 4810–AM–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board; Notice of Federal Advisory Committee Meeting

**AGENCY:** Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Science Board (DSB) will take place.

**DATES:** Closed to the public Thursday, February 13, 2020 from 8:45 a.m. to 4:00 p.m.

**ADDRESSES:** The address of the closed meeting is conference Room 3E928 at the Pentagon, Washington, DC 20301.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin Doxey, (703) 571–0081 (Voice), (703) 697–1860 (Facsimile), *kevin.a.doxey.civ@mail.mil* (Email). Mailing address is Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140. Website: *http://www.acq.osd.mil/dsb/*. The most up-to-date changes to the meeting agenda can be found on the website.

**SUPPLEMENTARY INFORMATION:** Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer (DFO), the Defense Science Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the meeting on February 13, 2020 of the Defense Science Board. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

*Purpose of the Meeting:* The mission of the DSB is to provide independent advice and recommendations on matters relating to the DoD's scientific and technical enterprise. The objective of the meeting is to obtain, review, and evaluate classified information related to the DSB's mission. DSB membership will meet with DoD Leadership to discuss classified current and future national security challenges and priorities within the DoD.

*Agenda:* The DSB Winter Quarterly Meeting will begin on February 13, 2020 at 8:45 a.m. with opening remarks by Mr. Kevin Doxey, the DFO, and Dr. Craig Fields, DSB Chairman. The first presentation will be from Dr. Mark Rosker, the Director of DARPA's Microsystems Technology Office, who will provide a classified brief on his view of technical defense challenges and priorities. Following lunch, Mr. James Baker, Director of the Office of Net Assessment, will provide a classified brief of his view of defense challenges and priorities. Next, Lieutenant General Jack Shanahan, Director of the Joint Artificial Intelligence Center, will provide a classified brief of his view of defense challenges and priorities. Finally, Dr. Michael Griffin, Under Secretary of Defense for Research and Engineering, will provide a classified brief of his view of defense challenges and priorities. The meeting will adjourn at 4:00 p.m.

*Meeting Accessibility:* In accordance with Section 10(d) of the FACA and 41 CFR 102–3.155, the DoD has determined that the DSB meeting will be closed to the public. Specifically, the Under Secretary of Defense (Research and Engineering), in consultation with the DoD Office of General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by 5 U.S.C. 552b(c)(1). The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meetings. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense (Research and Engineering).

*Written Statements:* In accordance with Section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the DSB at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB DFO provided in the **FOR FURTHER INFORMATION CONTACT** section at any point; however, if a written statement is not received at least three calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DSB until a later date.

Dated: February 19, 2020.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2020–03662 Filed 2–24–20; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DOD–2019–OS–0136]**

### Submission for OMB Review; Comment Request

**AGENCY:** Defense Finance and Accounting Service (DFAS), DoD.

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by March 26, 2020.

**ADDRESSES:** Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

**FOR FURTHER INFORMATION CONTACT:** Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil*.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Custodianship Certification to Support Claims on Behalf of Minor Children of Deceased Members of the Armed Forces, DD Form 2790, OMB Control Number 0730–0010.

*Type of Request:* Extension.

*Number of Respondents:* 300.

*Responses per Respondent:* 1.

*Annual Responses:* 300.

*Average Burden per Response:* 24 minutes.

*Annual Burden Hours:* 120.

*Needs and Uses:* Per DoD Financial Management Regulation, 7000.14–R, Volume 7B, Chapter 46, paragraph 460103A(1), an annuity for a minor child is paid to the legal guardian, or, if there is no legal guardian, to the natural parent who has care, custody, and control of the child as the custodian, or to a representative payee of the child. An annuity may be paid directly to the child when the child is

considered to be of majority age under the law in the state of residence. The child then is considered an adult for annuity purposes and a custodian or legal fiduciary is not required.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DoD Clearance Officer:* Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: February 20, 2020.

**Morgan E. Park,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 2020–03706 Filed 2–24–20; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Guidance To Establish Policies for the Agency Levee Safety Program Entitled Engineer Circular 1165–2–218

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The U.S. Army Corps of Engineers (USACE) has developed draft agency guidance, entitled Engineer Circular 1165–2–218, to consolidate and formalize policies and procedures for its Levee Safety Program. The intent of the Levee Safety Program is to understand, monitor, and manage flood risk associated with levees over time, provide a framework to sustain long term benefits, and adapt activities and actions based on the dynamic nature of flood risk. USACE is seeking feedback from non-federal levee sponsors, interested associations, Tribes, other federal agencies, and any other interested individuals on this proposed draft guidance document. This notice announces the availability of the draft Engineer Circular for comment. The comment period on the draft document starts with the publication of this notice in the **Federal Register** and will last for 60 days. The draft Engineer Circular is available for review on the USACE Levee Safety Program website *(https://www.usace.army.mil/Missions/Civil-Works/Levee-Safety-Program/)* and at (*http://www.regulations.gov*) reference docket number COE–2020–0003.

**DATES:** Comments must be submitted on or before April 27, 2020.

**ADDRESSES:** You may submit comments identified by docket number COE–2020–0003 by any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov* (*http://www.regulations.gov*). Follow the instructions for submitting comments.

*Email: EC218@usace.army.mil* (mail to: *EC218@usace.army.mil*) and include the docket number, COE–2020–0003, in the subject line of the message.

*Mail:* U.S. Army Corps of Engineers, Attn: CECW–EC/3E62, 441 G Street NW, Washington, DC 20314–1000.

*Hand Delivery/Courier:* Due to security requirements, we cannot receive comments by hand delivery or courier.

*Instructions:* If submitting comments through the Federal eRulemaking Portal, direct your comments to docket number COE–2020–0003. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov* (*http://www.regulations.gov*), including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *regulations.gov* or email. The *regulations.gov* website is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to USACE without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* For access to the docket to read background documents or comments received, go to *www.regulations.gov* (*http://www.regulations.gov*). All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tammy Conforti at 202–761–4649, email *EC218@usace.army.mil* (mail to: *EC218@usace.army.mil*) or visit *http://www.usace.army.mil/Missions/Civil-Works/Levee-Safety-Program/* (*http://www.usace.army.mil/Missions/Civil-Works/Levee-Safety-Program/*).

**SUPPLEMENTARY INFORMATION:** Engineer Circular 1165–2–218, U.S. Army Corps of Engineers (USACE) Levee Safety Program, provides the context and policies for the implementation of program activities. Although Engineer Circulars are typically used to establish internal agency policy, this document has been drafted to include four volumes applicable to both USACE and non-federal levee sponsors. The Engineer Circular will be temporary in nature and will expire two years after the date of publication, providing USACE time to learn through implementation experience, identify clarifications or additional resources required, and to work with our partners in implementing the program. After two years, Engineer Circular 1165–2–218 will either be revised, rescinded, or converted to an Engineer Regulation, which does not expire.

*Questions to Shape Focus of Public Comment Review:* The purpose of this review is to solicit feedback on clarity and understandability of the draft Engineer Circular; on clarity and appropriateness of roles and responsibilities related to the program; and on clarity of program objectives, requirements, and available support.

Commenters are encouraged to use the following questions to guide their feedback:

*Question 1:* Are the goals and objectives of the USACE Levee Safety Program clearly stated? Please articulate any improvements or clarifications needed.

*Question 2:* Are the roles and responsibilities of non-federal levee sponsors clearly described? Please describe any improvements or clarifications needed.

*Question 3:* Are the activities and services provided by USACE understood? Please articulate any improvements or clarifications needed.

*Question 4:* Is how and when USACE engages with non-federal levee sponsors and other stakeholders throughout program activities clearly described? Please describe any improvements or clarification needed.

*Question 5:* Is it clear what assistance and support USACE can provide non-federal levee sponsors in the long-term management of flood risk? Please describe any improvements or clarifications needed.

*Question 6:* Are there any other materials or resources that would be helpful for non-federal levee sponsors or communities related to managing levees?

*Question 7:* Are there any opportunities to improve the USACE Levee Safety Program to further support public awareness of the risks and benefits of levees? Please identify specific activities or materials USACE should consider.

*Question 8:* Are there any specific changes you would recommend to improve the USACE Levee Safety Program?

*Future Actions:* In addition, USACE will be hosting two public webinars and five public meetings to provide an overview of the draft Engineer Circular and directions on how to provide comments. For information about the webinars and public meetings visit the USACE Civil Works Levee Safety Program website (*http://www.usace.army.mil/Missions/Civil-Works/Levee-Safety-Program/*). Feedback and comments provided in response to this notice will be considered and the draft Engineer Circular will be updated as appropriate. When the final Engineer Circular is published, a notice will be placed in the **Federal Register** and on the USACE Civil Works Levee Safety Program website (*http://www.usace.army.mil/Missions/Civil-Works/Levee-Safety-Program/*). The final document itself will be made available through the USACE publications website (*http://www.publications.usace.army.mil/*).

Dated: February 19, 2020.

**R.D. James,**

*Assistant Secretary of the Army, Civil Works.*

[FR Doc. 2020–03726 Filed 2–24–20; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Migrant Education Program Consortium Incentive Grant Program

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education is issuing a notice inviting applications for fiscal year (FY) 2020 for the Migrant Education Program (MEP) Consortium Inventive Grant program (CIG), Catalog of Federal Domestic Assistance (CFDA) number 84.144F.

**DATES:**

*Applications Available:* February 28, 2020.

*Deadline for Transmittal of Applications:* April 27, 2020.

*Deadline for Intergovernmental Review:* June 24, 2020.

**ADDRESSES:** For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Patricia Meyertholen, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E315, Washington, DC 20202–6135. Telephone: (202) 260–1394. Email: *Patricia.Meyertholen@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The purpose of the MEP CIG program is to provide incentive grants to State educational agencies (SEAs) that participate in a consortium with one or more other SEAs or other appropriate entities to improve the delivery of services to migratory children whose education is interrupted. Through this program, the Department provides financial incentives to SEAs that receive Title I, Part C (MEP) funding to participate in high-quality consortia to improve the intrastate and interstate coordination of migrant education programs by addressing key needs of migratory children whose education is interrupted.

*Background:* On March 3, 2004, the Department published in the **Federal Register** a notice of final requirements for the CIG program (69 FR 10110) (2004 CIG NFR). In the notice, the Department established seven absolute priorities that promote key national objectives of the MEP. The Department added an eighth absolute priority when it published in the **Federal Register** a notice of final priority on March 12, 2008 (73 FR 13217) (2008 CIG NFP).

For FY 2020, the Department is focusing the CIG competition on three absolute priorities. These absolute priorities were selected in order to improve alignment of program priorities with the Administration's priorities. Specifically, the FY 2020 competition will focus on improving the proper and timely identification and recruitment of eligible migratory children, strengthening the involvement of migratory parents in the education of their children, and improving the educational attainment of out-of-school youth.

We recognize the importance of sustaining efforts to properly and timely identify and recruit migratory children and continue to welcome applications that address this absolute priority. To promote a seamless transition between identification and recruitment, and taking the next step to enroll and serve these children, within this absolute priority, the FY 2020 competition includes an invitational priority for applications designed to develop, promote, and adopt enrollment, placement, and credit accrual policies that meet the unique needs of migratory children. This invitational priority encourages the transfer of educational records as it relates to proper enrollment in school and placement in grade and course, and accrual of credits.

The FY 2020 competition also includes two competitive preference priorities. The first is Supplemental Priority 6 from the Department's Notice of Final Supplemental Priorities and Definitions for Discretionary Grant Programs (Supplemental Priorities), published in the **Federal Register** on March 2, 2018 (83 FR 9096), which calls for projects in science, technology, engineering, and math (STEM)

education, including computer science, that support student mastery of key prerequisites to ensure success in all STEM fields and expose students to building-block skills such as critical thinking and problem-solving, gained through hands-on, inquiry-based learning.

The second competitive preference priority, Priority 9 of the Supplemental Priorities, encourages projects designed to increase educational opportunities by reducing academic or nonacademic barriers to economic mobility.

We encourage applications that propose to address these absolute, competitive preference, and invitational priorities. The types of applications we envision receiving include, for example, projects that propose to strengthen the involvement of migratory parents in the education of their children by encouraging activities that raise awareness and understanding among migratory parents about the importance of STEM education, the timing and mastery of prerequisites such as Algebra I, and the opportunities available in STEM and computer science fields; and empower parents to advocate for placement in appropriate courses if their children seek to pursue a career in STEM. Such projects would align with the Secretary's vision for family engagement and with Supplemental Priority 6.[1]

In addition, we encourage applications that propose to create or support alternative pathways to a regular high school diploma or post-secondary credential for migratory youth who have dropped out of school. For example, applications that reduce barriers or challenges to completion of a traditional education program by providing opportunities such as: Afternoon or evening academic programs, online learning, independent study, flexible scheduling, one-on-one education plans and guidance, career counseling, high school equivalency programs, and integrated education and training that provides high school equivalency instruction concurrently and contextually with workforce preparation activities and workforce training for a specific occupation or occupational cluster, with the goals of supporting these individuals' pursuit of a regular high school diploma or postsecondary credential. Such projects would align with Supplemental Priority 9 and with recent changes to the Elementary and Secondary Education Act, as amended (ESEA), which gives priority for MEP services to migratory children who have dropped out of school.

These are two examples of projects or components of projects that a consortium of MEP States could propose when submitting a CIG application. We also encourage other combinations of the absolute, competitive preference, and invitational priorities.

*Priorities:* Applicants must address at least one of the three absolute priorities described in this notice. Absolute Priorities 1 and 2 are from the 2004 CIG NFR. Absolute Priority 3 is from the 2008 CIG NFP. The term ''scientifically based'' has been replaced with ''evidence-based'' in Absolute Priorities 2 and 3 as explained in the *Waiver of Proposed Rulemaking* section of this notice.

Within Absolute Priority 1, we include one invitational priority that applicants have the option to address. Within Absolute Priorities 2 and 3, we include two competitive preference priorities that applicants have the option to address. The competitive preference priorities are from the Supplemental Priorities.

The applicant must clearly indicate in the abstract section of its application to which absolute priority or priorities it is applying. The Department intends to create three funding slates for CIG applications—one for applications that meet Absolute Priority 1, a separate slate for applications that meet Absolute Priority 2, and a third slate for applications that meet Absolute Priority 3. As a result, the Department may fund applications out of the overall rank order. The Department anticipates making at least one award on each slate, provided applications of sufficient quality are submitted, but the Department is not bound by these estimates.

In addition, the applicant must indicate in the abstract section of its application which competitive preference or invitational priority it is addressing, if any. While applicants are encouraged to address only one competitive preference priority, if an applicant chooses to address more than one competitive preference priority, the Department will instruct reviewers to score the first competitive preference priority mentioned in the abstract.

*Absolute Priorities:* For FY 2020, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one or more of these priorities.

These priorities are:

*Absolute Priority 1:* Services designed to improve the proper and timely identification and recruitment of eligible migratory children whose education is interrupted.

Within this absolute priority, we are particularly interested in applications that address the following invitational priority.

*Invitational Priority:* Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Projects designed to assist SEAs and local educational agencies to develop, promote, and adopt enrollment, placement, and credit accrual policies to meet the unique needs of migratory children resulting from educational disruptions, including for secondary school-aged students, such as consolidation of partial credits, out-of-State administration of mandated State assessments, and flexible credit accrual options.

*Absolute Priority 2:* Services designed (based on a review of evidence-based research) to strengthen the involvement of migratory parents in the education of migratory students whose education is interrupted.

*Absolute Priority 3:* Services designed (based on a review of evidence-based research) to improve the educational attainment of out-of-school migratory youth whose education is interrupted.

*Competitive Preference Priorities:* For FY 2020, these priorities are competitive preference priorities. Within Absolute Priorities 2 and 3, we give competitive preference to applications that address one of the following priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets one of the competitive preference priorities.

The priorities are:

*Competitive Preference Priority 1: Promoting Science, Technology, Engineering, and Math (STEM) Education, With a Particular Focus on Computer Science (Up to 10 points).*

Projects designed to improve student achievement or other educational outcomes in one or more of the following areas: Science, technology, engineering, math, or computer science (as defined in this notice). These projects must address supporting student mastery of key prerequisites (*e.g.,* Algebra I) to ensure success in all STEM fields, including computer science (notwithstanding the definition in this notice); exposing children or students to building-block skills (such as critical thinking and problem-solving,

[1] STEM is also a national priority. For more details, see ''Charting A Course For Success: America's Strategy For STEM Education'', *www.whitehouse.gov/wp-content/uploads/2018/12/STEM-Education-Strategic-Plan-2018.pdf* (December 2018).

gained through hands-on, inquiry-based learning); or supporting the development of proficiency in the use of computer applications necessary to transition from a user of technologies, particularly computer technologies, to a developer of them.

*Competitive Preference Priority 2: Promoting Economic Opportunity (Up to 10 points).*

Projects designed to increase educational opportunities by reducing academic or nonacademic barriers to economic mobility. These projects must address creating or supporting alternative paths to a regular high school diploma (as defined in section 8101(43) of the ESEA) or recognized postsecondary credentials (as defined in section 3(52) of the Workforce Innovation and Opportunity Act (WIOA)) for students whose environments outside of school, disengagement with a traditional curriculum, homelessness, or other challenges make it more difficult for them to complete an educational program.

*Definitions:* The following definitions apply to this competition. The definition of ''computer science'' is from the Supplemental Priorities. The definitions of ''demonstrates a rationale'' and ''evidence-based'' are from 34 CFR 77.1(c). The definition of ''recognized postsecondary credential'' is from section 3(52) of WIOA. The definition of ''regular high school diploma'' is from section 8101(43) of the ESEA.

*Computer science* means the study of computers and algorithmic processes and includes the study of computing principles and theories, computational thinking, computer hardware, software design, coding, analytics, and computer applications.

Computer science often includes computer programming or coding as a tool to create software, including applications, games, websites, and tools to manage or manipulate data; or development and management of computer hardware and the other electronics related to sharing, securing, and using digital information.

In addition to coding, the expanding field of computer science emphasizes computational thinking and interdisciplinary problem-solving to equip students with the skills and abilities necessary to apply computation in our digital world.

Computer science does not include using a computer for everyday activities, such as browsing the internet; use of tools like word processing, spreadsheets, or presentation software; or using computers in the study and exploration of unrelated subjects.

*Demonstrates a rationale* means a key project component (as defined in 34 CFR 77.1(c)) included in the project's logic model (as defined in 34 CFR 77.1(c)) is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes (as defined in 34 CFR 77.1(c)).

*Evidence-based* means the proposed project component (as defined in 34 CFR 77.1(c)) is supported by one or more of strong evidence (as defined in 34 CFR 77.1(c)), moderate evidence (as defined in 34 CFR 77.1(c)), promising evidence (as defined in 34 CFR 77.1(c)), or evidence that demonstrates a rationale.

*Recognized postsecondary credential* means a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the State involved or Federal Government, or an associate or baccalaureate degree.

*Regular high school diploma* means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA; and does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

*Waiver of Proposed Rulemaking:* The term ''scientifically based'' has been replaced with the term ''evidence-based,'' as defined in 34 CFR 77.1(c). Under the Administrative Procedure Act (5 U.S.C. 553) (APA) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency, for good cause, finds that the requirement is impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B) and (d)(3)). There is good cause to waive rulemaking in this case because the term ''scientifically based'' and its definition are no longer in statute. Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that obtaining public comment on the removal of the term ''scientifically based'' and the adoption of the term ''evidence-based'' is unnecessary and contrary to the public interest.

The APA also generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). Because this final regulatory action merely updates outdated regulations, the Secretary also has good cause to waive the 30-day delay in the effective date of these regulatory changes under 5 U.S.C. 553(d)(3).

*Program Authority:* 20 U.S.C. 6398(d).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations in 34 CFR parts 75 (except 75.232), 76, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The 2004 CIG NFR. (e) The 2008 CIG NFP. (f) The notice of final requirement published in the **Federal Register** on December 31, 2013 (78 FR 79613). (g) The MEP regulations in 34 CFR 200.81–200.89. (h) The Supplemental Priorities.

*Note:* The regulations in 34 CFR part 86 apply to institutions of higher education only.

## II. Award Information

*Type of Award:* Formula grants.

*Estimated Available Funds:* $3,000,000.

*Estimated Range of Awards:* $50,000-$150,000.

The actual size of an SEA's award will depend on the number of SEAs that participate in high-quality consortia and the size of those SEAs' MEP formula grant allocations.

*Estimated Average Size of Awards:* $100,000.

*Maximum Award:* An SEA cannot receive an incentive award that exceeds its MEP Basic State Formula grant allocation or $250,000, whichever is less, for a single budget period of 12 months.

*Estimated Number of Awards:* 30 SEA awards. An SEA that participates in a consortium may receive only one incentive grant award regardless of the number of consortia in which it participates.

*Note:* The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

**III. Eligibility Information**

1. *Eligible Applicants:* SEAs receiving MEP Basic State Formula grants, in a consortium with one or more other SEAs or other appropriate entities. An application for an incentive grant must be submitted by an SEA that will act as the ''lead SEA'' for the proposed consortium.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Pursuant to the 2004 CIG NFR, the supplement-not-supplant provisions in sections 1118(b) and 1304(c)(2) of the ESEA are applicable to this program.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants. Pursuant to ESEA section 1302, the Secretary makes grants to SEAs, or combinations of such agencies, to establish or improve, directly or through local operating agencies, programs of education for migratory children.

**IV. Application and Submission Information**

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

*Note:* Applicants are not required to submit Budget information (ED 524). Please see the application package for a complete list of application requirements.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 25 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

5. *Use of CIG Funds:* SEAs in consortia receiving awards must implement the activities described in their project applications as a condition of their receipt of funds. CIG awards are treated as additional funds available to an SEA under the MEP Basic State Formula grant program. Moreover, general requirements governing the use and reporting of awarded funds would be governed by provisions of 34 CFR part 76, which govern State-administered formula grant programs, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200.

**V. Application Review Information**

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR part 75.210 and are as follows:

(a) *Significance* (10 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers:

(1) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population. (Up to 5 points)

(2) The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies. (Up to 5 points)

(b) *Quality of the project design* (30 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (Up to 10 points)

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (Up to 7 points)

(3) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population. (Up to 5 points)

(4) The extent to which the proposed project demonstrates a rationale (as defined in this notice). (Up to 8 points)

(c) *Quality of project services* (30 points). The Secretary considers the quality of the services to be provided by the proposed project.

(1) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (Up to 3 points)

(2) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (Up to 10 points)

(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services. (Up to 10 points)

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services. (Up to 7 points)

(d) *Quality of the management plan* (10 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (Up to 2 points)

(2) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project. (Up to 3 points)

(3) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project. (Up to 5 points)

(e) *Quality of the project evaluation* (20 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the project evaluation, the Secretary considers:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (Up to 10 points)

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (Up to 10 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* Consortium grantees are required to report on their project's effectiveness based on the project objectives, performance measures, and scheduled activities outlined in the consortium's application.

In addition, all grantees are required, under 34 CFR 80.40(b), to report on the Government Performance and Results Act of 1993 (GPRA) indicators as part of their Consolidated State Performance Report. The GPRA indicators established by the Department for the MEP, of which the Consortium Incentive Grants are a component, are—

(a) The percentage of MEP students that scored at or above proficient on their State's annual Reading/Language Arts assessments in grades 3–8;

(b) The percentage of MEP students that scored at or above proficient on their State's annual Mathematics assessments in grades 3–8;

(c) The percentage of MEP students who were enrolled in grades 7–12, and graduated or were promoted to the next grade level; and

(d) The percentage of MEP students who entered 11th grade that had received full credit for Algebra I or a higher Mathematics course.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project and whether the grantee has expended funds consistent with MEP requirements.

## VII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is

the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 20, 2020.

**Frank T. Brogan,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2020–03763 Filed 2–24–20; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2020–SCC–0036]**

### Agency Information Collection Activities; Comment Request; Grant Reallotment

**AGENCY:** Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before April 27, 2020.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0036. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact David Steele, 202–245–6520.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Grant Reallotment.

*OMB Control Number:* 1820–0692.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 323.

*Total Estimated Number of Annual Burden Hours:* 11.

*Abstract:* The Rehabilitation Act of 1973, as amended (the Act), authorizes the Rehabilitation Services Administration (RSA) Commissioner to reallot to other grant recipients that portion of a recipient's annual grant that cannot be used. To maximize the use of appropriated funds under the formula grant programs, RSA has established a reallotment process for the State Vocational Rehabilitation Services (VR); State Supported Employment Services (Supported Employment); Independent Living Services for Older Individuals Who Are Blind (OIB); Client Assistance Program (CAP); and Protection and Advocacy of Individual Rights (PAIR) programs. The authority for RSA to reallot formula grant funds is found at sections 110(b)(2) (VR), 603(b) (Supported Employment), 752(i)(4) (OIB), 112(e)(2) (CAP), and 509(e) (PAIR) of the Act.

This request is to extend the use of the form for an additional 3 years. The information will be used by the RSA State Monitoring and Program Improvement Division (SMPID) to reallot formula grant funds for the awards mentioned above. This permits RSA to maximize the use of Federal funds to meet the needs of individuals with disabilities.

Dated: February 20, 2020.

**Kate Mullan,**

*PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer.*

[FR Doc. 2020–03749 Filed 2–24–20; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP19–1353–000.

*Applicants:* Northern Natural Gas Company.

*Description:* Report Filing: 20200214 45 Day Update Filing.

*Filed Date:* 2/14/20.

*Accession Number:* 20200214–5213.

*Comments Due:* 5 p.m. ET 2/26/20.

*Docket Numbers:* RP19–1523–004.

*Applicants:* Panhandle Eastern Pipe Line Company, LP.

*Description:* Compliance filing File and Motion Revised Rates and Cancelled Records to be effective 3/1/2020.

*Filed Date:* 2/18/20.

*Accession Number:* 20200218–5137.

*Comments Due:* 5 p.m. ET 3/2/20.

*Docket Numbers:* RP20–524–000.

*Applicants:* Equitrans, L.P.

*Description:* § 4(d) Rate Filing: Negotiated Rate Service Agreement—Mercuria Name Change to be effective 3/1/2020.

*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5020.
*Comments Due:* 5 p.m. ET 3/2/20.
*Docket Numbers:* RP20–525–000.
*Applicants:* Equitrans, L.P.
*Description:* § 4(d) Rate Filing: 3–1–2020 Formula-Based Negotiated Rates to be effective 3/1/2020.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5021.
*Comments Due:* 5 p.m. ET 3/2/20.

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 date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 19, 2020.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2020–03703 Filed 2–24–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP20–49–000]**

### Transcontinental Gas Pipe Line Company, LLC; Notice of Intent To Prepare an Environmental Document for a Proposed Amendment of the Northeast Supply Enhancement Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of a proposed amendment to Transcontinental Gas Pipe Line Company, LLC's (Transco) Northeast Supply Enhancement Project. Transco seeks authorization to utilize and extend an existing road to access Compressor Station 206 in Somerset County, New Jersey in lieu of constructing the certificated access road. The Commission will use the environmental document in its decision-making process to determine whether the amendment is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the proposed amendment/alternative access road. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on March 20, 2020.

You can make a difference by submitting your specific comments or concerns regarding the amendment. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all filed comments during the preparation of the environmental document.

If you sent comments on this amendment to the Commission before the opening of this docket on January 31, 2020, you will need to file those comments in Docket No. CP20–49–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this amendment. State and local government representatives should notify their constituents of the potential change in access to Compressor Station 206 and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the amendment, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

Transco provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*) at *https://www.ferc.gov/resources/guides/gas/gas.pdf.*

**Public Participation**

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to *www.ferc.gov/docs-filing/esubscription.asp.*

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a

comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the projects' docket number (CP20–49–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

**Summary of the Proposed Amendment**

Transco proposes to amend the Northeast Supply Enhancement Project to utilize an alternative permanent access road to Compressor Station 206 (Higgins Farm Access Road) that would involve the use and extension of an existing road rather than construction of the previously approved access road across property owned by Trap Rock Industries (Trap Rock Access Road). Transco states the proposal would enable it to comply with requirements from the New Jersey Department of Environmental Protection and reduce wetland impacts. The existing road crosses the Higgins Farm Superfund Site for approximately 1,819 feet, terminating at an enclosed groundwater remediation system operated by the U.S. Environmental Protection Agency. Transco would not modify the U.S. Environmental Protection Agency road but would extend the road approximately 1,213 feet to the compressor station site. Most of the extension would occur on land owned by Transco. The figure in appendix 1 depicts the previously-approved Trap Rock Access Road and newly proposed Higgins Farm Access Road.[1]

**Land Requirements for Construction**

Construction of the Higgins Farm Access Road would disturb about 5.4 acres of land, all of which would be permanently impacted during operation of Compressor Station 206.

**The Environmental Review Process**

The environmental document will discuss impacts that could occur as a result of the construction and operation of the Higgins Farm Access Road under these general headings:

- geology and soils;
- water resources, fisheries, and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources; and
- land use.

Commission staff will also evaluate reasonable alternatives to the proposed amendment, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The environmental document will present Commission staffs' independent analysis of the issues. The environmental document will be available in electronic format in the public record through eLibrary[2] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the environmental document is issued. The environmental document may be issued for an allotted public comment period. Commission staff will consider all comments on the environmental document before making recommendations to the Commission. To ensure Commission staff has the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to these projects to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

**Consultation Under Section 106 of the National Historic Preservation Act**

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the New Jersey State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

**Currently Identified Environmental Issues**

Commission staff has already identified several issues that deserve attention based on a preliminary review of the planned facility and the environmental information provided by Transco. This preliminary list of issues may change based on your comments and our analysis.

- water resources and wetlands;
- forested land;
- residences;
- special status species;
- agricultural land;
- special land uses; and
- pre-existing contamination.

**Environmental Mailing List**

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the planned amendment.

If the Commission issues the environmental document for an allotted public comment period, a *Notice of Availability* of the environmental document will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 2).

**Additional Information**

Additional information about the amendment/alternative access road is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number(s) in the

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

''Docket Number'' field, excluding the last three digits (*i.e.,* CP20–49). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: February 19, 2020.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–03699 Filed 2–24–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 349–207]**

### Alabama Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Non-capacity amendment to replace turbine runner.

b. *Project No.:* 349–207.

c. *Date Filed:* December 17, 2019.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Hydroelectric Project.

f. *Location:* The project is located on the Tallapoosa River in Tallapoosa, Elmore, and Coosa counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. James F. Crew, 600 North 18th Street, Birmingham, AL 35203, 205–257–4265.

i. *FERC Contact:* Mr. Steven Sachs, (202) 502–8666, *Steven.Sachs@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/doc-sfiling/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–349–207.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant proposes to install a new turbine runner, wicket gate assembly, and related components at unit no. 4. The new equipment would not increase the hydraulic capacity of the project but would increase the installed capacity by approximately 5 megawatts.

l. *Locations of the Applications:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. The filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', or ''PROTEST'' as applicable; (2) set forth in the heading the name of the applicant and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening or protesting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: February 19, 2020.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–03697 Filed 2–24–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL19–49–000]**

### Midcontinent Independent System Operator, Inc.; Notice of Filing

Take notice that on February 19, 2020, Midcontinent Independent System Operator, Inc. filed a Compliance Refund Report for Cooperative Energy regarding Reactive Power Supply, pursuant to Federal Energy Regulatory Commission's (Commission) Order issued December 4, 2019.[1]

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

[1] *Cooperative Energy,* 169 FERC ¶ 61,185 (December 4, 2019) (''December Order'').

become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible online 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 March 11, 2020.

Dated: February 19, 2020.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–03701 Filed 2–24–20; 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:* ER10–1819–023; ER10–1820–026; ER10–1874–009; ER19–9–003.

*Applicants:* Northern States Power Company (a Minnesota Corporation), Northern States Power Company (a Wisconsin Corporation), Mankato Energy Center, LLC, Mankato Energy Center II, LLC.

*Description:* Notice of Change in Status of Northern States Power Company, a Minnesota corporation, *et al.*

*Filed Date:* 2/18/20.

*Accession Number:* 20200218–5252.

*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER19–467–004.

*Applicants:* New York Independent System Operator, Inc.

*Description:* Compliance filing: Compliance Energy Storage—Order No. 841 to be effective 12/31/9998.

*Filed Date:* 2/18/20.

*Accession Number:* 20200218–5208.

*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER19–708–001.

*Applicants:* GSG, LLC.

*Description:* Report Filing: Refund Report Filing to be effective N/A.

*Filed Date:* 2/19/20.

*Accession Number:* 20200219–5005.

*Comments Due:* 5 p.m. ET 3/11/20.

*Docket Numbers:* ER19–1960–002.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Compliance filing: 2020–02–18_Attachment X Compliance for Order 845 to be effective 12/20/2019.

*Filed Date:* 2/19/20.

*Accession Number:* 20200219–5079.

*Comments Due:* 5 p.m. ET 3/11/20.

*Docket Numbers:* ER19–2050–004.

*Applicants:* Midcontinent Independent System Operator, Inc, GridLiance Heartland LLC.

*Description:* Compliance filing: 2020–02–19_GridLiance Formula Rate Settlement Compliance Filing to be effective 12/31/9998.

*Filed Date:* 2/19/20.

*Accession Number:* 20200219–5061.

*Comments Due:* 5 p.m. ET 3/11/20.

*Docket Numbers:* ER20–511–002.

*Applicants:* Wilderness Line Holdings, LLC.

*Description:* Tariff Amendment: Resubmission of Open Access Transmission Tariff to be effective 2/20/2020.

*Filed Date:* 2/19/20.

*Accession Number:* 20200219–5075.

*Comments Due:* 5 p.m. ET 3/11/20.

*Docket Numbers:* ER20–529–002.

*Applicants:* Wilderness Line Holdings, LLC.

*Description:* Tariff Amendment: Resubmission of Windstar LGIA & TSA to be effective 12/31/9998.

*Filed Date:* 2/19/20.

*Accession Number:* 20200219–5086.

*Comments Due:* 5 p.m. ET 3/11/20.

*Docket Numbers:* ER20–1032–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Original WMPA SA No. 5592; Queue No. AE2–055 to be effective 1/22/2020.

*Filed Date:* 2/19/20.

*Accession Number:* 20200219–5055.

*Comments Due:* 5 p.m. ET 3/11/20.

*Docket Numbers:* ER20–1033–000.

*Applicants:* Portsmouth Genco, LLC, Portsmouth Genco, LLC.

*Description:* Notice of Cancellation of Market-Based Rate Tariff of Portsmouth Genco, LLC.

*Filed Date:* 2/18/20.

*Accession Number:* 20200218–5270.

*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER20–1034–000.

*Applicants:* Consolidated Edison Company of New York, Inc, New York Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: Amended Interconnection Agreement (SA1162)—Con Edison NY/NJ Port Authority to be effective 2/19/2020.

*Filed Date:* 2/19/20.

*Accession Number:* 20200219–5059.

*Comments Due:* 5 p.m. ET 3/11/20.

*Docket Numbers:* ER20–1035–000.

*Applicants:* Southern California Edison Company.

*Description:* Tariff Cancellation: Notice of Termination of SA Nos. 32 and 33 PAPCO to be effective 5/9/2020.

*Filed Date:* 2/19/20.

*Accession Number:* 20200219–5062.

*Comments Due:* 5 p.m. ET 3/11/20.

*Docket Numbers:* ER20–1036–000.

*Applicants:* The Potomac Edison Company, PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Potomac Edison submits revisions to OATT, Attachment H–11A re: OSFC to be effective 4/20/2020.

*Filed Date:* 2/19/20.

*Accession Number:* 20200219–5063.

*Comments Due:* 5 p.m. ET 3/11/20.

*Docket Numbers:* ER20–1037–000.

*Applicants:* Southern California Edison Company.

*Description:* § 205(d) Rate Filing: Amended GIA & Service Agreement Difwind Farms Ltd V, SA Nos. 991–992 WDT1130QFC to be effective 4/20/2020.

*Filed Date:* 2/19/20.

*Accession Number:* 20200219–5065.

*Comments Due:* 5 p.m. ET 3/11/20.

*Docket Numbers:* ER20–1038–000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* § 205(d) Rate Filing: 2–19–20 Unexecuted Agreements, City and County of San Francisco WDT SA (SA 275) to be effective 4/20/2020.

*Filed Date:* 2/19/20.

*Accession Number:* 20200219–5103.

*Comments Due:* 5 p.m. ET 3/11/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 19, 2020.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2020–03702 Filed 2–24–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. Ic20–6–000]**

## Commission Information Collection Activities (Ferc–725a(1b); Comment Request; Extension

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Notice of information collection and request for comments.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–725A(1B), (Mandatory Reliability Standards for the Bulk Power System)

**DATES:** Comments on the collection of information are due April 27, 2020.

**ADDRESSES:** You may submit comments (identified by Docket No. IC20–6–000) by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

*Instructions:* All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

*Docket:* Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

**FOR FURTHER INFORMATION CONTACT:** Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

**SUPPLEMENTARY INFORMATION:**

*Title:* FERC–725A(1B), (Mandatory Reliability Standards for the Bulk Power System).

*OMB Control No.:* 1902–0292.

*Type of Request:* Three-year extension of the FERC–725A(1B) information collection requirements with no changes to the current reporting and recordkeeping requirements.

*Abstract:* The FERC–725A(1B) Under section 215 of the Federal Power Act (FPA),1the Commission proposes to approve Reliability Standards TOP–010–1 (Real-time Reliability Monitoring and Analysis Capabilities) submitted by North American Electric Corporation (NERC). In this order, the Reliability Standards build on monitoring, real-time assessments and support effective situational awareness. The Reliability Standards accomplish this by requiring applicable entities to: (1) Provide notification to operators of real-time monitoring alarm failures; (2) provide operators with indications of the quality of information being provided by their monitoring and analysis capabilities; and (3) address deficiencies in the quality of information being provided by their monitoring and analysis capabilities. FERC–725A(1B) address situational awareness objectives by providing for operator awareness when key alarming tools are not performing as intended. These collections will improve real-time situational awareness capabilities and enhance reliable operations by requiring reliability coordinators, transmission operators, and balancing authorities to provide operators with an improved awareness of system conditions analysis capabilities, including alarm availability, so that operators may take appropriate steps to ensure reliability. These functions include planning, operations, data sharing, monitoring, and analysis.

*Type of Respondent:* Balancing Authority (BA),Transmission Operations (TOP) and Reliability Coordinators (RC).

*Estimate of Annual Burden*:[1] The Commission estimates the total annual burden and cost [2] for this information collection in the table below.

FERC–725A(1B), CHANGES DUE TO TOP–010–1 IN DOCKET NO. IC20–6–000 [3]

| Entity | Requirements & period | Number of respondents [4] | Annual number of responses per respondent | Total number of responses | Average burden & cost per response [5] | Total annual burden hours & total annual cost | Cost per respondent ($) |
|---|---|---|---|---|---|---|---|
| | | (1) | (2) | (1) * (2) = (3) | (4) | (3) * (4) = (5) | (5) ÷ (1) |
| BA [6] | Year 1 Implementation (one-time reporting). | 98 | 1 | 98 | 70 hrs.; $4,494.00 | 6,860 hrs.; $440,412.00. | $4,494.00 |
| | Starting in Year 2 (annual reporting). | 98 | 1 | 98 | 42 hrs.; $2,696.40 | 4,116 hrs.; $264,247.20. | $2,696.40 |
| TOP [7] | Year 1 Implementation (one-time reporting). | 169 | 1 | 169 | 70 hrs.; $4,494.00 | 11,830 hrs.; $759,486.00. | $4,494.00 |

[1] "Burden" is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

[2] Costs (for wages and benefits) are based on wage figures from the Bureau of Labor Statistics (BLS) for May 2019 (at *https://www.bls.gov/oes/current/naics2_22.htm*) and benefits information (at *https://www.bls.gov/news.release/ecec.nr0.htm).*

[3] Our estimates are based on the NERC Compliance Registry Summary of Entities and Functions as of January 31, 2019, which indicates there are registered as BA and TOP.

[4] The number of respondents is the number of entities in which a change in burden from the current standards to the proposed exists, not the total number of entities from the current or proposed standards that are applicable.

[5] The estimated hourly costs (salary plus benefits) are based on Bureau of Labor Statistics (BLS) information, as of May 2019 (at *http://www.bls.gov/oes/current/naics2_22.htm,* with updated benefits information for March 2019 at *http://www.bls.gov/news.release/ecec.nr0.htm*), for an electrical engineer (code 17–2071, $68.17/hour), and for information and record clerks record keeper (code 43–4199, $40.84/hour). The hourly figure for engineers is used for reporting; the hourly figure for information and record clerks is used for document retention.

FERC–725A(1B), CHANGES DUE TO TOP–010–1 IN DOCKET NO. IC20–6–000 [3]—Continued

| Entity | Requirements & period | Number of respondents [4] (1) | Annual number of responses per respondent (2) | Total number of responses (1) * (2) = (3) | Average burden & cost per response [5] (4) | Total annual burden hours & total annual cost (3) * (4) = (5) | Cost per respondent ($) (5) ÷ (1) |
|---|---|---|---|---|---|---|---|
| | Starting in Year 2 (annual reporting). | 169 | 1 | 169 | 40 hrs.; $2,568.00 ..... | 6,760 hrs.; $433,992.00. | $2,568.00 |
| BA/TOP ..... | Annual Record Retention. | 267 | 1 | 267 | 2 hrs.; $75.38 ..... | 534 hrs.; $20,126.46 | $75.38 |
| Total Burden Hours Per Year. | ..... | ..... | ..... | ..... | ..... | 19,224 hrs. $1,220,024.46 (Year 1); 11,410 hrs. $718,365.66 per year, (starting in Year 2). | |

**Averaging One-Time Burden and Responses for FERC–725A(1B), Changes Due to TOP–010–1 in Docket No. IC20–6–000 Over Years 1–3**

—Year 1 has 19,224 hrs. of burden and record retention

—Years 2 and 3 have on-going annual burden and record retention of 11,410 hrs.

For purposes of this OMB clearance, the 19,224 one-time burden hours will be averaged over Years 1–3. After Year 3, the one-time burden hours will then be removed from the inventory. The estimated additional burden due to this Order is 14,014 [consisting of (19,224 +11,410 + 11,410) ÷ 3].

*Comments:* Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

[6] Balancing Authority (BA). The following Requirements and associated measures apply to balancing authorities: Requirement R1: A revised data specification and writing the required operating process/operating procedure; and Requirement R2: Quality monitoring logs and the data errors and corrective action logs.

[7] Transmission Operations (TOP). The following Requirements and associated measures apply to transmission operators: Requirement R1: A revised data specification and writing the required operating process/operating procedure; and Requirement R3: Alarm process monitor performance logs to maintain performance logs and corrective action plans.

Dated: February 19, 2020.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–03698 Filed 2–24–20; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–10005–70–OECA]**

### Applicability Determination Index Data System Posting: EPA Formal Responses to Inquiries Concerning Compliance With Clean Air Act Stationary Source Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** This document announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made with regard to the New Source Performance Standards (NSPS); the National Emission Standards for Hazardous Air Pollutants (NESHAP); the Emission Guidelines and Federal Plan Requirements for existing sources; and/or the Stratospheric Ozone Protection Program.

**FOR FURTHER INFORMATION CONTACT:** An electronic copy of each complete document posted on the Applicability Determination Index (ADI) data system is available on the internet through the Resources and Guidance Documents for Compliance Assistance page of the Clean Air Act Compliance Monitoring website under ''Air'' at: *https://www2.epa.gov/compliance/resources-and-guidance-documents-compliance-assistance.* The letters and memoranda on the ADI may be located by author, date, office of issuance, subpart, citation, control number, or by string word searches. For questions about the ADI or this document, contact Maria Malave, Monitoring, Assistance and Media Programs Division by phone at: (202) 564–7027, or by email at: *malave.maria@epa.gov.* For technical questions about individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

**SUPPLEMENTARY INFORMATION:**

### Background

The General Provisions of the NSPS in 40 Code of Federal Regulations (CFR) part 60 and the General Provisions of the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. 40 CFR 60.5 and 61.06. The General Provisions in 40 CFR part 60 also apply to Federal and EPA-approved state plans for existing sources in 40 CFR part 62. See 40 CFR 62.02(b)(2). The EPA's written responses to source or facility-specific inquiries on provisions in 40 CFR parts 60, 61 and 62 are commonly referred to as applicability determinations. Although the NESHAP 40 CFR part 63 regulations [which include Maximum Achievable Control Technology (MACT) standards and/or Generally Available Control Technology (GACT) standards] contain no specific regulatory provision providing that sources may request applicability determinations, the EPA also responds to written inquiries regarding applicability for the 40 CFR part 63 regulations. In addition, the General Provisions in 40 CFR parts 60 and 63 allow sources to seek permission to use monitoring or recordkeeping that is different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). The EPA's written responses to these inquiries are commonly referred to as

alternative monitoring decisions. Furthermore, the EPA responds to written inquiries about the broad range of regulatory requirements in 40 CFR parts 60 through 63 as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping, or reporting requirements contained in the regulation. The EPA's written responses to these inquiries are commonly referred to as regulatory interpretations.

The EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them to the ADI on a regular basis. In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric ozone regulations, contained in 40 CFR part 82. The ADI is a data system accessed via the internet, with over three thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS, NESHAP, emission guidelines and Federal Plans for existing sources, and stratospheric ozone regulations. Users can search for letters and memoranda by author, date, office of issuance, subpart, citation, control number, or by string word searches.

Today's document comprises a summary of 78 such documents added to the ADI on February 7, 2020. This document lists the subject and header of each letter and memorandum, as well as a brief abstract of the content. Complete copies of these documents may be obtained from the ADI on the internet through the Resources and Guidance Documents for Compliance Assistance page of the Clean Air Act Compliance Monitoring website under ''Air'' at: *https://www2.epa.gov/compliance/resources-and-guidance-documents-compliance-assistance.*

**Summary of Headers and Abstracts**

The following table identifies the database control number for each document posted on February 7, 2020 to the ADI data system; the applicable category; the section(s) and/or subpart(s) of 40 CFR parts 60, 61, 62, 63 and 82 (as applicable) addressed in the document; and the title of the document, which provides a brief description of the subject matter.

Also included in this document, is an abstract of each document identified with its control number. These abstracts are being provided to the public as possible items of interest and are not intended as substitutes for the contents of the original documents. This document does not change the status of any document with respect to whether it is ''of nationwide scope or effect'' for purposes of CAA section 307(b)(1). For example, this document does not convert an applicability determination for a particular source into a nationwide rule. Neither does it purport to make a previously non-binding document binding.

ADI Determinations Uploaded on February 7, 2020

| Control No. | Categories | Subparts | Title |
|---|---|---|---|
| 1600003 | NSPS | IIII | Diesel Engine Certification and Applicability of Testing Provisions for Proposed Diesel Engines. |
| 1800004 | NSPS | J, Ja | Alternative Monitoring Plan for Hydrogen Sulfide Monitoring of Tank Degassing Operations at Refineries. |
| 1800010 | NESHAP, NSPS | J, Ja, UUU | Alternative Monitoring Plan Modifications for Two Wet Gas Scrubbers at a Refinery. |
| 1800011 | NESHAP, NSPS | J, Ja, UUU | Alternative Monitoring Plan Modifications for Two Wet Gas Scrubbers at a Refinery. |
| 1800012 | NSPS | EEEE | Performance Test Waiver for Opacity at a Portable Air Curtain Incinerator. |
| 1800014 | NSPS | WWW | Alternative Compliance Timeline for Landfill Gas Extraction Well. |
| 1800015 | NSPS | OOO | Applicability Determination for Crushers and Downstream Equipment at Mineral Processing Plants. |
| 1800016 | NSPS | DDDD, FFFF | Applicability Determination of the Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units. |
| 1800017 | NSPS | J, Ja | Alternative Monitoring Plan for Portable Flares and Fuel Gas Combustion Devices for Degassing Operations at a Refinery. |
| 1800018 | NSPS | LLLL | Alternative Monitoring Request for a Nitrogen Oxides Emissions Control Device at a Sewage Sludge Incinerator. |
| 1800019 | NSPS | A, Ja | Alternative Monitoring Plan for Hydrogen Sulfide from a Flare at a Refinery. |
| 1800020 | NSPS | A, Ja | Alternative Monitoring Plan for Hydrogen Sulfide from a Flare at a Refinery. |
| 1800021 | NESHAP, NSPS | J, UUU | Alternative Monitoring Plan for a Wet Gas Scrubber at a Refinery. |
| 1800022 | NESHAP, NSPS | J, UUU | Alternative Monitoring Plan for a Wet Gas Scrubber at a Refinery. |
| 1800023 | NSPS | Ja | Monitoring Exemption Request for Hydrogen Sulfide Monitoring of Low-Sulfur Fuel Gas Streams at a Refinery. |
| 1800024 | NSPS | J | Monitoring Exemption Request for Monitoring of Low Sulfur Vent Gas Stream at a Refinery. |
| 1800025 | NESHAP, NSPS | HH, OOOO | Applicability Determination for Flow-Through Transfer Sumps at Natural Gas Booster Station. |
| 1800026 | NSPS | KKKK | Regulatory Interpretation of Monitoring Requirements for a Combustion Turbine Firing Emergency Fuel. |
| 1800027 | NSPS | D, Db | Alternative Sulfur Dioxide Emissions Limitations for Cogeneration Boilers at a Wet Milling Facility. |

ADI DETERMINATIONS UPLOADED ON FEBRUARY 7, 2020—Continued

| Control No. | Categories | Subparts | Title |
|---|---|---|---|
| 1800028 | Federal Plan, MACT, NSPS | DDDD, III, G | Operating Parameter Limits and Oxygen Monitoring Waiver for Three Energy Recovery Units. |
| 1800029 | NESHAP, NSPS | A, JJJJ, ZZZZ | Applicability Determination for Three Stationary Spark Ignition Engines at a Landfill. |
| 1800030 | NSPS | A, UUU | Alternative Monitoring Request for Continuous Opacity Monitoring Requirements at a Mineral Processing Facility. |
| 1800031 | NESHAP, NSPS | Kb, WW | Alternative Monitoring Plan for Internal Floating Roof Storage Tanks. |
| 1800032 | NSPS | UUU | Applicability Determination for Autoclaves. |
| 1800033 | NSPS | Ja | Alternative Monitoring Plan for Coker Flare at a Refinery. |
| 1800034 | NSPS | Ja | Alternative Monitoring Plan for a Refinery Flare. |
| 1800035 | NSPS | KKKK | Waiver Request of the Frequency of $NO_X$ Emission Rate Testing for Emergency Fuels on Combustion Turbine. |
| 1800036 | NESHAP, NSPS | JJJJ, ZZZZ | Applicability Determination for a Non-Emergency Spark Ignition Internal Combustion Engine Burning Natural Gas and Landfill/Digester Gas. |
| 1800037 | NSPS | GG | Regulatory Interpretation for Nitrogen Oxide Limit for Stationary Gas Turbine. |
| 1800038 | MACT, NSPS | IIII, JJJJ, ZZZZ | Applicability Determination for Three Internal Combustion Engines at a Compressor Station. |
| 1800039 | NSPS | Ja | Monitoring Exemption Request for Low-Sulfur Fuel Gas Streams at a Refinery. |
| 1800040 | NSPS | Ja | Alternative Monitoring Plan for Hydrogen Sulfide in Low-Sulfur Fuel Gas Stream at a Petroleum Refinery. |
| 1800041 | NSPS | A, Ec | Alternative Monitoring Plan for a Hospital/Medical/Infectious Waste Incinerator. |
| 1800042 | NESHAP, NSPS | J, UUU | Alternative Monitoring Request for Wet Gas Scrubber on a Fluidized Catalytic Cracking Unit at a Petroleum Refinery. |
| 1800043 | NSPS | J | Alternative Monitoring Request for Sulfur Dioxide Using Continuous Emissions Monitoring System and Flue Gas Calculation at a Refinery. |
| 1800044 | NSPS | Ec | Alternative Monitoring Operating Parameter Limits for Two Hospital/Medical/Infectious Waste Incinerators. |
| 1800045 | NSPS | A, Ja | Alternative Monitoring Plan for Mass Spectrometer Analyzer on Flare System at a Refinery. |
| 1800046 | NSPS | A, Ja | Alternative Monitoring Plan for Mass Spectrometer Analyzer on Flare at a Refinery. |
| 1800047 | NSPS | Db | Boiler De-rate Request at a Central Heating Plant. |
| 1900001 | NSPS | Ja | Alternative Monitoring Request for Hydrogen Sulfide in Flare at a Refinery. |
| 1900002 | NSPS | Ja | Alternative Monitoring Request for Hydrogen Sulfide in Flares at a Petroleum Refinery. |
| 1900003 | NSPS | Ja | Alternative Monitoring Plan for Span Gas Concentration for Total Reduced Sulfur Continuous Emissions Monitoring System at a Petroleum Refinery. |
| 1900004 | NESHAP, NSPS | J, UUU | Alternative Monitoring Plan for Wet Gas Scrubber on a Fluidized Catalytic Cracking Unit at a Refinery. |
| 1900005 | NESHAP, NSPS | J, Ja, UUU | Alternative Monitoring Request for Wet Gas Scrubber on a Fluidized Catalytic Cracking Unit at a Refinery. |
| 1900006 | NESHAP, NSPS | J, UUU | Alternative Monitoring Plan for Wet Gas Scrubber on a Fluidized Catalytic Cracking Unit at a Refinery. |
| 1900007 | NSPS | Ja | Alternative Monitoring Request for Hydrogen Sulfide and Sulfur at Four Refinery Flares. |
| 1900008 | NSPS | J | Monitoring Exemption Request for Hydrogen Sulfide in Low-Sulfur Fuel Gas Stream at a Refinery. |
| 1900009 | NSPS | JJJJ | Performance Test Waiver for Stationary Spark Ignition Internal Combustion Engines at a Landfill. |
| 1900010 | NSPS | J | Monitoring Exemption Request for Hydrogen Sulfide in Low-Sulfur Fuel Gas Stream at a Refinery. |
| 1900011 | NSPS | Ja | Monitoring Exemption for Hydrogen Sulfide on Low-Sulfur Fuel Gas Stream at a Refinery. |
| 1900012 | NSPS | Ec | Alternative Monitoring Operating Parameter Limits and Performance Testing Plan at a Hospital/Medical/Infectious Waste Incinerator. |
| 1900013 | NSPS | BB | Economic Feasibility Exemption Determination for Brown Stock Washers at Pulp Mill. |
| 1900014 | NESHAP, NSPS | DDDD, EEE | Alternative Monitoring Request for Hydrogen Chloride from Solid Waste Incineration Units. |
| 1900015 | NSPS | Kb | Alternative Monitoring Request for Floating Roof on Ethanol Storage Tank. |
| 1900016 | NSPS | D | Alternative Monitoring Request for Nitrogen Oxides in Sulfite Recovery Boiler at a Pulp Mill. |

ADI DETERMINATIONS UPLOADED ON FEBRUARY 7, 2020—Continued

| Control No. | Categories | Subparts | Title |
|---|---|---|---|
| 1900017 | NSPS | BBa | Alternative Monitoring Request for Total Reduced Sulfur in Brownstock Washer System at a Pulp Mill. |
| 1900018 | NSPS | BBa | Monitoring Waiver Request for Brownstock Washer System at a Pulp Mill. |
| 1900019 | NESHAP, NSPS | DDDD, EEE | Performance Test Waiver for Dioxin/Furan on Seven Boilers at a Chemical Plant. |
| 1900021 | NSPS | DDDD | Alternative Monitoring Request for Scrubber on a Waste Heat Boiler. |
| 1900022 | NSPS | DDDD | Performance Test Waiver for Hydrogen Chloride at Solid Waste Incineration Units. |
| 1900023 | NSPS | A | Withdrawal of Regulatory Interpretation for NSPS Part 60 Subpart A Notification, Recordkeeping, and Monitoring Requirements. |
| A160003 | Asbestos | M | Regulatory Clarification of Documentation to Identify Building Materials as Non-Asbestos Containing Material. |
| FP00007 | Federal Plan | HHH | Alternative Operating Parameter Request for Hospital/Medical/Infectious Waste Incinerator. |
| M100091 | MACT | A, DDDDD | Regulatory Interpretation Regarding Use of Electronic Reporting Tool. |
| M150022 | MACT | DDDDD | Applicability Determination for Two Boilers at a Pulp and Paper Mill. |
| M180003 | MACT | EEE | Alternative Monitoring Request for Flue Gas Flow Rate at Three Hazardous Waste Combustion Incinerators. |
| M180006 | MACT | ZZZZ | Additional Non-Emergency Run-Time Hours Request for Emergency Diesel Generator. |
| M180007 | MACT | HHHHH | Alternative Operating Parameters Request for Carbon Adsorption System at Coating Manufacturing Facility. |
| M180008 | MACT | EEE | Waiver Request for Maximum Ash Feed Rate Operating Parameter Limit for Three Hazardous Waste Incinerators. |
| M180009 | MACT | HH | Alternative Monitoring Plan for Ethylene Glycol Cooling Jacket Leak Detection at Six Gas Processing Plants. |
| M180010 | MACT | HH, DDDDD | Applicability Determination for Glycol Dehydration Reboiler at a Compressor Station. |
| M180012 | MACT | CC | Temporary Alternative Monitoring Request for Flare Pilot Flame at a Refinery. |
| M180013 | MACT | ZZZZ | Applicability Determination for Five Stationary Combustion Engines at a Booster Station. |
| M190001 | MACT | ZZZZ | Monitoring Waiver Request for Catalyst Inlet Temperature for Non-emergency Generators. |
| M190002 | MACT | FFFF | Alternative Monitoring Request for Pilot Flame on Hydrogen Flare. |
| M190003 | MACT | MM | Alternative Monitoring Request for Lime Kiln Scrubber. |
| Z180003 | NESHAP | ZZZZ | Alternative Monitoring Request for Two Internal Combustion Engines at a Nuclear Power Station. |
| Z180004 | NESHAP | LLLLL | Alternative Monitoring Plan for Asphalt Storage Tanks During Annual Regenerative Thermal Oxidizer Shutdown. |

**Abstracts**

*Abstract for [1600003]*

Q1: Does EPA determine that four new proposed diesel engines at Taunton Municipal Light Plant's (TMLP's) West Water Street facility in Taunton, Massachusetts, subject New Source Performance Standards for Stationary Compression Ignition Internal Combustion Engines, 40 CFR part 60, subpart IIII, would maintain their EPA NSPS Tier 4 certification with the addition of supplemental controls?

A1: Yes. Based on the statement provided by the vendor that the add-on $DeNO_x$ system will not affect the certification or the operation of the factory emissions controls of the engines, and as long as the engines are certified, operated and maintained according to the applicable provisions for manufacturers and owners of certified engines, EPA finds the addition of the supplemental $DeNO_x$ system controls will not affect the certification of the engine.

Q2: Does EPA determine that the provisions in 40 CFR 60.4211(g) requiring engine testing apply to these engines?

A2: No. EPA has determined that as long as TMLP installs, configures, operates, and maintains the proposed Tier 4 certified engines and control devices according to the manufacturers emission-related instructions, and TMLP does not change the engine emission-related settings in a way that is not permitted by the manufacturer, the provisions of 40 CFR 60.4211(g) would not apply to the proposed engines.

*Abstract for [1800004]*

Q: Does EPA approve an Alternative Monitoring Plan (AMP) for Diversified Vapor Technologies (DVT) to conduct monitoring of hydrogen sulfide (H2S) emissions, in lieu of installing a continuous emission monitoring system (CEMS), when performing tank degassing and other similar operations controlled by portable, temporary thermal oxidizers, at various refineries located within Region 6 states that are subject to NSPS subparts J or Ja?

A: Yes. Based on the description of the process, the vent gas streams, the design of the vent gas controls, and the H2S monitoring data furnished, EPA conditionally approves the AMP since it

is impractical to require monitoring via an H2S CEMS. As part of the conditional approval, EPA is including proposed operating parameter limits and data which the refineries must furnish to DVT. The approved AMP is only for degassing operations conducted at refineries in EPA Region 6.

*Abstract for [1800010]*

Q: Does EPA approve modifications to previously issued Alternative Monitoring Plans (AMPs) for Low Energy Jet Ejector Venturi (JEV) type Wet Gas Scrubbers (WGS) on two Fluidized Catalytic Cracking Units (FCCU) at the ExxonMobil Baytown Refinery, located in Baytown, Texas, subject to NSPS subparts J and Ja, and also to requirements of NESHAP subpart UUU, for parametric monitoring of opacity at the WGSs in lieu of a Continuous Opacity Monitoring System (COMS), due to changes in operating conditions at the units when moisture levels are high in the stacks?

A: Yes. Based upon the design of the WGS units and the process specific supplemental information provided, EPA approves the AMP modifications to use parametric monitoring in lieu of COMS. EPA reviewed the recent performance test results and found the data supportive for the revised final operating parameter limits (OPLs). The OPLs that EPA approves for demonstrating compliance with the AMP include minimum L/G, maximum effluent stack gas temperature, and the updated liquid flow calculation using the inlet JEV pressure and the JEV nozzle size as the restriction orifice variable.

*Abstract for [1800011]*

Q: Does EPA approve modifications to previously issued Alternative Monitoring Plans (AMPs) for Low Energy Jet Ejector Venturi (JEV) type Wet Gas Scrubbers (WGSs) on two Fluidized Catalytic Cracking Units (FCCUs) at the ExxonMobil Beaumont Refinery, located in Beaumont, Texas, subject to NSPS subparts J and Ja, and also to requirements of NESHAP subpart UUU, for parametric monitoring of opacity at the WGSs in lieu of a Continuous Opacity Monitoring System, due to changes in operating conditions at the units when moisture levels are high in the stacks?

A: Yes. Based on evaluation of results from three one-hour test runs, consistent with the FCCU operating conditions during the performance test, EPA approves the AMP modifications to use parametric monitoring in lieu of COMS, including the minimum L/G and a new maximum coke burn-off rate for the FCCU.

*Abstract for [1800012]*

Q1: Does EPA approve a waiver of the requirement to conduct Method 9 annual opacity tests under NSPS EEEE, applicable to Other Solid Waste Incinerators (OSWI), for a portable air curtain incinerator (ACI) owned by Hidden Lake Property Owners Association (HLPO) in Angel Fire, New Mexico?

A1: No. EPA does not grant the waiver for annual opacity testing using Method 9. This test is required to demonstrate compliance with startup and operating requirements of the ACI under the OSWI NSPS EEEE rule. OSWI NSPS rule at 40 CFR 60.2972(d) allows annual testing to occur upon startup of the unit, if periods longer than 12 months have passed since the prior annual test was conducted. If the unit is only operated a few months of the year, there is no requirement to maintain Method 9 opacity reader certification all year long, but only to obtain certification for those periods in which the ACI is operated and must be tested.

*Abstract for [1800014]*

Q1: Does EPA approve Environtech's request for an alternative timeline of 120 days from the date of initial exceedance to correct oxygen exceedances at several wells at its Morris, Illinois landfill subject to NSPS subpart WWW, applicable to municipal solid waste (MSW) landfills, if the design plan was amended to add some wells and remove other wells including the wells with the oxygen exceedances?

A1: No. EPA does not approve an alternative timeline of 120 days for the landfill to exceed the oxygen standard at several wells while landfill construction is underway. While NSPS subpart WWW allows an owner or operator to expand the landfill to correct an exceedance, the proposed design plan changes in this situation do not increase capacity and are not an expansion. In addition, the changes to the well system are not directly related to correcting the exceedances at the wells in question (other than to remove them).

Q2: Does EPA approve Environtech's request for an alternative timeline of 120 days from the date of initial exceedance to correct oxygen exceedances at a well that may have excess liquids?

A2: No. EPA does not approve the alternative timeline. While the NSPS subpart WWW allows an owner or operator to expand the landfill to correct an exceedance, that is not what is occurring in this situation. Rather, Environtech has determined that there may be liquids in this well and wants 120 days to complete the investigation and make repairs. EPA considers a period of 120 days an excessive amount of time to determine whether excess liquids are present and repair a well. EPA does not give alternative timelines to diagnose the causes of exceedances.

*Abstract for [1800015]*

Q1: Does EPA determine that certain processes at the Hi-Crush Proppants LLC (Hi-Crush) facilities located in Augusta, Blair, and Whitehall, Wisconsin meet the definitions of crush and nonmetallic mineral processing plants subject to 40 CFR part 60, subpart OOO, applicable to nonmetallic mineral processing plants?

A1: Yes. EPA determines that the Hi-Crush facilities meet the definition of nonmetallic mineral processing plants because they operate crushers that crush nonmetallic mineral material.

Q2: Does EPA determine that the processes downstream of the surge pile of washed sand stockpile are considered part of the nonmetallic mineral processing plant?

A2: The processes downstream of the surge pile at all three facilities and the processes downstream of the washed sand stockpile at the Blair facility are part of the ''production line'' of the nonmetallic mineral processing plant and subject to subpart OOO. While the processes downstream of the washed sand stockpile at the August and Whitehall facilities are not considered part of the nonmetallic mineral processing plant because these do not convey materials downstream within the nonmetallic mineral processing plant.

*Abstract for [1800016]*

Q: Does EPA determine that an incinerator owned by Covance Laboratories, Inc. (Covance), located in Greenfield, Indiana, in which 67 percent of the burned waste was municipal solid waste is subject to Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration (CISWI) Units, 40 CFR part 60, subpart DDDD?

A: No. EPA determines that Covance's incinerator is not a CISWI unit subject to Indiana's federally-approved state plan for CISWI units. However, subpart DDDD does not directly establish enforceable emission standards and other requirements applicable to the owner or operator of a CISWI unit. Further, Covance's incinerator would not be subject to an approved state plan that is based on and consistent with the current subpart DDDD.

*Abstract for [1800017]*

Q1: Does EPA approve the alternative monitoring request from St. Paul Park Refining Co. LLC (SPP) to use an alternative monitoring plan (AMP) for monitoring hydrogen sulfide (H2S) and sulfur dioxide ($SO_2$) emissions from portable flares and fuel gas combustion devices (FGCDs) used to control emissions from storage tank, process unit vessel and piping degassing for maintenance and cleaning events at the St. Paul Park, Minnesota refinery subject to NSPS subparts J and Ja?

A1: Yes. EPA approves the alternative monitoring plan since it is impractical to continuously monitor the H2S in and $SO_2$ emissions from gases going to portable FGCDs during the infrequent and temporary events when storage tanks, process unit vessels and piping are degassed for maintenance and cleaning operations.

Q2: Does EPA approve SPP's request, pursuant to 40 CFR 60.8(b), to waive the performance testing requirements under NSPS subparts J and Ja when performing storage tank degassing and cleaning operations and using a flare or FGCD for VOC emission control?

A2: Yes. EPA approves the performance testing waiver request for portable FGCSs because the provisions of the AMP will demonstrate SPP's compliance with the NSPS subpart J or Ja standard.

*Abstract for [1800018]*

Q: Does EPA approve Green Bay Metropolitan Sewerage District's request to use site specific operating parameters, operating limits, and averaging periods of a nitrogen oxides ($NO_X$) emissions control device at a new fluid bed sewage sludge incinerator (FBI) subject to 40 CFR subpart LLLL, at its wastewater treatment plant in Green Bay, Wisconsin?

A: Yes. EPA finds that the proposed parametric monitoring for used of the selective non-catalytic reduction (SNCR) technology to control $NO_X$ emissions from the FBI is sufficient to ensure compliance with the $NO_X$ emission limit at 40 CFR 60.4845. Under 40 CFR 60.4855(b), an affected source that does not use a wet scrubber, fabric filter, electrostatic precipitator, or activated carbon injection to comply with an emission limit can petition the Administrator for specific operating parameters, operating limits, and averaging periods to be established during the initial performance test and to be monitored continuously thereafter.

*Abstract for [1800019]*

Q: Does EPA approve an Alternative Monitoring Plan for alternate span gas concentration values for hydrogen sulfide on total reduced sulfur (TRS) continuous emissions monitoring systems (CEMS) for six flares at the CITGO Lake Charles Manufacturing Complex (CITGO) petroleum refinery in Lake Charles, Louisiana covered under NSPS subparts A and Ja?

A: Yes. Based on the process data and analyzer information submitted, EPA conditionally approves the request with specified concentration ranges. Additionally, CITGO must conduct linearity analysis on the TRS CEMS once every three years to determine each detector's linearity across the entire range of expected sulfur concentrations. A report of each completed linearity analysis shall be submitted to EPA Region 6 and the Louisiana Department of Environmental Quality and maintained in each facility's on-site records.

*Abstract for [1800020]*

Q: Does EPA approve an Alternative Monitoring Plan for alternate span gas concentration values for hydrogen sulfide on total reduced sulfur (TRS) continuous emissions monitoring systems (CEMS) for a refinery flare at the Placid Refining Company LLC (Placid) refinery in Port Allen, Louisiana covered under NSPS subparts A and Ja?

A: Yes. Based on the process data and analyzer information submitted, EPA conditionally approves the request with specified concentration ranges. Additionally, Placid must conduct linearity analysis on the TRS CEMS once every three years to determine each detector's linearity across the entire range of expected concentrations of acid gas vent streams. A report of each completed linearity analysis shall be submitted to EPA Region 6 and the Louisiana Department of Environmental Quality and maintained in each facility's on-site records.

*Abstract for [1800021]*

Q: Does EPA approve a modification to a previously issued Alternative Monitoring Plan (AMP) for a Wet Gas Scrubber (WGS) on a Fluidized Catalytic Cracking Unit at a Phillips 66 Company refinery, in Sweeny, Texas, subject to NSPS part 60 subpart J, and also new requirements of NESHAP part 63 subpart UUU, for parametric monitoring of opacity at the WGS in lieu of a Continuous Opacity Monitoring System, due to moisture interference on opacity readings in the stack?

A: Yes. Based upon the design of the WGS unit and the process specific supplemental information provided, EPA approves the AMP modification. EPA reviewed the recent performance test results and found the data supportive for retaining the establishing final OPLs. The OPLs approved for demonstrating compliance with the AMP included minimum Liquid-to-Gas Ratio, minimum water pressure to the quench/spray tower nozzles, and minimum pressure drop across filter modules/cyclolabs.

*Abstract for [1800022]*

Q: Does EPA approve a modification to a previously issued Alternative Monitoring Plan (AMP) for a Wet Gas Scrubber (WGS) on a Regenerative Catalytic Cracking Unit (RCCU) at the Shell Oil Products US refinery located in Norco, Louisiana, subject to NSPS part 60 subpart J, and also new requirements of NESHAP part 63 subpart UUU, for parametric monitoring of opacity at the WGS in lieu of a Continuous Opacity Monitoring System, due to moisture interference on opacity readings in the stack?

A: Yes. Based upon the design of the WGS unit and the process specific supplemental information provided, EPA approves the AMP modification. EPA reviewed the recent performance test results and found the data supportive for retaining the established final operating parameter limits (OPLs). The OPLs approved for demonstrating compliance with the AMP were minimum Liquid-to-Gas Ratio and Venturi Inlet Differential Pressure, defined as the flue gas inlet pressure to the four venturis, measured in inches water.

*Abstract for [1800023]*

Q: Does EPA approve a monitoring exemption in lieu of an Alternative Monitoring Plan for combusting an off-gas vent stream from a lean amine tank as an inherently low-content sulfur stream under NSPS for Refineries part 60 subpart Ja at the Wynnewood Refining Company, LLC (WRC) refinery located in Wynnewood, Oklahoma?

A: Yes. EPA conditionally approves the monitoring exemption for the off-gas vent stream. Based on the process operating parameters and monitoring data submitted by WRC, EPA determines that the vent gas stream is inherently low in sulfur according to 40 CFR 60.107a(a)(3)(iv). If the sulfur content or process operating parameters for the off-gas vent stream change from representations made for the monitoring exemption, WRC must document the changes, re-evaluate the vent stream characteristics, and follow the appropriate steps outlined in 40 CFR 60.107a(b)(3). The monitoring exemption should also be referenced

and attached to the facility's new source review and Title V permit for federal enforceability.

*Abstract for [1800024]*

Q: Does EPA approve a monitoring exemption in lieu of Alternative Monitoring Plan (AMP) for monitoring process parameters that affect hydrogen sulfide (H2S) concentrations in a vent gas stream, instead of installing a continuous emission monitoring system (CEMS) under NSPS subpart J, for a refinery to combust the off-gas vent stream from a Liquefied Petroleum Gas Merox Oxidizer Vent identified as inherently low in sulfur content and that is routed to Shell-Claus Off-Gas Treatment Unit Tail Gas Incinerator, at the Valero Corpus Christi West Refinery located in Corpus Christi, Texas?

A: Yes. Based on the description of the vent gas stream, the process parameters to be monitored, the design of the vent gas controls, and the H2S monitoring data furnished, EPA conditionally approves the monitoring exemption. EPA is including the facility's proposed operating parameter limits, which the facility must continue to monitor, as part of the conditional approval. If refinery operations change such that the sulfur content of the off-gas stream changes from representations delineated in the AMP, then Valero must document the change(s) and follow the appropriate steps at 40 CFR 60.105(b)(3)(i)–(iii).

*Abstract for [1800025]*

Q: Do the flow-through transfer sumps used at DCP Midstream's (DCP's) natural gas booster stations in Oklahoma meet the definition of affected storage vessels under NSPS subpart OOOO, applicable to crude oil and natural gas production, transmission and distribution?

A: No. Based on the design and operation data that DCP furnished, and EPA's review of the additional information submitted by the Oklahoma Department of Environmental Quality, EPA determines that the transfer sumps function as knockout vessels, and do not meet the definition and criteria to be an affected storage vessel under NSPS OOOO. EPA considered certain characteristics of the transfer sumps, including that there is a physical separation process operation that occurs, and the purpose of the sump is to provide for that physical separation. Additionally, collection of materials in the sumps is dependent on upstream process variables, not downstream operator discretion. In consideration of the process variables that may affect physical separation, transfer of collected separated materials to other vessels is accomplished by an automatic flow controller or other device with defined set points that trigger transfer, independent of operator action.

*Abstract for [1800026]*

Q1: Does EPA confirm that when firing an emergency fuel from a combustion turbine as defined in 40 CFR parts 72 and 75, that in accordance with appendix E, section 2.5.2.3, Marshfield Utilities (Marshfield), located in Marshfield, Wisconsin, may continue to use the nitrogen oxides ($NO_X$) correlation curve derived from the most recent stack test for monitoring and reporting the $NO_X$ emission rate?

A1: Yes. EPA confirms that Marshfield may use the most recently derived $NO_X$ correlation curve for monitoring and reporting of $NO_X$ emissions, but, according to appendix E paragraph 2.2, Marshfield may not use the most recently derived $NO_X$ correlation curve if that curve is over 5 years old.

Q2: Does EPA determine that Marshfield may continue to use the $NO_X$ correlation curve derived from the most recent stack test for monitoring and reporting the $NO_X$ emission rate even if the data is more than 5 years old?

A2: No. Paragraph 2.2 of appendix E clearly states that a correlation curve cannot be used for more than 20 calendar quarters.

Q3: Since appendix E does not require testing of emergency fuels and EPA's 2012 waiver determination requires Marshfield to follow the testing requirements of appendix E only, does EPA determine that the waiver could also waive $NO_X$ performance testing for distillate fuel oil when it is designated as an emergency fuel?

A3: Under paragraph 2.1.4 of appendix E, Marshfield is permitted to claim an exemption from the testing requirements for emergency fuels, but, if it does so, it must rely on the $NO_X$ Maximum Emission Rate (MER) for distillate fuel oil (200 ppm) for monitoring and reporting $NO_X$ emissions from combustion of the emergency fuel. Although paragraph 2.5.2.3 allows for use of a $NO_X$ correlation curve for monitoring and reporting combustion of emergency fuels, a $NO_X$ correlation curve cannot be used after it is over 5 years old. In such an instance, the $NO_X$ MER must be used. Because appendix E's $NO_X$ MER for distillate fuel oil (200 ppm) is greater than the NSPS KKKK $NO_X$ emission limit for fuel oil (74 ppm), $NO_X$ emission rate testing for distillate fuel oil must be conducted (and must show emission results at or below the limit in NSPS KKKK) to remain in compliance with NSPS KKKK when firing distillate fuel oil, whether or not as an emergency fuel.

*Abstract for [1800027]*

Q: Does EPA approve Tate & Lyle Ingredients Americas LLC's (Tate & Lyle's) request that the two Riley Stoker circulating fluid beds (CFB) boilers at its Decatur, Illinois corn wet milling facility be allowed to use the alternative rate and emission limit for sulfur dioxide ($SO_2$) set forth in 40 CFR 60.42b(k)(4) of subpart Db, rather than the current applicable rate and emission limit set forth in 40 CFR 60.43(a)(2) of subpart D?

A: Yes. Based on the information provided and as allowed under 40 CFR 60.43(d), EPA approves the Tate & Lyle's request with the assumption that all versions of the ASTM D2234 used by Tate & Lyle (*e.g.,* ASTM methods for analysis of sulfur in the coal and the gross calorific value) are specifically allowed under EPA Method 19.

*Abstract for [1800028]*

Q1: Does EPA approve site-specific operating parameter limits (OPLs) under NSPS subpart DDDD for three separate Energy Recovery Units (ERUs) located at the Americas Styrenics LLC facility in St. James, Louisiana?

A1: Yes. Upon review of the site-specific information provided, EPA conditionally approves the request for site-specific OPLs. Because the residue oil burned in all three ERUs is a non-hazardous secondary material that meets the definition of a solid waste per 40 CFR 241.3, all three ERUs must meet requirements specified in subpart DDDD, including performance testing. Each ERU must be performance tested to demonstrate compliance with emission limitations at four different test conditions that represent the overall operational range of the units. EPA categorized and evaluated the type of operating parameters to be established, based upon the type of monitoring to be conducted following the initial performance testing.

Q2: Does EPA also approve a waiver related to the monitoring of oxygen levels during startup and shutdown of the ERUs under subpart DDDD, based upon the Commercial and Industrial Solid Waste Incineration Units (CISWI) rule?

A2: No. EPA does not approve the monitoring waiver because the startup and shutdown provisions specific to ERUs in the 2016 final CISWI rule apply.

*Abstract for [1800029]*

Q: Does EPA determine that a fuel change from landfill gas (LFG) to natural gas (NG) at the Milam Recycling & Disposal Facility in East St. Louis, Illinois is a modification under the NSPS subpart JJJJ if the engines were originally designed to combust NG, then combusted LFG, and now combust NG? Changes to the fuel regulator and air-to-fuel ratio were needed to change from NG to LFG and then back again.

A: No. EPA determines that the use of NG as a fuel source in the three engines does not constitute a modification under the NSPS. The Caterpillar 3516 engines were designed to combust NG. The relatively minor changes made to the fuel regulator and to the air-to-fuel ratio did not change the fact that the engines themselves were and are capable of accommodating NG. In addition, the Title V permit in effect at the time of the request allowed the use of both LFG and NG.

*Abstract for [1800030]*

Q1: Does the EPA determine that gypsum dryer units at the Calcium Products facility in Fort Dodge, Iowa, subject to 40 CFR part 60, subpart UUU with a Potential to Emit less than 11 tons per year of particulate matter (PM) are exempt from monitoring requirements?

A1: Yes. EPA determines that the facility has successfully demonstrated via stack test to have potential PM emissions less than 11 tons per year and is exempt from the monitoring requirements in 40 CFR 60.743. The exemption is under the condition that Calcium Products will operate and maintain the control devices in a manner consistent with good engineering control practices anytime the dryers are in operation, this would include ensuring that fabric bags are in good working order at all times.

Q2: Does EPA approve the alternative monitoring request to use a Bag Leak Detection System (BLDS) in lieu of the Continuous Opacity Monitors at the facility?

A2: Yes. EPA conditionally approves the alternative monitoring request to use BLDS. Calcium Products is required to immediately document any BLDS alarms and take corrective actions to reduce or eliminate the cause of the alarms. The failure to immediately investigate, document the root cause, and implement corrective actions to minimize or eliminate the cause of the alarm will be considered a violation of the monitoring requirements of 40 CFR 60.734. The AMP conditions are specified in the EPA response letter.

*Abstract for [1800031]*

Q: Does EPA approve the Phillips 66 request to conduct a top-side in-service inspection to meet the internal out-of-service inspection requirements for internal floating roof (IFR) storage tanks subject to 40 CFR part 60, subpart Kb at multiple facilities?

A: Yes. Based on the tank data and the inspection procedures described in Phillips 66's AMP request, EPA has determined under 40 CFR 60.13(i) that the specified IFR storage tanks can be properly inspected and repaired with the proposed top-side internal inspection methodology. Phillips 66 agrees to use the inspection requirements in 40 CFR 63.1063(d) of NESHAP subpart WWW, which require the facility to identify and address any gaps of more than 0.32 centimeters (⅛ inch) between any deck fitting gasket, seal, or wiper and any surface that it is intended to seal, instead of complying with the less rigorous visual inspection requirements under NSPS subpart Kb for which a measurement criterion is not established. EPA's approval of this AMP is contingent upon Phillips 66 continuing to have visual access to all deck components specified in paragraph (a) of 40 CFR 63.1063.

*Abstract for [1800032]*

Q: Does EPA determine that autoclaves operated by GP Industrial Plasters LLC (GP), located in Blue Rapids, Kansas, are classified as calciners and subject to 40 CFR part 60, subpart UUU?

A: No. EPA determines that the autoclaves operated by GP release no particulate matter to the environment during the processing of gypsum since these are used to remove water from gypsum rock. However, the pan dryers, where the gypsum is discharged to, are still subject to UUU.

*Abstract for [1800033]*

Q: Does EPA approve HollyFrontier Cheyenne Refining LLC's (HFCR's) alternative monitoring plan request to use data from low range hydrogen sulfide validations and daily and quarterly cylinder gas audits as an alternative to the total reduced sulfur quality assurance procedure described in 40 CFR 60.107a(e)(1)(iii) for the Coker flare at the HFCR refinery in Cheyenne, Wyoming subject to NSPS subpart Ja?

A: Yes. EPA conditionally approves the HFCR's request and is requiring higher concentration calibrations for the high span portion of the analyzer. The approval is conditioned on HFCR's agreement that it will not challenge any of the high range values measured by the analyzer even though higher concentration calibration gases will not be used for daily and periodic calibrations.

*Abstract for [1800034]*

Q: Does EPA approve Sinclair Casper Refining Company's (SCRC's) alternative monitoring plan (AMP) request to use the lower concentration of hydrogen sulfide as an alternative to the total reduced sulfur quality assurance procedure described in 40 CFR 60.107a(e)(1)(iii) for a refinery flare at the SCRC refinery in Casper, Wyoming subject to NSPS subpart Ja?

A: Yes. EPA conditionally approves the AMP request and is requiring higher concentration calibrations for the high span portion of the analyzer. The approval is conditioned on SCRC's agreement that it will not challenge any of the high range values measured by the analyzer even though higher concentration calibration gases will not be used for daily and periodic calibrations.

*Abstract for [1800035]*

Q: Does EPA approve Marshfield Utilities' (Marshfield) waiver of the frequency of nitrogen oxides ($NO_X$) emission rate testing for emergency fuels on combustion turbine that is subject to the statutes of 40 CFR part 60, subpart KKKK (NSPS KKKK) and 40 CFR part 75, appendix E (appendix E)?

A: EPA determines that Marshfield Utilities may rely upon the exemption in appendix E, at section 2.1.4, to forgo appendix E's $NO_X$ performance testing requirements for distillate fuel oil as an emergency fuel but only after it has received all appropriate modifications to its permit(s) necessary to designate distillate fuel oil as an emergency fuel under 40 CFR part 75. All emissions reported pursuant to appendix E, must use the $NO_X$ maximum emission rate (MER) for distillate fuel oil. Since the distillate fuel oil $NO_X$ MER of appendix E is greater than the $NO_X$ compliance limit established by NSPS KKKK, performance testing for emergency fuel under NSPS KKKK is required. Therefore, the $NO_X$ emission rate testing for distillate fuel oil, as an emergency fuel, may be conducted every 5 years in accordance with the testing requirements of NSPS KKKK.

*Abstract for [1800036]*

Q1: Does EPA determine that 40 CFR part 60, subpart JJJJ applies to a 1,550 bhp, non-emergency spark ignition internal combustion engine (SI ICE) that will use a blend of digester gas/natural gas?

A1: Yes. EPA determines that 40 CFR part 60, subpart JJJJ does apply to a non-emergency SI ICE constructed after June 12, 2006, and manufactured on or after July 1, 2007, that will use a blend of digester gas/natural gas.

Q2: If subpart JJJJ applies, which of the emission standards in Table 1 to subpart JJJJ apply to the engine?

A2: When the engine burns a blend of natural gas and landfill/digester gas, it must comply with both emission standards of Table 1 to subpart JJJJ (the standards for natural gas engines and the standards for landfill/digester gas engines). Therefore, an engine in question must meet the more stringent standards that apply, which are for engines that burn natural gas.

*Abstract for [1800037]*

Q: Does EPA agree with the Oklahoma Department of Environmental Quality's (ODEQ's) determination that a Solar MARS 90 turbine located in Oklahoma does not need to comply with the $NO_X$ standard of NSPS subpart GG?

A: No. EPA indicated to ODEQ that the turbine must comply with the $NO_X$ standard as required by 40 CFR 60.332(d). EPA agreed that 40 CFR 60.332(b) applies to only electric utility stationary gas turbines, and that 40 CFR 60.332(c) is not applicable because the Solar MARS 90 turbine is rated at 114 MMBtu/hour and has a heat input at peak load greater than 100 MMBtu/hour. EPA did not agree with ODEQ's interpretation that 40 CFR 60.332(d) is only applicable to electric utility stationary gas turbines.

*Abstract for [1800038]*

Q: Does EPA determine that three newly installed engines at the Enable Midstream Partners, LP F&H compressor station located in Latimer County, Oklahoma are subject to area source requirements under 40 CFR part 63, subpart ZZZZ (RICE NESHAP)?

A: Yes. EPA determines that the engines would be subject to area source requirements under the RICE NESHAP and would only need to demonstrate compliance by meeting requirements of NSPS subpart JJJJ. On January 25, 2018, EPA issued a new guidance memorandum that superseded previous OIAI policy. Under the new guidance, a major source that takes an enforceable limit on its potential to emit and brings its HAP emissions below the applicable threshold becomes an area source, irrespective of when the source limits its potential to emit. Enable took steps to reduce the facility-wide potential to emit to below major HAP source levels prior to removing four existing engines and installing three new engines. Since the new engines were installed after the facility status changed to an area source for HAP emissions, the new engines are subject to the area source requirements under 40 CFR 63.6590(c), which specifies that a new or reconstructed stationary engine located at an area source must meet RICE NESHAP requirements by complying with the requirements of 40 CFR part 60, subpart IIII, for compression ignition engines, or 40 CFR part 60, subpart JJJJ, for spark ignition engines.

*Abstract for [1800039]*

Q: Does EPA approve an exemption from continuous monitoring requirements for hydrogen sulfide (H2S) concentrations in a vent gas stream under NSPS subpart Ja for fuel gas streams low in sulfur content at the Holly Refining Tulsa East Loading Terminal in Tulsa, Oklahoma, which combusts off-gas vent streams from gasoline and diesel product loading?

A: Yes. Based on the description of the vent gas streams, the product specifications and parameters that were monitored, the design of the vent gas controls, and the H2S monitoring data furnished, EPA conditionally approves three exemptions under NSPS subpart Ja. EPA included requirements for evaluating future additional products for sulfur content prior to loading as part of the conditional approval.

*Abstract for [1800040]*

Q: Does EPA approve an Alternative Monitoring Plan (AMP) for monitoring process parameters that affect hydrogen sulfide (H2S) concentrations in a vent gas stream subject to NSPS subpart Ja at the Marathon Petroleum refinery in Garyville, Louisiana, which combusts the off-gas vent stream from a light naphtha Merox Oxidizer unit at a refinery crude heater?

A: Yes. Based on the description of the vent gas stream, the key process parameter to be monitored, the design of the vent gas controls, and the H2S monitoring data furnished, EPA conditionally approves the AMP since it meets the exemption criteria of 40 CFR 60.107a(a)(3)(iv), for fuel gas streams that are low-sulfur and the Unit 210 Crude Heater does not need to meet the continuous monitoring requirements of either 40 CFR 60.107a(a)(l) or (2) under the NSPS Ja. EPA included the facility's proposed operating parameter limit which the facility must continue to monitor as part of the conditional approval.

*Abstract for [1800041]*

Q: Does EPA approve the request for an alternative monitoring plan (AMP) for the Monarch Waste Technologies, LLC (MWT) Pyromed Pyrolysis System to be operated at the Nambe Pueblo near Santa Fe, New Mexico as a hospital/medical/infectious waste incinerator (HMIWI) under NSPS Ec?

A: No. EPA determines that the petition does not provide specific information about the control equipment installed, nor does it provide sufficient other required information for a petition under 40 CFR 60.56c(j). Due to this lack of information, EPA cannot evaluate the AMP request. EPA previously provided information and guidance to the company related to implementation requirements under NSPS Ec after an on-site meeting and tour of the facility. However, the AMP petition submitted did not incorporate EPA's information. EPA's response outlines the areas of the petition that are in conflict with federal rule interpretations and requirements.

*Abstract for [1800042]*

Q1: Does EPA conditionally approve Motiva Enterprises, LLC's (Motiva's) request to modify a previously issued Alternative Monitoring Plan (AMP) for a Wet Gas Scrubber (WGS) on a Fluidized Catalytic Cracking Unit (FCCU) subject to NSPS subpart J, and also new requirements of NESHAP subpart UUU, for parametric monitoring of opacity at the WGS in lieu of a continuous opacity monitoring system, due to moisture interference on opacity readings in the stack at the Motiva refinery located in Port Arthur, Texas?

A1: Yes. Based upon the site-specific information and performance test data submitted, EPA approves operating parameter limits (OPLs) for the FCCU No. 3 WGS unit, taking into consideration all data from past test events where compliance was demonstrated with the 1 lb PM/1000 lbs of coke bum-off emission limitation. The OPLs approved for demonstrating compliance with the AMP included minimum Liquid-to-Gas Ratio, minimum water pressure to the quench/spray tower nozzles, and minimum pressure drop across filter modules/cyclolabs.

Q2: What alternative monitoring conditions were not approved?

A2: Although Motiva did not request a change in the type of operating parameters already approved, they proposed that the OPLs be established on a three-hour hourly rolling average basis rather than an a one-hour basis, using a 20 percent downward extrapolation to establish the minimum limits for each OPL from those values actually demonstrated during the most recent performance test. EPA will not

approve a downward extrapolation of data for operation from results of one performance test. Operating parameters to be established are minimum value limits, and test results should be representative of typical operating conditions under test conditions designed to demonstrate compliance in consideration of potentially worst-case emissions over the full range of operating scenarios.

*Abstract for [1800043]*

Q: Does EPA approve Phillips 66 Sweeny Refinery's (PSR's) request to use a sulfur dioxide ($SO_2$) Continuous Emissions Monitoring System (CEMS), and calculation of the flue gas flow rate and coke burn-off rate as an alternative for determining compliance with the emission limitation for sulfur oxides ($SO_X$) at a fluidized catalytic cracking unit (FCCU) subject to NSPS subpart J at its refinery located in Sweeny, Texas?

A: Yes. Based on the test results and information submitted, EPA conditionally approves the request to use the FCCU $SO_2$ CEMS data with a correction factor to account for non-$SO_2$ $SO_X$, and calculations for flue gas flow rate and coke burn-off rate to generate $SO_X$ continuous data in lieu of daily Method 8 testing. In addition, PSR will conduct Method 8 compliance testing at the FCCU once every five years.

*Abstract for [1800044]*

Q: Does EPA approve site-specific alternative monitoring operating parameter limits (OPLs) under NSPS subpart Ec for the alternate control scenario during start up and shut down of two hospital/medical/infectious waste incinerators (HMIWI) at the Stericycle, Inc. Springhill facility located in Sarepta, Louisiana?

A: No. Based upon the information provided, EPA denied the petition and testing waiver request because there is no need to distinguish a separate operational mode and control scenario specific only to startup and shutdown of each HMIWI, nor to establish separate requirements for monitoring, recordkeeping, and reporting that would be specific only to startup and shutdown periods for each HMIWI. The rule intent is clear that a minimum combustion chamber temperature must be achieved prior to operations and at all times when waste is combusted, and for controls to be operated at all times without bypass.

*Abstract for [1800045]*

Q: Does EPA approve HollyFrontier El Dorado Refining LLC's (HFEDR's) request to use an alternative monitoring plan (AMP) for a mass spectrometer (MS) analyzer for the NSPS subpart Ja sulfur monitoring requirements for the flare system at its refinery in El Dorado, Kansas to allow for reduced concentrations of calibration gases to perform daily validations and quarterly cylinder gas audits (CGA) as required by 40 CFR 60.13(d) and 40 CFR part 60, appendix F?

A: Yes. EPA conditionally approves the AMP using a lower portion of the MS analyzer due to safety concerns associated with handling gases with high concentrations of hydrogen sulfide, and given that total reduce sulfur monitoring is used for determining a work practice threshold contained in the regulation (*i.e.* the root cause analysis/corrective action) as opposed to monitoring an emission limit for compliance. The conditions are specified in the EPA response letter, which includes that the analyzer detector is linear across the span of the analyzer and HFEDR submits the CGA quarterly audit results to EPA Region 7, on a frequency of no less than semi-annually.

*Abstract for [1800046]*

Q: Does EPA approve CHS McPherson Refinery, Inc.'s (CHS's) request to use an alternative monitoring plan (AMP) for a mass spectrometer (MS) analyzer for the NSPS subpart Ja sulfur monitoring requirements for the main flare at its refinery in McPherson, Kansas to allow for reduced concentrations of calibration gases to perform daily validations and quarterly cylinder gas audits (CGA) as required by 40 CFR 60.13(d) and 40 CFR part 60, appendix F?

A: Yes. EPA conditionally approves the AMP for using a lower portion of the MS analyzer due to safety concerns associated with handling gases with high concentrations of hydrogen sulfide, and given that total reduce sulfur monitoring is used for determining a work practice threshold contained in the regulation (*i.e.* the root cause analysis/corrective action) as opposed to monitoring an emission limit for compliance. The with conditions are specified in the EPA response letter, which includes that the analyzer detector is linear across the span of the analyzer and CHS submits the CGA quarterly audit results to EPA Region 7, on a frequency of no less than semi-annually.

*Abstract for [1800047]*

Q: Does EPA approve Dartmouth College's request to de-rate Boiler #1, subject to 40 CFR part 60, subpart Db, to a heat input rating of 98 MMBtu/hour at its central heating plant located in Hanover, New Hampshire?

A: Yes. EPA determines that the de-rating criteria for an acceptable project physical changes proposed by Dartmouth College in its February 27, 2018 letter are acceptable and approves the request with conditions. This approval of Dartmouth's de-rate proposal will become void if the unit exceeds an average of 100 MMBtu of heat input in any hour of operation.

*Abstract for [1900001]*

Q: Due to safety concerns with conducting a relative accuracy test audit (RATA) for a flare subject to NSPS subpart Ja which is normally recovering flare gases, does EPA approve the BP Products North America, Inc. (BP) request to conduct a cylinder gas audit rather than a RATA for the hydrogen sulfide continuous emission monitoring systems at its Whiting, Indiana refinery?

A: Yes. Due to the flare specific configuration and gas composition, EPA approves BP's requested alternative for a period of one year to develop procedures or implement other changes as it determines are necessary in order to safely conduct the required RATA, after which BP must conduct the annual RATA as required.

*Abstract for [1900002]*

Q: Does EPA approve alternate span gas concentration values for hydrogen sulfide (H2S) on total reduced sulfur (TRS) continuous emissions monitoring systems for ten flares at the Blanchard Refining Company, LLC (Blanchard) Galveston Bay Refinery in Texas City, Texas covered under NSPS subpart Ja?

A: Based on the process data and analyzer information submitted, EPA conditionally approves the request to reduce the concentrations of the calibration gas to specified ranges and validation standards on the CEMS for the 10 flares. Blanchard must conduct linearity analysis on the H2S gas chromatographs once every three years to determine each detector's linearity across the entire range of expected sulfur concentrations. The analysis must include four test gases in specified ranges. A report of each completed linearity analysis shall be submitted to EPA Region 6 and the Texas Commission on Environmental Quality and maintained in each facility's on-site records.

*Abstract for [1900003]*

Q: Does EPA approve alternate span gas concentration values for hydrogen sulfide on the total reduced sulfur (TRS) continuous emissions monitoring system for a flare at the HollyFrontier

Navajo Refining LLC (HFNR) petroleum refinery in Artesia, New Mexico covered under NSPS subpart Ja?

A: Yes. Based on the process data and analyzer information submitted, EPA conditionally approves the request to reduce the concentrations of the calibration gas to specified ranges and validation standards on the CEMS for the flare. HFNR must conduct linearity analysis on the Extrel MAX300–IG once every three years to determine the detector's linearity across the entire range of expected sulfur concentrations. The analysis must include four test gases in specified ranges. A report of each completed linearity analysis shall be submitted to EPA Region 6 and the New Mexico Environment Department and maintained in each facility's on-site records.

*Abstract for [1900004]*

Q: Does EPA approve Blanchard Refining Company, LLC's request to modify a previously issued Alternative Monitoring Plan (AMP) for a Wet Gas Scrubber (WGS) on a Fluidized Catalytic Cracking Unit subject to NSPS subpart J, and also new requirements of NESHAP subpart UUU, for parametric monitoring of opacity at the WGS in lieu of a continuous opacity monitoring system, due to moisture interference on opacity readings in the stack located at the Galveston Bay Refinery in Texas City, Texas?

A: Yes. Based upon the design of the WGS unit and the process specific supplemental information provided, EPA approves the AMP modification. EPA reviewed the recent performance test results and found the data supportive for establishing the final operating parameter limits (OPLs). The OPLs approved for demonstrating compliance with the AMP included minimum Liquid-to-Gas Ratio for the filter module, minimum Liquid-to-Gas Ratio for the absorber section, and minimum pressure drop across filter modules/cyclolabs.

*Abstract for [1900005]*

Q: Does EPA approve the Flint Hills Resources (FHR) request to modify a previously issued Alternative Monitoring Plan (AMP) for a Wet Gas Scrubber (WGS) on a Fluidized Catalytic Cracking Unit subject to NSPS subpart J, and also new requirements of NESHAP subpart UUU, for parametric monitoring of opacity at the WGS in lieu of a continuous opacity monitoring system, due to moisture interference on opacity readings in the stack at the Corpus Christi East Refinery located in Corpus Christi, Texas?

A: Yes. Based upon the design of the WGS unit and the process specific supplemental information provided, EPA approves the AMP modification. EPA reviewed the recent performance test results and found the data supportive for establishing final operating parameter limits (OPLs). The OPLs approved for demonstrating compliance with the AMP included minimum Liquid-to-Gas Ratio and the throat velocity ratio.

*Abstract for [1900006]*

Q: Does EPA approve Phillips 66 Company's request to modify a previously issued Alternative Monitoring Plan (AMP) for a Wet Gas Scrubber (WGS) on a Fluidized Catalytic Cracking Unit, located at the Alliance Refinery in Belle Chasse, Louisiana, subject to NSPS subpart J, and also new requirements of NESHAP subpart UUU, for parametric monitoring of opacity at the WGS in lieu of a continuous opacity monitoring system, due to moisture interference on opacity readings in the stack?

A: Yes. Based upon the design of the WGS unit and the process specific supplemental information provided, EPA approves the AMP modification. EPA reviewed the recent performance test results and found the data supportive for establishing the final operating parameter limits (OPLs). The OPLs approved for demonstrating compliance with the AMP included minimum Liquid-to-Gas Ratio and minimum slurry liquid circulation pump discharge pressure.

*Abstract for [1900007]*

Q: Does EPA approve alternate span gas concentration values for hydrogen sulfide (H2S) on total reduced sulfur (TRS) continuous emissions monitoring systems for four flares at the Phillips 66 Ponca City Refinery in Ponca City, Oklahoma covered under NSPS subpart Ja?

A: Based on the process data and analyzer information submitted, EPA conditionally approves the request to reduce the concentrations of the calibration gas to specified ranges and validation standards on the CEMS for the four flares. Phillips 66 must conduct linearity analysis on the H2S and TRS analyzers once every three years to determine each detector's linearity across the entire range of expected concentrations of acid gas vent streams. A report of each completed linearity analysis shall be submitted to EPA Region 6 and the Oklahoma Department of Environmental Quality and maintained in each facility's on-site records.

*Abstract for [1900008]*

Q: Does EPA approve a monitoring exemption for an inherently low-sulfur fuel gas stream subject to NSPS subpart J to combust the off-gas vent stream from the delayed coking unit 843 disulfide oxidation tower T–6750 that is routed to Flare No.23, at the Valero Port Arthur Refinery (Valero) located in Port Arthur, Texas?

A: Yes. Based on the description of the vent gas stream, the process parameters to be monitored, the design of the vent gas controls, and the hydrogen sulfide monitoring data furnished, EPA agrees that the fuel gas is inherently low in sulfur, and conditionally approves the exemption. Valero must meet other applicable NSPS requirements to maintain and operate affected facilities and associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions, and, may not use gaseous diluents to achieve compliance with the NSPS subpart J emission standard.

*Abstract for [1900009]*

Q: Does EPA grant the Chautauqua County Landfill, located in Jamestown, New York, a test waiver and agree that any future stack testing be conducted on one representative engine annually, in a staggered schedule such that each engine is tested once every 3 years to establish compliance with the performance testing requirements of 40 CFR 60.8 and subpart JJJJ?

A: Yes. Based on the information provided, EPA approves the request to conduct a performance test every 8,760 hours or 3 years, whichever comes first, for all five identical engines burning the same landfill gas fuel, and which are operated and maintained in the same manner, that were constructed after July 1, 2007 in a staggered schedule, to establish compliance with the performance testing requirements of 40 CFR 60.8 and subpart JJJJ.

*Abstract for [1900010]*

Q: Does EPA approve an exemption in lieu of Alternative Monitoring Plan (AMP) for an inherently low-sulfur fuel gas stream, instead of installing a continuous emission monitoring system (CEMS) under NSPS subpart J, for a refinery to combust the off-gas vent stream from the Unit 126 Butane Merox Disulfide Separator at the Marathon Petroleum Company LP (MPC) refinery located in Garyville, Louisiana?

A: Yes. Based on the description of the vent gas stream, the process parameters to be monitored, the design

of the vent gas controls, and the hydrogen sulfide (H2S) monitoring data furnished, EPA agrees that the fuel gas is inherently low in sulfur, and approves the exemption. MPC must meet other applicable NSPS requirements to maintain and operate affected facilities and associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions, and, may not use gaseous diluents to achieve compliance with the NSPS subpart J emission standard.

*Abstract for [1900011]*

Q: Does EPA approve a monitoring exemption for an inherently low-sulfur fuel gas stream subject to NSPS subpart Ja to combust the off-gas vent stream from the Light Naphtha Merox Unit Disulfide Separator that is routed to Crude Topper Heater 17H01, at the Valero Refining Houston, Texas Refinery (Valero Houston)?

A: Yes. Based on the description of the vent gas stream, the process parameters to be monitored, the design of the vent gas controls, and the hydrogen sulfide monitoring data furnished, EPA agrees that the fuel gas is inherently low in sulfur and approves the exemption. Valero Houston must meet other applicable NSPS requirements to maintain and operate affected facilities and associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions, and, may not use gaseous diluents to achieve compliance with the NSPS subpart Ja emission standard.

*Abstract for [1900012]*

Q: Does EPA approve the request for an alternative monitoring plan with site-specific operating parameters for the Monarch Waste Technologies, LLC (MWT) Pyromed Pyrolysis System to be operated at the Nambe Pueblo near Santa Fe, New Mexico as a hospital/medical/infectious waste incinerator (HMIWI) under NSPS Ec?

A: Based on technical review of the information submitted, EPA conditionally approves the interim operating parameters but does not approve the proposed testing plan. EPA approves the daily loading rate of sorbent and the pressure drop across the ceramic filters. MWT must also monitor both the inlet and outlet temperatures of gases routed to and exiting the pollution control system because vent gas temperature may be an indicator of potential dioxin formation. To obtain approval of an initial performance testing plan, MWT must further develop a performance test plan that aligns with requirements of 40 CFR 60.8 and 40 CFR 60.56c and submit the plan for EPA to review and approve.

*Abstract for [1900013]*

Q: Does EPA approve Georgia Pacific, LLC's request for an exemption, based on economic feasibility, from the total reduced sulfur (TRS) standard in 40 CFR part 60, subpart BB to incinerate the exhaust gases from a brown stock washer (BSW) system for control of TRS emissions at its pulp mill in Crossett, Arkansas?

A: Yes. EPA determines that additional controls would be economically unfeasible; therefore, conditionally approves an exemption from the subpart BB standard for TRS for this BSW system. The determination is consistent with previous determinations EPA has made regarding economic feasibility of controlling TRS emissions from other BSW systems. This approval is conditional based on the implementation and maintenance of the 2016 GP Washer Proposal to route BSW exhaust gases to the incinerator. This determination is only the TRS limit in subpart BB and does not alter the applicability of TRS limits imposed under the state implementation plan, new source review requirements, or any other regulations. If installation of controls becomes economically feasible, then the exemption for TRS controls will no longer apply.

*Abstract for [1900014]*

Q: Does EPA approve the material balance proposed by the Eastman Chemical Company for monitoring the concentration of hydrogen chloride (HCl) in the flue gas from Boilers 18—24 at the company's Kingsport, Tennessee facility subject to 40 CFR part 60, subpart DDDD?

A: Yes. EPA conditionally approves the site-specific monitoring approach since it is acceptable for demonstrating continuous compliance with the HCl emission limit. The proposed approach is based upon the conservative assumption that all of the chlorine contained in the fuel and waste streams burned in the boilers is emitted as HCl. In addition, the proposed equations for converting HCl results into terms of the applicable standard are technically sound.

*Abstract for [1900015]*

Q: Does EPA determine that the Magellan Midstream Partner L.P. (Magellan) proposal to conduct in-service inspections on an ethanol storage tank subject to 40 CFR part 60, subpart Kb at the company's Charlotte, North Carolina storage terminal is acceptable?

A: Yes. The EPA responded to the Mecklenburg County Land Use and Environmental Services Agency (Agency) that conducting in-service inspections on Tank 14 at the Charlotte terminal will be acceptable provided that inspection procedures in 40 CFR 63.1063(d) are followed since facility does not have alternate storage capacity for ethanol. This determination is consistent with previous EPA Region 7 approvals of in-service inspections for similar storage tanks located at three other Magellan storage terminals located in Missouri.

*Abstract for [1900016]*

Q: Does EPA determine that an alternative nitrogen oxides ($NO_X$) monitoring proposal for the sulfite recovery boiler subject to 40 CFR part 60, subpart D and located at the Rayonier Advanced Materials pulp mill in Fernandina Beach, Florida is acceptable?

A: Yes. Based on the information provided by the Florida Department of Environmental Protection, Division of Air Resource Management, EPA determines that since the NOx limit in subpart D does not apply to the combustion of red liquid, an alternative to a continuous emission monitoring system must be used when red liquor and natural gas are co-fired in the boiler. $NO_X$ emissions from the natural gas burners installed on the boiler are controlled with steam injection, and excess emission during periods when red liquor and natural gas are co-fired will be defined in terms of the steam pressure or steam flow to the burners.

*Abstract for [1900017]*

Q: Does EPA approve an alternative monitoring plan (AMP) in lieu of a continuous emission monitoring system (CEMS) for total reduced sulfur (TRS) monitoring for the D-line Brownstock Washer System at the WestRock pulp mill (WestRock) in Fernandina Beach, Florida subject to 40 CFR part 60, subpart BBa?

A: No. EPA determines that the proposed alternative AMP cannot be approved because it defines TRS excess emissions in terms of scrubber operating parameters (liquid flow and hypochlorite addition rates), which will provide a lower level of compliance than the CEMS. The AMP will not generate results in terms of the 5-ppm emission limit promulgated at § 60.283a(a)(l)(v). Because of this, it is possible that some periods of excess emissions detected with a CEMS would

not be detected using the procedures outlined in the AMP.

*Abstract for [1900018]*

Q: Does EPA approve the proposed waiver of the requirement to include an oxygen monitor in the total reduced sulfur (TRS) scrubber continuous emission monitoring system (CEM) that will be installed downstream of the D-line Brownstock Washer System at the WestRock pulp mill in Fernandina Beach, Florida subject to 40 CFR part 60, subpart BBa?

A: EPA approves the alternative monitoring proposal. Since the applicable TRS for the D-line Brownstock Washer System is not corrected to ten percent oxygen, ongoing compliance with subpart BBa can be determined without monitoring the oxygen concentration at the outlet of the scrubber that controls emissions from the affected facility.

*Abstract for [1900019]*

Q: Does EPA approve the proposed waiver for dioxin/furan (D/F) testing required under 40 CFR part 60, subpart DDDD on Boilers 18 through 24 at the Eastman Chemical Company facility in Kingsport, Tennessee?

A: Yes. EPA conditionally approves the waiver request of the D/F testing for five of the seven boilers since testing demonstrates that the D/F concentration in the flue gas from two representative units is less than or equal to 50 percent of the applicable standard. Under this approval, the maximum duration between D/F testing for any individual boiler shall not exceed 72 months.

*Abstract for [1900021]*

Q: Does EPA approve the proposed alternative to pressure drop monitoring for a scrubber that controls emissions from a waste heat boiler (WHB), a Commercial and Industrial Solid Waste Incinerators (CISWI) unit, subject to 40 CFR part 60, subpart DDDD (Emissions Guidelines and Compliance Times for CISWI Units)? at the Solvay Specialty Polymers USA, LLC facility in Augusta, Georgia?

A: Yes. The EPA finds the alternative monitoring approach acceptable to demonstrate continuous compliance with the PM emission limit by sampling and analyzing the waste stream (*i.e.,* ash/solids content of the mixed isomer stream) on a monthly basis for twelve months. In addition, it relies on a conservative assumption that all the ash in the waste is emitted as particulate matter. The site-specific alternative monitoring we are conditionally approving will apply after EPA issues the final CISWI federal plan or approves a revised Georgia CISWI state plan.

*Abstract for [1900022]*

Q: Does EPA approve Eastman Chemical Company's request to conduct hydrogen chloride (HCl) performance testing on only some of the seven identical boilers (No. 18—21) that burn coal, biosludge, and liquid waste at the company's Kingsport, Tennessee facility subject to 40 CFR part 60, subpart DDDD (Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units)?

A: EPA conditionally approves the performance test waiver request. Based upon the lack of post-combustion add-on controls for HCl and the significant margin of compliance during the initial HCl performance testing conducted on the seven boilers, a waiver of testing for five of the seven boilers will be acceptable if test results for two representative units demonstrates that the HCl concentration in the flue from the boilers tested is less than or equal to 50 percent of the applicable limit in 40 CFR part 60, subpart DDDD.

*Abstract for [1900023]*

Q: What is the EPA interpretation for continuous monitoring system (CMS) downtime and emission reporting requirements under the Clean Air Act New Source Performance Standards (''NSPS'') General Provisions at 40 CFR part 60, subpart A?

R; The EPA responded to the Oklahoma Department of Environmental Quality (ODEQ) that it is withdrawing a regulatory interpretation dated June 26, 2017 (AD Control Number 1700037) in response to ODEQ's April 18, 2017 request to allow for further examination and discussion of the questions. Based upon new information received from industry, the June 2017 EPA response may lead to some uncertainty when applied across several industry sectors. The regulatory requirements at issue involve the reporting for CMS downtime and the calculation of a valid hour of emissions under NSPS subpart A.

*Abstract for [A160003]*

Q1: When planning a renovation/demolition project, is the collection and analysis of bulk samples using Polarized Light Microscopy the only way to comply with the requirements of a thorough inspection under 40 CFR 61.145(a) of subpart M (Asbestos NESHAP)?

A1: The asbestos NESHAP does not define ''thorough inspection.'' This was left to the owner/operator to determine when undertaking a renovation/demolition operation. Some possible means of determining a thorough inspection include, but is not limited to: (1) Use the ASTM–E2356–14 Standard Practice for Comprehensive Building Asbestos Surveys (ADI #A150001); (2) Assume building materials within the facility are asbestos-containing materials, and follow the regulation accordingly; and (3) Apply the definition(s) of friable, non-friable, Category I non-friable asbestos-containing material and/or Category II non-friable asbestos-containing material, sample and analyze building materials using Polarized Light Microscopy.

Q2: What type of documentation would be acceptable to the EPA for each building component impacted by the renovation/demolition operation in order to comply with 40 CFR 61.145(a)?

A2: Depending on the circumstances, there may be appropriate documents that show asbestos content or lack of asbestos content for each building material. The documentation should provide information on how the asbestos content was determined. For compliance purposes, Polarized Light Microscopy is the test method recognized in the regulatory definition of asbestos-containing materials. One example of documentation that would be acceptable is found in a school's Management Plan required under 40 CFR part 763.

*Abstract for [FP00007]*

Q: Does EPA approve site-specific operating parameters (SSOPs) under 40 CFR part 62 subpart HHH for the polishing system and wet gas scrubber on the hospital/medical/infectious waste incinerator at the Wyoming Medical Center (WMC) located in Casper, Wyoming?

A: Yes. Based on the particular design of WMC's polishing system and the process-specific and testing data provided, EPA approves SSOPs for the polishing system and the wet gas scrubber. The SSOPs for the polishing system are: Carbon adsorber unit maximum inlet temperature; cartridge filter unit minimum inlet temperature; laboratory analysis of carbon medial sampled at the 50 percent bed level within the adsorber unit every two years according to one or more published test methods (*e.g.* ASTM); and the carbon bed will be replaced every six to ten years, depending on the intermittent two-year test results. The SSOPs for the wet gas scrubber are those required in 40 CFR 60.57c and wet gas scrubber unit maximum outlet temperature.

*Abstract for [M100091]*

Q1: Has EPA waived Electronic Reporting Tool (ERT) requirements for

certain Arkansas facilities, based on EPA' s 2014 delegation of NESHAP authority to Arkansas and the 2014 Memorandum of Understanding (MOU) between EPA Region 6 and the Arkansas Department of Environmental Quality (ADEQ) that implements that delegation?

A1: No. While the 2014 Delegation and the MOU contain a provision that major sources in Arkansas subject to delegated 40 CFR part 63 standards are only required to submit the information required by the General Provisions and the relevant 40 CFR part 63 subpart to ADEQ, this provision was not intended to constitute EPA approval to waive ERT requirements in 40 CFR part 63 that are applicable to Arkansas facilities. This determination is consistent with 40 CFR 63.91(g)(2), which identifies delegations that EPA must retain which cannot be delegated to a State, including 40 CFR 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. In addition, 40 CFR part 63, subpart DDDDD specifies at 40 CFR 63.7570(b)(5) that the authority to approve a major change to recordkeeping or reporting is not delegable to state, local, or tribal agencies, and is specifically retained by EPA.

Q2: Does EPA approve a major change to reporting under subpart DDDDD for Deltic Timber Corporation facilities in Arkansas to allow those facilities to submit paper reports to the ADEQ in lieu of electronic reporting using the ERT?

A2: No. EPA believes that approval of such a major reporting change for performance testing information would directly conflict with the intent and objectives of the ERT requirements in subpart DDDDD and would be inconsistent with the important purposes behind the electronic reporting requirements. Electronic reports that cannot be uploaded via the ERT must be placed on a compact disc and sent to EPA's Office of Air Quality Planning and Standards, per 40 CFR 63.7550(h)(l)(i).

*Abstract for [M150022]*

Q: Does EPA determine that two boilers at the Packaging Corporation of America (PCA) mill in Valdosta, Georgia that fire wet woody biomass meet the Boiler definition in 40 CFR part 63, subpart DDDDD for classification as hybrid suspension grate units?

A: Yes. Based on your description of the two boilers, EPA determines that these boilers meet the definition of a hybrid suspension grate unit in subpart DDDDD and can be classified accordingly.

*Abstract for [M180003]*

Q: Does EPA approve BASF's alternative monitoring request pursuant to 40 CFR 63.1209(g)(l) and 63.8(f) to change automatic waste feed cut-off requirements for the operating parameter limit (OPL) on flue gas flow rate for three hazardous waste combustion incinerators A, B and C at its Hannibal, Missouri facility?

A: Yes. EPA approves the alternative monitoring request with the following conditions: BASF shall notify EPA at least 30 days prior to any system or equipment changes associated with the waste tank fume (WTF) flow and motive air flow; BASF shall continuously monitor WTF flow and motive air flow to incinerators A, B and C; compliance with the OPL for flue gas flow shall be determine; BASF shall automatically cut-off hazardous waste feed to hazardous waste incinerators A, B and C if the rolling average combustion air/fume air flow exceeds the OPL for flue gas flow; when establishing the operating parameter limit of maximum flue gas flow rate required for destruction and removal efficiency (40 CFR 63.12090)(2)), particulate matter (40 CFR 63.1209(m)(l)(i)(C), dioxins/furans (40 CFR 63.1209(k)(3)) and hydrogen chloride and chlorine gas (40 CFR 63.1209(o)(2)), all gaseous flow inputs shall be continuously monitored during compliance testing and shall be used to determine the operating parameter limit; and, the alternative monitoring approval shall be included as an appendix to all hazardous waste incinerator units A, B and C comprehensive performance test plan submittals.

*Abstract for [M180006]*

Q: Does EPA approve an extension to the number of additional runtime hours for an emergency diesel generator located at Entergy Operations, Inc.'s Arkansas Nuclear One (ANO) facility in Russellville, Arkansas, which is subject to the NESHAP for Reciprocating Internal Combustion Engines, subpart ZZZZ (RICE NESHAP)?

A: No. EPA does not approve the additional runtime hours since the emergency generator ran more than 100 hours due to the facility's error in programming the controller, and not because of the time necessary for maintenance or testing.

*Abstract for [M180007]*

Q: Does EPA approve The Dow Chemical Company's (Dow's) proposal to monitor a non-regenerative carbon adsorption system using the weight of the carbon bed and outlet temperature of each bed in the series, for the Myers 10 Mixer Process Unit facility in Midland, Michigan, subject to the NESHAP for miscellaneous coating manufacturing, subpart HHHHH?

A: Yes. Based on the information provided, EPA approves Dow's proposed operating parameters and averaging periods in lieu of the parameters under 40 CFR 63.990(c)(3), which are not appropriate for a none regenerative carbon system and use of an organic monitoring device capable of providing a continuous record is economically impractical.

*Abstract for [M180008]*

Q: Does EPA approve Veolia E.S. Technical Solutions, L.L.C.'s (Veolia's) request to waive the requirement to establish and comply with a maximum ash feed rate operating parameter limit (OPL) for three hazardous waste incinerators located at its Sauget, Illinois facility and subject to NESHAP for Hazardous Waste Combustors (HWC), 40 CFR part 63, subpart EEE?

A: No. EPA does not approve Veolia's OPL waiver request, because Veolia has not demonstrated that neither the maximum ash feed rate OPL nor an alternative OPL is needed to ensure compliance with the particulate matter emission standard in the subpart EEE. To evaluate this request, Veolia must submit supplemental information within 30 days of the EPA response letter's date to consider its application during review of the comprehensive performance test plan.

*Abstract for [M180009]*

Q: Does EPA approve an alternate monitoring plan (AMP) for detecting leaks in ancillary equipment which is in ethylene glycol (EG) service, using weekly audio/visual/olfactory (AVO) inspections at six separate DCP Midstream LP (DCP) gas processing plants located in Texas?

A: Yes. EPA approves DCP's proposed AMP to conduct weekly AVO inspections of the ancillary equipment in EG service at six gas processing plants. Visual evidence of EG liquid on, or dripping from, ancillary equipment in EG service would indicate an equipment leak, and repair must be conducted as required by 40 CFR part 61, subpart V.

*Abstract for [M180010]*

Q: Does EPA determine that the glycol dehydration reboiler at the Enable Gas Gathering, LLC Strong City Compressor Station, located in Oklahoma, is a process heater subject to 40 CFR part 63, subpart DDDDD?

A: Yes. EPA determines that the glycol dehydration reboiler is a process heater subject to subpart DDDDD since the gaseous fuel fired to the reboiler is not regulated under another MACT subpart, and the exhaust gas from the combustion chamber is uncontrolled (*i.e.* emissions are released directly to the atmosphere). Although the glycol dehydration reboiler is an affected under NESHAP subpart HH (''Oil and Natural Gas Production Facilities NESHAP''), the process vent standards under this rule only apply to a glycol dehydration unit still vent and flash tank, if present, but do not address the combustion chamber emissions of a reboiler unit. This determination is consistent with 40 CFR 63.7491(h), which indicates that units used as control devices for gas streams regulated under other MACT subparts are not subject to MACT subpart DDDDD. Under MACT subpart HH, a reboiler unit is defined separately from a glycol dehydration unit and is not considered a control device under subpart HH. At the subject facility, an enclosed flare is the control device for the glycol dehydration unit process vents subject to subpart HH. Therefore, the glycol reboiler is considered a process heater subject to the MACT DDDDD, because it is not a control device being used to comply with another MACT subpart and does not meet the exemption provided at 40 CFR 63.7491(h).

*Abstract for [M180012]*

Q: Does EPA approve the request from ExxonMobil Fuels & Lubricants Company (ExxonMobil) for its Joliet Refinery in Channahon, Illinois, subject to 40 CFR part 63, subpart CC, to temporarily conduct alternate monitoring for pilot flame presence at its flares during periods of time when atmospheric conditions interfere with the operation of the infrared sensors, until ExxonMobil can install thermocouples that will not have any interference issue?

A: Yes. Because safety reasons preclude ExxonMobil from installing thermocouples until a flare outage, EPA approves the request to temporarily use infrared sensors, combined with alternative monitoring techniques during periods of time when atmospheric conditions interfere with the operation of the infrared sensors, until ExxonMobil installs thermocouples to monitor pilot flame presence next flare outage or July 1, 2019 (one year after the compliance date), whichever is sooner.

*Abstract for [M180013]*

Q: Does EPA determine that the five newly installed engines at the ONEOK Field Services Company, LLC Antioch Booster Station in Garvin County, Oklahoma are subject to the area source requirements under 40 CFR part 63, subpart ZZZZ?

A: Yes. The EPA responded to the Oklahoma Department of Environmental Quality (DEQ) that it agrees with its determination that the five new engines are subject to the area source requirements for new stationary reciprocating internal combustion engines under 40 CFR 63.6590(a)(2)(iii). The primary hazardous air pollutant (HAP) from the new engines is formaldehyde. The new engines are subject to federally enforceable limits to ensure that total facility formaldehyde emissions will be below 10 tons per year. Since all the existing engines that caused the facility to be previously classified as a major source of HAP were retired, and the new engines are subject to federally enforceable emission limits below major source thresholds, the facility is now classified as an area source of HAPs.

*Abstract for [M190001]*

Q: Does EPA determine that the request for a waiver of the requirement to monitor the catalyst inlet temperature during low operating capacity periods for 14 non-emergency generators subject to 40 CFR part 63, subpart ZZZZ located at Robins Air Force Base (Robins) in Houston County, Georgia is acceptable?

A: No. The EPA responded to the Air Protection Branch of the Georgia Environmental Protection Division that while EPA does not have the authority to waive the catalyst inlet temperature monitoring requirement in subpart ZZZZ, Robins can petition EPA for approval of an alternative to the catalyst inlet temperature range specified in the rule (*i.e.,* 450–1350 °F).

*Abstract for [M190002]*

Q: Does EPA approve the alternative monitoring request to use an acoustic monitor for verifying the presence of a pilot flame for a hydrogen flare at the SI Group facility in Orangeburg, South Carolina subject to 40 CFR part 63, subpart FFFF (MON rule)?

A: Yes. Based upon a review of information submitted by the SI Group, EPA determines that the proposed major alternative monitoring approach with use of the acoustic pilot monitor satisfies the requirement in 40 CFR 63.987(c) for a continuous pilot flame on the hydrogen flare.

*Abstract for [M190003]*

Q: Does EPA approve the proposed alternative monitoring parameter for a scrubber that controls emissions from the No. 1 Lime Kiln at the International Paper pulp mill in Pensacola, Florida subject to 40 CFR part 63, subpart MM?

A: Yes. Based on the information provided, EPA confirms that the 2004 approved monitoring parameter (lime production rate) as an alternative to the scrubber monitoring parameter specified in 40 CFR part 63, subpart MM (differential pressure) is an acceptable alternative under 40 CFR 63.987(c) of the revised subpart MM, effective on October 11, 2019.

*Abstract for [Z180003]*

Q: Does EPA approve Dominion Energy Nuclear Connecticut, Inc. (Dominion) to use existing monitors that measure differential pressure across the air filter media and continuously display the condition during engine operation in lieu of the annual air filter inspections required by 40 CFR part 63, subpart ZZZZ, at the Millstone Nuclear Power Station in Waterford, Connecticut?

A: Yes. EPA approves the use of the pressure drop monitoring as an alternative to the annual filter inspections because the differential pressure readings shall be taken at least once each time the engine is operated (approximately every 4 hours for extended runs) and shall be maintained within the approved specifications to ensure optimal engine performance and reliability which minimize emissions. Further, if readings are out of specifications, Dominion shall take corrective actions.

*Abstract for [Z180004]*

Q1: Does EPA approve ''alternative monitoring parameters'' in lieu of the required parametric monitoring for group 2 asphalt storage tanks, which are subject to 40 CFR part 63, subpart LLLLL, during the annual regenerative thermal oxidizer (RTO) shutdown for maintenance activities, which lasts for approximately 2 weeks, at the CertainTeed Saint-Gobain North America (CertainTeed) facility in Shakopee, Minnesota?

A1: Yes. EPA approves an alternative monitoring plan because CertainTeed uses an RTO to comply with subpart LLLLL during normal operation and will only use the mist eliminators and conduct visible emission (VE) checks once per shift or twice daily during daylight hours per EPA Method 22 for compliance with the zero-opacity standard during the approximately 2-

week long annual RTO maintenance outage. EPA agrees that it is overly burdensome to require the installation of the required parametric monitoring equipment for this short duration of time.

Q2: Does EPA approve ''alternative monitoring parameters'' for group 2 asphalt storage tanks which are subject to subpart LLLLL anytime there is a production curtailment and CertainTeed shuts down the RTO?

A2: No. CertainTeed did not provide information about how often this production curtailment might occur, so EPA cannot determine whether or not it is reasonable to allow alternative monitoring during these periods of time.

Dated: January 15, 2020.

**John Dombrowski,**

*Deputy Director, Office of Compliance, Office of Enforcement and Compliance Assurance.*

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## FEDERAL COMMUNICATIONS COMMISSION

**[FRS 16515]**

### Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council; Meeting

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC or Commission) Communications Security, Reliability, and Interoperability Council (CSRIC) VII will hold its fourth meeting.

**DATES:** March 17, 2020.

**ADDRESSES:** Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street SW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Suzon Cameron, Designated Federal Officer, (202) 418–1916 (voice) or *CSRIC@fcc.gov* (email); or, Kurian Jacob, Deputy Designated Federal Officer, (202) 418–2040 (voice) or *CSRIC@fcc.gov* (email).

**SUPPLEMENTARY INFORMATION:** The meeting will be held on March 17, 2020, from 1:00 p.m. to 5:00 p.m. EDT in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street SW, Washington, DC 20554.

The CSRIC is a Federal Advisory Committee that will provide recommendations to the FCC to improve the security, reliability, and interoperability of communications systems. On March 15, 2019, the FCC, pursuant to the Federal Advisory Committee Act, renewed the charter for CSRIC VII for a period of two years through March 14, 2021. The meeting on March 17, 2020, will be the fourth meeting of CSRIC VII under the current charter.

The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the internet from the FCC's web page at *http://www.fcc.gov/live.* The public may submit written comments before the meeting to Suzon Cameron, CSRIC Designated Federal Officer, by email *Suzon.Cameron@fcc.gov* or U.S. Postal Service Mail to Suzon Cameron, Senior Attorney, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street SW, Room 7–B458, Washington, DC 20554.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted but may be impossible to fill.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2020–03708 Filed 2–24–20; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than March 11, 2020.

A. *Federal Reserve Bank of Minneapolis* (Chris P. Wangen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Karen R. Healy Hurwitt Trust, West Fargo, North Dakota, Karen Hurwitt, Charlotte, Vermont and First Western Bank & Trust, West Fargo, North Dakota, as co-trustees;* to retain or acquire voting shares of Lincoln Holding Company, and thereby indirectly retain or acquire voting shares of Lincoln State Bank, both of Hankinson, North Dakota.

Board of Governors of the Federal Reserve System, February 20, 2020.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2020–03724 Filed 2–24–20; 8:45 am]

**BILLING CODE P**

## FEDERAL TRADE COMMISSION

**[File No. 191 0160]**

### Agnaten SE, Compassion First and NVA; Analysis of Agreement Containing Consent Orders To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement; request for comment.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis of Agreement Containing Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before March 26, 2020.

**ADDRESSES:** Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''Agnaten SE, Compassion First and NVA; File No. 191 0160'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Michael Barnett (202–326–2362), Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website (for February 14, 2020), at this web address: *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 26, 2020. Write ''Agnaten SE, Compassion First and NVA; File No. 191 0160'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Agnaten SE, Compassion First and NVA; File No. 191 0160'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

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

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

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 26, 2020. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

## Analysis of Agreement Containing Consent Orders To Aid Public Comment

### I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') with Agnaten SE, the owner of Veterinary Specialists of North America, LLC and Compassion-First Pet Hospitals (''Compassion First'') and NVA Parent Inc. (''NVA''), which is designed to remedy the anticompetitive effects that would result from Compassion First's proposed acquisition of NVA.

Pursuant to a Stock Purchase Agreement dated June 3, 2019, Compassion First proposes to acquire all of the assets of NVA in a transaction valued at approximately $5 billion (the ''Acquisition''). Both parties provide specialty and emergency veterinary services in clinics located throughout the United States. The Commission alleges in its Complaint that the Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the markets for certain specialty and emergency veterinary services in three different localities in the United States.[1] The proposed Consent Agreement will remedy the alleged violations by preserving the

[1] In the area around Asheville, North Carolina and Greenville, South Carolina, two Compassion First facilities compete closely with an NVA facility to provide internal medicine, oncology, ophthalmology, and surgery veterinary specialty services and emergency veterinary services. In the area between Norwalk, Connecticut and Yonkers, New York, each merging party has a clinic that provides neurology and radiation oncology veterinary specialty services that compete closely. Finally, in the area surrounding Fairfax and Manassas, Virginia, a Compassion First facility and an NVA facility compete closely to provide emergency veterinary services.

competition that would otherwise be eliminated by the Acquisition. Specifically, under the terms of the Consent Agreement, Compassion First is required to divest three clinics, one in each area,[2] to MedVet Associates, LLC (''MedVet''), an operator of specialty and emergency veterinary clinics elsewhere in the country.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the proposed Consent Agreement as well as any comments received, and decide whether it should withdraw, modify, or make the Consent Agreement final.

## II. The Relevant Markets and Market Structures

The relevant lines of commerce in which to analyze the Acquisition are individual specialty veterinary services and emergency veterinary services. Specialty veterinary services are required in cases where a general practitioner veterinarian does not have the expertise or equipment necessary to treat the sick or injured animal. General practitioner veterinarians commonly refer such cases to a specialist, typically a doctor of veterinary medicine who is board certified in the relevant specialty. Individual veterinary specialties include internal medicine, neurology, oncology, ophthalmology, radiation oncology, and surgery. Emergency veterinary services are those used in acute situations where a general practice veterinarian is not available or, in some cases, not trained or equipped to treat the patient's medical problem.

The relevant areas for the provision of specialty and emergency veterinary services are local, delineated by the distance and time that pet owners travel to receive treatment. The distance and time customers travel for specialty services are highly dependent on local factors, such as the proximity of a clinic offering the required specialty service, appointment availability, population density, demographics, traffic patterns, or specific local geographic barriers.

The Acquisition is likely to result in consumer harm in markets for the provision of the following services in the following localities:

a. Internal medicine, oncology, ophthalmology, and surgery specialty veterinary services and emergency veterinary services in and around Asheville, North Carolina and Greenville, South Carolina;

b. neurology and radiation oncology specialty veterinary services in the area between Norwalk, Connecticut and Yonkers, New York; and

c. emergency veterinary services in and around Fairfax and Manassas, Virginia.

All of these relevant markets are currently highly concentrated, and the Acquisition would substantially increase concentration in each market. In some cases, the combined firm would be the only provider following the transaction. In other markets, consumers would only have one remaining alternative to the combined firm following the transaction.

## III. Entry

Entry into the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. For *de novo* entrants, obtaining financing to build a new specialty or emergency veterinary facility and acquiring or leasing necessary equipment can be expensive and time consuming. The investment is risky for specialists that do not have established practices and bases of referrals in the area. Further, to become a licensed veterinary specialist requires extensive education and training, significantly beyond that required to become a general practitioner veterinarian. Consequently, veterinary specialists are often in short supply, and recruiting them to move to a new area frequently takes more than two years, making timely expansion by existing specialty clinics particularly difficult.

## IV. Effects of the Acquisition

The Acquisition, if consummated, may substantially lessen competition in each of the relevant markets by eliminating close, head-to-head competition between Compassion First and NVA for the provision of specialty and emergency veterinary services. In some markets, the Acquisition will result in a merger to monopoly. The Acquisition increases the likelihood that Compassion First will unilaterally exercise market power and cause customers to pay higher prices for, or receive lower quality, relevant services.

## V. The Consent Agreement

The proposed Consent Agreement remedies the Acquisition's anticompetitive effects in each market by requiring the parties to divest a facility to MedVet in all three localities. The divestitures will preserve competition between the divested clinics and the combined firm's clinics. MedVet is a qualified acquirer of the divested assets because it has significant experience acquiring, integrating, and operating specialty and emergency veterinary clinics, and it does not currently operate or have plans to operate any veterinary clinics in the relevant markets.

The Consent Agreement requires the divestiture of all regulatory permits and approvals, confidential business information, including customer information, and other assets associated with providing specialty and emergency veterinary care at the divested clinics. To ensure the divestiture is successful, the Consent Agreement also requires Compassion First and NVA to secure all third-party consents, assignments, releases, and waivers necessary to conduct business at the divested clinics.

The Consent Agreement also requires Compassion First and NVA to provide reasonable financial incentives to certain employees to encourage them to stay in their current positions. Such incentives may include, but are not limited to, guaranteed retention bonuses for specialty veterinarians at divestiture clinics. These incentives will encourage veterinarians to continue working at the divestiture clinics, which will ensure that MedVet is able to continue operating the clinics in a competitive manner.

Finally, the Consent Agreement contains several other provisions to ensure that the divestitures are successful. First, the Consent Agreement prevents Compassion First from hiring specialty or emergency veterinarians affiliated with the divested clinics for a period of one year. This provides MedVet with sufficient time to build working relationships with these important employees before Compassion First would be able to hire them back. Second, Compassion First will be required to provide transitional services for a period of one year to ensure MedVet continues to operate the divested clinics effectively as it implements its own quality care, billing, and supply systems. Finally, the Consent Agreement requires Compassion First to provide prior notice to the Commission of plans to acquire certain specialty or emergency veterinary clinics for a period of ten years from the date the Commission issues the Order.

The Order requires Compassion First and NVA to divest the clinics no later than ten business days after the consummation of the Acquisition.

[2] The divested clinics are NVA's R.E.A.C.H. Specialty Clinic in Asheville, North Carolina; Compassion First's Veterinary Referral Center of Northern Virginia in Manassas, Virginia; and Compassion First's Veterinary Care Center in Norwalk, Connecticut.

The Commission has appointed Thomas A. Carpenter, D.V.M., as Monitor to ensure that Compassion First and NVA comply with all of their obligations pursuant to the Consent Agreement and to keep the Commission informed about the status of the transfer of rights and assets to MedVet. Dr. Carpenter possesses relevant experience and expertise regarding issues relevant to the divestiture, including experience as a monitor in previous FTC matters.

If the Commission determines that MedVet is not an acceptable acquirer of the divested assets, or that the manner of the divestitures is not acceptable, the parties must unwind the sale of rights and assets to MedVet and divest them to a Commission-approved acquirer within six months of the date on which the Consent Agreement becomes final. In that circumstance, the Commission may appoint a trustee to divest the rights and assets if the parties fail to divest them as required.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement. It is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

**April J. Tabor,**

*Acting Secretary.*

[FR Doc. 2020–03687 Filed 2–24–20; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–20–20IP; Docket No. CDC–2020–0021]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Occupational Driver Safety at Intersections.'' The purpose of this data collection is to gather experimental information in the CDC Motor Vehicle Safety Research Laboratory on the effects of occupation, vehicle type, vehicle approach speed, signal light logic, and emergency response status on emergency vehicle driver decision-making at intersections. The information will also be used to formulate science-based safety recognition training materials and an advanced driver assistant tool to enhance occupational driver (*e.g.,* law enforcement officers and firefighters) safety at intersections.

**DATES:** CDC must receive written comments on or before April 27, 2020.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2020–0021 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

*Please note:* Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

**Proposed Project**

Occupational Driver Safety at Intersections—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Nearly 40% of all traffic crashes occur at intersections. Erroneous decision-making while crossing a signalized intersection is a significant risk factor for drivers. Such decision-making is even more challenging for occupational drivers (*e.g.,* police and fire truck drivers) due to their job demands, special vehicle characteristics, and frequency of crash risk exposure. NIOSH has initiated a laboratory simulation study on effects of occupation, vehicle type, vehicle approach speed, signal light logic, and emergency response status on emergency vehicle driver decision-making at intersections to advance the safety of approximately 900,000 law enforcement officers and 1,134,400 career and volunteer firefighters.

Study results will be used to develop science-based safety recognition training materials for emergency vehicle drivers and their employers to enhance driver safety at intersections. The information also will be used to (1) determine the optimal time/distance to activate a traffic signal preemption system for

emergency vehicles to obtain the right-of-way at intersections, and (2) conceptualize an advanced driver assistant system (ADAS) that provides signal light status and issues a preemptive warning when an emergency vehicle approaches an intersection at an unsafe speed limit based on the vehicle and environmental conditions. The system will assist occupational drivers in decision making while crossing a signalized intersection.

Thirty-two fire truck drivers, 32 law enforcement officers (LEOs), and 32 general passenger vehicle drivers will be recruited for the experiment. The driving task for fire truck drivers and LEOs will consist of responding to an emergency call and returning to the base station. The general passenger vehicle drivers serve as the baseline reference; they will drive a sedan, simulating normal daily driving conditions. LEOs will perform an additional driving task (off-duty condition) using a sedan (same weight and size as the LEO cruiser) on a separate visit for the experiment. The drivers' performance (*e.g.,* perception and response time, stopping accuracy, and stress level) and safety outcomes (*e.g.,* deceleration at intersection, clearance to intersection, red light running time, and red light running frequency) will be analyzed, based on vehicle locations, vehicle speeds, and drivers' heart rates.

A follow-up study will evaluate the effectiveness of a driver assistant tool (derived from the first experiment) on the drivers' decision-making and overall safety outcomes. The driver assistant tool would be (1) either an algorithm to activate a traffic signal preemption system at optimal time/distance for emergency vehicles to obtain the right-of-way at intersections or, (2) an advanced driver assistant system that provides signal light status and issues a preemptive warning when an emergency vehicle approaches an intersection at an unsafe speed limit. Half of the participants from the first experiment (*i.e.,* 16 truck drivers, 16 LEOs, and 16 general passenger vehicle drivers) and 48 new participants (16 from each of the three groups) will be recruited. The design of this experiment in terms of nature of tasks and outcome measures will be the same as those for the first experiment.

The two experiments will utilize 192 research participants. An additional six participants may be recruited to replace dropouts during the study due to simulator sickness. The data collection for the two experiments will take three years in total. Informed consent and the data collection are expected to take 3–3.5 hours (total) to complete for Experiment 1 and 4–4.5 hours for Experiment 2 for each participant. The total estimated annualized burden hours are 341. There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hrs.) | Total burden (in hrs.) |
|---|---|---|---|---|---|
| Experiment 1: Law Enforcement Officers | Pre-Enrollment Confirmation Email | 11 | 1 | 1/60 | 1 |
| | Participation Data Collection Form | 11 | 1 | 1/60 | 1 |
| | Informed Consent form—including participant orientation | 11 | 1 | 20/60 | 4 |
| | Motion Sickness Screen Form | 11 | 1 | 2/60 | 1 |
| | Pre and post drive simulator sickness assessment x5 scenarios x3 conditions. | 11 | 1 | 1 | 11 |
| | Sharpened Romberg Postural Stability Test x2 states x3 conditions. | 11 | 1 | 30/60 | 6 |
| | Practice Roadmap—Driving practice in simulator x3 conditions. | 11 | 1 | 48/60 | 9 |
| | Actual test—120 minutes x3 conditions | 11 | 1 | 360/60 | 66 |
| Experiment 1: Firefighter | Pre-Enrollment Confirmation Email | 11 | 1 | 1/60 | 1 |
| | Participation Data Collection Form | 11 | 1 | 1/60 | 1 |
| | Informed Consent form—including participant orientation | 11 | 1 | 20/60 | 4 |
| | Motion Sickness Screen Form | 11 | 1 | 2/60 | 1 |
| | Pre and post drive simulator sickness assessment x5 scenarios x2 conditions. | 11 | 1 | 40/60 | 7 |
| | Sharpened Romberg Postural Stability Test x2 states x2 conditions. | 11 | 1 | 20/60 | 4 |
| | Practice Roadmap—Driving practice in simulator x2 conditions. | 11 | 1 | 36/60 | 7 |
| | Actual test—120 minutes x2 conditions | 11 | 1 | 240/60 | 44 |
| Experiment 1: General civilian | Pre-Enrollment Confirmation Email | 11 | 1 | 1/60 | 1 |
| | Participation Data Collection Form | 11 | 1 | 1/60 | 1 |
| | Informed Consent form—including participant orientation | 11 | 1 | 20/60 | 4 |
| | Motion Sickness Screen Form | 11 | 1 | 2/60 | 1 |
| | Pre and post drive simulator sickness assessment x5 scenarios x1 condition. | 11 | 1 | 20/60 | 4 |
| | Sharpened Romberg Postural Stability Test x2 states x1 condition. | 11 | 1 | 10/60 | 2 |
| | Practice Roadmap—Driving practice in simulator x1 condition. | 11 | 1 | 16/60 | 3 |
| | Actual test—120 minutes x1 condition | 11 | 1 | 120/60 | 22 |
| Experiment 2: Law Enforcement Officers | Pre-Enrollment Confirmation Email | 11 | 1 | 1/60 | 1 |
| | Participation Data Collection Form | 11 | 1 | 1/60 | 1 |
| | Informed Consent form—including participant orientation | 11 | 1 | 20/60 | 4 |
| | Motion Sickness Screen Form | 11 | 1 | 2/60 | 1 |
| | Pre and post drive simulator sickness assessment x5 scenarios x1 condition. | 11 | 1 | 20/60 | 4 |
| | Sharpened Romberg Postural Stability Test x2 states x1 condition. | 11 | 1 | 10/60 | 2 |
| | Acceptance of Advanced Driver Assistance System x1 condition. | 11 | 1 | 40/60 | 7 |
| | Practice Roadmap—Driving practice in simulator x1 condition. | 11 | 1 | 16/60 | 3 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hrs.) | Total burden (in hrs.) |
|---|---|---|---|---|---|
| | Actual test—120 minutes x1 condition | 11 | 1 | 120/60 | 22 |
| Experiment 2: Firefighter | Pre-Enrollment Confirmation Email | 11 | 1 | 1/60 | 1 |
| | Participation Data Collection Form | 11 | 1 | 1/60 | 1 |
| | Informed Consent form—including participant orientation | 11 | 1 | 20/60 | 4 |
| | Motion Sickness Screen Form | 11 | 1 | 2/60 | 1 |
| | Pre and post drive simulator sickness assessment x5 scenarios x1 condition. | 11 | 1 | 20/60 | 4 |
| | Sharpened Romberg Postural Stability Test x2 states x1 condition. | 11 | 1 | 10/60 | 2 |
| | Acceptance of Advanced Driver Assistance System x1 condition. | 11 | 1 | 40/60 | 7 |
| | Practice Roadmap—Driving practice in simulator x1 condition. | 11 | 1 | 16/60 | 3 |
| | Actual test—120 minutes x1 condition | 11 | 1 | 120/60 | 22 |
| Experiment 2: General civilian | Pre-Enrollment Confirmation Email | 11 | 1 | 1/60 | 1 |
| | Participation Data Collection Form | 11 | 1 | 1/60 | 1 |
| | Informed Consent form—including participant orientation | 11 | 1 | 20/60 | 4 |
| | Motion Sickness Screen Form | 11 | 1 | 2/60 | 1 |
| | Pre and post drive simulator sickness assessment x5 scenarios x1 condition. | 11 | 1 | 20/60 | 4 |
| | Sharpened Romberg Postural Stability Test x2 states x1 condition. | 11 | 1 | 10/60 | 2 |
| | Acceptance of Advanced Driver Assistance System x1 condition. | 11 | 1 | 40/60 | 7 |
| | Practice Roadmap—Driving practice in simulator x1 condition. | 11 | 1 | 16/60 | 3 |
| | Actual test—120 minutes x1 condition | 11 | 1 | 120/60 | 22 |
| Total | | | | | 341 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2020–03653 Filed 2–24–20; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–20–20HN; Docket No. CDC–2020–0016]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National Outbreak Reporting System (NORS). NORS collects data on all waterborne and foodborne disease outbreaks and enteric disease outbreaks transmitted by contact with environmental sources, infected persons or animals, or unknown modes of transmission.

**DATES:** CDC must receive written comments on or before April 27, 2020.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2020–0016 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

**Please note:** Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, of the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

**Proposed Project**

National Outbreak Reporting System (NORS)—New—National Center for Emerging and Zoonotic Infectious Disease (NCEZID), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The National Outbreak Reporting System (NORS) is a web-based platform that is used by local, state, and territorial health departments in the United States to report all waterborne and foodborne disease outbreaks and enteric disease outbreaks transmitted by contact with environmental sources, infected persons or animals, or unknown modes of transmission to the Centers for Disease Control and Prevention. CDC analyzes outbreak data to determine trends and develop and refine recommendations for prevention and control of foodborne, waterborne, and enteric disease outbreaks. NORS was previously approved as part of OMB Control No. 0920–0004, and is being pulled into its own information collection request to allow for more timely updates to information collection instruments, as necessary for public health surveillance.

CDC requests approval for an estimated 747 annualized burden hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| Epidemiologist | NORS Foodborne Disease Transmission, Person-to-Person Disease Transmission, Animal Contact, Environmental Contamination, Unknown Transmission Mode, Form 52.13.<br>NORS Waterborne Disease Transmission, Form 52.12.<br>National Outbreak Reporting System, Data Dictionary. | 59 | 38 | 20/60 | 747 |
| Total | | | | | 747 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2020–03651 Filed 2–24–20; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–20–20HD; Docket No. CDC–2020–0010]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS)

**ACTION:** Notice with comment period

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled *Shigella Hypothesis Generating Questionnaire (SHGQ).* The development of a Shigella Hypothesis Generating Questionnaire will support shigellosis cluster and outbreak investigations. CDC will collect state and local health department furnished shigellosis case data.

**DATES:** CDC must receive written comments on or before April 27, 2020.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2020–0010 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

**Please note:** Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, of the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

**Proposed Project**

Shigella Hypothesis Generating Questionnaire—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

*Shigella* are a family of bacteria that cause the diarrheal disease shigellosis. It is estimated that *Shigella* causes about 500,000 cases of diarrhea in the United States annually. From 2007 through 2017, there have been 1,046 outbreaks of shigellosis in the United States, with most of these outbreaks attributed to person to person spread. Outbreaks of shigellosis have been reported in a range of settings such as community-wide, daycares, schools, restaurants, and retirement homes. Outbreaks of shigellosis have impacted a range of populations such as children, men who have sex with men, people experiencing homelessness, tight knit religious communities, international travelers, and refugees/displaced persons. Finally, outbreaks of shigellosis have been attributed to a range of transmission modes including person-to-person/no common source, sexual person-to-person contact, contaminated food, and contaminated water. As part of *Shigella* outbreak investigations, it is common for state and local health departments to conduct comprehensive interviews with cases and contacts to identify how individuals became sick with shigellosis, to identify individuals who could have come into contact with an individual sick with shigellosis, and to identify strategies to control the cluster or outbreak. As person-to-person contact is the most common mode of transmission for shigellosis, and shigellosis is highly contagious, it can be challenging to identify how individuals could have become ill. As a result, comprehensive hypothesis generating questionnaires focused on a range of settings, activities, and potential modes of transmission are needed to guide prevention and control activities.

There is currently no national, standardized hypothesis generating interview data collection instrument for use during single or multistate shigellosis cluster or outbreak investigations. More detailed data about shigellosis cases involved in single or multistate clusters or outbreaks are needed to better characterize the epidemiology of clusters and outbreaks and to identify modes or settings of importance by collecting the following information. This information will not only help inform routine cluster and outbreak investigation activities but also guide awareness efforts and appropriate prevention strategies. To meet these needs the *Shigella* Hypothesis Generating Questionnaire (SHGQ) was developed.

The SHGQ will be administered by state and local public health officials via telephone interviews with cases of shigellosis or their proxy who are part of a shigellosis cluster or outbreak. The SHGQ will collect information on demographics characteristics, household information and family member event and activity attendance, clinical signs and symptoms, medical care and treatment information, travel history, contact with international travelers or other ill individuals, event and activity attendance, limited food and water exposure, work, visit, and volunteer locations, childcare and school attendance, and recent sexual partner(s) and activity.

This interview activity is consistent with the state's existing authority to investigate reports of notifiable diseases for routine surveillance purposes; therefore, formal consent to participate in the activity is not required. However, cases may choose not to participate and may choose not to answer any question they do not wish to answer. It will take health department personnel approximately 45 minutes to administer the questionnaire to an estimated 1500 patient respondents. This results in an estimated annual burden to the public of 1,125 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| Shigellosis case patients identified as part of outbreak or cluster investigations. | Shigella Hypothesis Generating Questionnaire. | 1,500 | 1 | 45/60 | 1,125 |
| Total | | | | | 1,125 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2020–03650 Filed 2–24–20; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–20–0910; Docket No. CDC–2020–0018]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed revision of the existing information collection generic clearance titled Message Testing for Tobacco Communication Activities (MTTCA). CDC's Office on Smoking and Health has used the MTTCA clearance to support the development and testing of tobacco-related health messages, including messages supporting CDC's National Tobacco Education Campaign (NTEC) called the Tips from Former Smokers® campaign.

**DATES:** CDC must receive written comments on or before April 27, 2020.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2020–0018 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

*Please note:* Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

#### Proposed Project

Message Testing for Tobacco Communication Activities (MTTCA)(OMB Control No. 0920–0910, expires 05/31/2021)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

In 2012, CDC's Office on Smoking and Health obtained OMB approval of a generic clearance to support the development and testing of tobacco-related health messages, including messages disseminated through multiple phases of a media campaign (Message Testing for Tobacco Communication Activities (MTTCA), OMB No. 0920–0910, exp. 1/31/2015). In 2015, OSH obtained approval for a modification to the MTTCA clearance that granted a three-year extension and an increase in respondents and burden hours (MTTCA, OMB No. 0920–0910, exp. 3/31/2018). This MTTCA clearance was approved with 44,216 annualized responses and 10,998 annualized burden hours. In 2018, OSH obtained approval for an extension to the MTTCA clearance that increased the annualized number of respondents to 46,108 and decreased the annualized burden hours to 7,070 (MTTCA, OMB No. 0920–0910, exp. 5/31/2021). CDC's authority to collect information for public health purposes is provided by the Public Health Service Act (41 U.S.C. 241) Section 301.

CDC has employed the MTTCA clearance to collect information about adult smokers' and nonsmokers' attitudes and perceptions, and to pretest draft messages and materials for clarity, salience, appeal, and persuasiveness. The MTTCA clearance has been used to obtain OMB approval for a variety of message testing activities, with particular emphasis on communications supporting CDC's National Tobacco Education Campaign (NTEC) called the Tips from Former Smokers® campaign. This national campaign is designed to increase public awareness of the health consequences of tobacco use and exposure to secondhand smoke. The MTTCA clearance has also supported formative research relating to the development of health messages that are not specifically associated with the national campaign.

Information collection modes under the MTTCA clearance that are supported include in-depth interviews; in-person focus groups; online focus groups; in-person, or telephone interviews; and online surveys. Each project approved under the MTTCA framework is outlined in a project-specific Information Collection Request that describes its purpose and methodology. Messages developed from MTTCA data collection have been disseminated via multiple media channels including television, radio, print, out-of-home, and digital formats.

CDC requests OMB approval to extend the MTTCA clearance, with changes, for three years. Requested changes are to increase the number of respondents and burden hours, and to expand testing of messages on non-combustible products to include heated tobacco products. These changes are needed to support CDC's planned information collections and to accommodate additional needs

that CDC may identify during the next three years. No modification is requested for information collection activities, methodology, or populations of interest from the existing generic clearance. The extension and requested changes are needed to support CDC's planned information collections and to accommodate additional needs that CDC may identify during the next three years. For example, the MTTCA generic clearance may be used to facilitate the development of tobacco-related health communications of interest for CDC's collaborative efforts with other federal partners including, but not limited to, the Food and Drug Administration's Center for Tobacco Products. The MTTCA clearance should not replace the need for additional generic clearance mechanisms of HHS and other federal partners that may need to test tobacco messages related to their campaigns and initiatives.

The existing MTTCA clearance was granted approval for a total of 138,324 respondents and 21,210 burden hours over a three-year period (annualized number of respondents of 46,108 and annualized burden hours of 7,070). To date, there have been 69,529 respondents and 10,489 burden hours used in this clearance, leaving a balance of 68,795 respondents and 10,721 burden hours (annualized number of respondents of 22,932 and annualized burden hours of 3,754 for each of the three years in the requested extension). The MTTCA extension would provide approval for an annualized number of respondents of 83,215 and annualized burden hours of 11,255. CDC will continue to use the MTTCA clearance to develop and test messages and materials. Participation is voluntary and there are no costs to respondents, other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| General Public and Special Populations. | Screening | 37,640 | 1 | 2/60 | 1,255 |
| | In-Depth Interviews (In Person) | 67 | 1 | 1 | 67 |
| | Focus Groups (In Person) | 288 | 1 | 1.5 | 432 |
| | Surveys (Online, Short) | 40,987 | 1 | 10/60 | 6,832 |
| | Surveys (Online, Medium) | 2,733 | 1 | 25/60 | 1,139 |
| | Surveys (In-Depth Telephone and Online). | 1,500 | 1 | 1 | 1,500 |
| Total | | 83,215 | | | 11,225 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2020–03654 Filed 2–24–20; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–20–1185; Docket No. CDC–2020–0020]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Youth Outreach Generic Clearance for the National Center for Health Statistics. This generic clearance is designed to facilitate outreach efforts in the fields of math and science to young people (K through college) and those who support them.

**DATES:** CDC must receive written comments on or before April 27, 2020.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2020–0020 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

*Please note:* Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

**Proposed Project**

Youth Outreach Generic Clearance for the National Center for Health Statistics (NCHS) (OMB Control No. 0920–1185, Exp. 5/31/2020)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

NCHS is authorized to collect data under Section 306 of the Public Health Service Act (42 U.S.C. 242k). NCHS has a history of reaching out to young people to encourage their interest in Science, Technology, Engineering and Math (STEM). Examples of past involvement include adopting local schools, speaking at local colleges, conducting a Statistics Day for high school students, and, most recently, conducting the NCHS Data Detectives Camp for middle school students.

The success of these programs has inspired NCHS leadership and staff to want to look for new and continuing opportunities to positively impact the lives of young people and expand their interest, understanding of and involvement in the sciences. NCHS requests approval for an Extension to a Generic Clearance mechanism (OMB Control No. 0920–1185) to collect information for these youth outreach activities and to inform future NCHS planning activities. These activities include hosting the Data Detectives Camp annually; hosting Statistics Day annually; creating youth poster sessions for professional conferences (such as the NCHS National Conference on Health Statistics or the American Statistical Association Conference etc.); hosting a statistical or health sciences etc. fair or other STEM related competitions; organizing a STEM Career Day or similar activity; developing web-based sites or materials with youth focus as well as other programs developed to meet future youth outreach needs, particularly activities that encourage STEM.

Information will be collected using a combination of methodologies appropriate to each program. These may include: registration forms, letters of recommendation, evaluation forms; mail surveys; focus groups; automated and electronic technology (*e.g.* email, Web-based surveys); and telephone surveys.

OMB approval is requested for three years to conduct the Youth Outreach Generic Clearance for the National Center for Health Statistics (NCHS). Participation is voluntary and there are no costs to respondents other than their time. The total estimated annualized burden hours are 1,750.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of survey | Respondent | Number of respondents | Number of responses/ respondent | Average burden/ response (in hours) | Response burden (in hours) |
|---|---|---|---|---|---|
| Questionnaires/Applications | Student/Youth | 800 | 1 | 30/60 | 400 |
| Applicants Questionnaire/Application | Parents/Guardians of Applicants | 800 | 1 | 30/60 | 400 |
| Applications, Recommendations, and Other applicant-supporting documentation. | School Officials/Community Representatives. | 1,200 | 1 | 30/60 | 600 |
| Focus Groups | Student/Youth; Parent/Guardian; School Officials; Other. | 50 | 1 | 60/60 | 50 |
| Other Program Surveys | Student/Youth; Parent/Guardian; School Officials; Other. | 600 | 1 | 30/60 | 300 |
| Total | | | | | 1,750 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2020–03655 Filed 2–24–20; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–20–20HO; Docket No. CDC–2020–0017]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Heat-related Changes in Cognitive Performance. The purpose of this study is to collect information on burden of heat strain among miners as well as factors related to personal risk and core body temperature that contribute to individual variability in heat tolerance and to declines in heat-related worker performance.

**DATES:** CDC must receive written comments on or before April 27, 2020.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2020–0017 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

**Please note:** *Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.*

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

**SUPPLEMENTARY INFORMATION:**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

**Proposed Project**

Heat-related Changes in Cognitive Performance—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

NIOSH, under Public Law 91–173 as amended by Public Law 95–164 (Federal Mine Safety and Health Act of 1977), and PL 109–236 (Mine Improvement and New Emergency Response Act of 2006) has the responsibility to conduct research to improve working conditions and to prevent accidents and occupational diseases in U.S. mines. Heat strain is one of these occupational diseases and is an increasing problem among many industries, including mining. As mines expand into deeper and hotter environments, and as heat waves occur with increasing frequency and severity, heat strain among underground and surface miners is likely to increase. Not only can heat strain lead to heat illness, but studies have demonstrated associations between heat exposure and work injuries. Although the underlying mechanism between heat exposure and injury is not known, reduced cognitive function is likely contributory.

Despite the increasing importance of heat strain in mining, few studies have focused on heat strain among U.S. miners. The few studies that are available have demonstrated that miners often exceed a core body temperature of 38°C during work activities, which is above the recommended threshold, but more information on frequency, duration, and intensity of elevated core body temperatures is needed in order to focus future heat strain research to better serve the mining industry.

In addition to determining the patterns of duration and intensity of heat strain among U.S. miners, investigating the additional effects of heat strain beyond the risk of heat illness is an important step in improving miner health and safety. Studies have demonstrated associations between heat stress and cognitive deficits, but substantial inter- and intra-individual variability exists in the physiologic and cognitive responses to heat exposure. More information is needed about the most important factors (*e.g.,* age, sex, chronic disease, fitness level, hydration) contributing to individual variability as well as interactions between these factors, because individual variability likely affects the usefulness of one-size-fits-all heat stress indices that are currently used in mining. Additionally, it is unclear which characteristics of core body temperature (*e.g.,* absolute temperature thresholds vs. rising or falling temperatures vs rate of temperature change) are most associated with cognitive dysfunction. A better understanding of how individual variability and core body temperature relate to cognitive deficits would assist in developing strategies for screening and monitoring miners to mitigate or prevent heat strain. Therefore, this study aims to assess the following objectives: (1) Whether a core body temperature threshold exists at which cognitive performance begins to decline, (2) What factors most contribute to individual variability in cognitive and physiologic responses to heat, and (3) What patterns of duration and intensity of heat strain are most common among U.S. surface and underground miners.

To study these objectives, a dual-arm field and laboratory study will be conducted. The field study will be conducted at surface and underground mines. Data will be collected from miners working in warm or hot areas of participating mines. Participants will swallow temperature pills to measure core body temperature and will wear bio-harnesses to measure heart rate. Two six-minute assessments will be taken during each shift. The assessments include questions on sleepiness and work tasks and a Psychomotor Vigilance Test (PVT) to assess vigilant attention and reaction time. An initial screening questionnaire as well as post-shift questionnaires will be used to obtain information on risk factors for heat strain and cognitive deficits. The purpose of collecting data at the field sites is to evaluate the frequency, duration, and intensity of heat strain by monitoring core body temperature and heart rate throughout two complete shifts, as well as to assess associations between core body temperature and cognitive deficits.

The laboratory study will be conducted in an environmental chamber, in which environmental conditions can be highly controlled. Data will be collected from miners, construction workers, and firefighters. These three groups were chosen because of their risk of heat exposure and their proximity to the NIOSH laboratory

where the study will be conducted. Participants will perform alternating resistance and aerobic exercises followed by brief surveys to evaluate sleepiness (Karolinska Sleepiness Scale), affect (Positive and Negative Affect Schedule), and fatigue. Following these surveys, two cognitive tests (PVT and N-back, which measures vigilance, working memory, and complex tracking) will be administered. Testing will occur at room temperature and in hot conditions to compare cognitive test results between conditions. Participants will swallow temperature pills and wear bio-harnesses to enable the collection of real-time core body temperature and heart rate data. An initial health screening questionnaire as well as additional questionnaires administered prior to each test will be used to ensure that participants are able to withstand the physical demands of testing and to provide information on factors that affect individual variability to heat tolerance. Additionally, a physical examination and fingerstick blood tests will be used for health screening. The purpose of collecting data in the environmental chamber is to compare physiologic and cognitive measurements at different core body temperatures to evaluate factors contributing to individual variability in cognitive and physiologic responses to heat and to evaluate whether core body temperature thresholds exist above which cognitive deficits are observed.

The total estimated burden hours are 109 for the field study and 77 for the environmental chamber study for a total of 186. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number responses per respondent | Average burden per response (hours) | Total burden (hours) |
|---|---|---|---|---|---|
| Miners | Informed consent form (field) | 59 | 1 | 30/60 | 30 |
| | Initial health screening questionnaire (field). | 59 | 1 | 30/60 | 30 |
| | Mid-shift field questionnaire | 59 | 4 | 1/60 | 4 |
| | PVT cognitive test | 59 | 5 | 5/60 | 25 |
| | Post-shift field questionnaire | 59 | 2 | 10/60 | 20 |
| Miners/firefighters/construction workers. | Informed consent form (chamber) | 30 | 1 | 30/60 | 15 |
| | Physical examination form | 30 | 1 | 10/60 | 5 |
| | Initial health screening questionnaire (chamber). | 30 | 1 | 30/60 | 15 |
| | Release of information form | 5 | 1 | 1/60 | 1 |
| | TSS and RPE | 30 | 5 | 1/60 | 3 |
| | PANAS and KSS | 30 | 5 | 2/60 | 5 |
| | Cognitive test: PVT | 30 | 5 | 10/60 | 25 |
| | Cognitive test: N-back | 30 | 5 | 1/60 | 3 |
| | Pre-testing health questionnaire | 30 | 2 | 5/60 | 5 |
| Total | | | | | 186 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2020–03652 Filed 2–24–20; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–20–1198; Docket No. CDC–2020–0014]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Cyclosporiasis National Hypothesis Generating Questionnaire''. The Cyclosporiasis National Hypothesis Generating Questionnaire (CNHGQ) facilitates the collection of standard data during investigations of outbreaks of cyclosporiasis, thereby increasing the likelihood that outbreaks will be recognized and sources will be identified.

**DATES:** CDC must receive written comments on or before April 27, 2020.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2020–0014 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

*Please note: Submit all comments through the Federal eRulemaking portal* (*regulations.gov*) *or by U.S. mail to the address listed above.*

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffery M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

**Proposed Project**

Cyclosporiasis National Hypothesis Generating Questionnaire (OMB Control No. 0920–1198 Exp. 9/30/2020)– Revision—Centers for Global Health (CGH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

An estimated one in six Americans per year becomes ill with a foodborne disease. Foodborne outbreaks of cyclosporiasis—caused by the parasite Cyclospora cayetanensis—have been reported in the United States since the mid-1990s and have been linked to various types of fresh produce. During the 15-year period of 2000–2014, 31 U.S. foodborne outbreaks of cyclosporiasis were reported; the total case count was 1,562. It is likely that more cases (and outbreaks) occurred than were reported; in addition, because of insufficient data, many of the reported cases could not be directly linked to an outbreak or to a particular food vehicle.

Collecting the requisite data for the initial hypothesis-generating phase of investigations of multistate foodborne disease outbreaks is associated with multiple challenges, including the need to have high-quality hypothesis-generating questionnaire(s) that can be used effectively in multijurisdictional investigations. Such a questionnaire was developed in the past for use in the context of foodborne outbreaks caused by bacterial pathogens; that questionnaire is referred to as the Standardized National Hypothesis Generating Questionnaire (SNHGQ). However, not all of the data elements in the SNHGQ are relevant to the parasite Cyclospora (*e.g.,* questions about consumption of meat and dairy products); on the other hand, additional data elements (besides those in the SNHGQ) are needed to capture information pertinent to Cyclospora and to fresh produce vehicles of infection. Therefore, the Cyclosporiasis National Hypothesis Generating Questionnaire (CNHGQ) has been developed, by using core data elements from the SNHGQ and incorporating modifications pertinent to Cyclospora.

The core data elements from the SNHGQ were developed by a series of working groups comprised of local, state, and federal public health partners. Subject matter experts at CDC have developed the CNHGQ, by modifying the SNHGQ to include and focus on data elements pertinent to Cyclospora/cyclosporiasis. Input also was solicited from state public health partners. Because relatively few data elements in the SNHGQ needed to be modified, a full vetting process was determined not to be necessary. The CNHGQ has been designed for administration over the telephone by public health officials, to collect data elements from case-patients or their proxies. The data that are collected will be pooled and analyzed at CDC, to generate hypotheses about potential vehicles/sources of infection.

CDC requests OMB approval to collect information via the CNHGQ from persons who have developed symptomatic cases of Cyclospora infection during periods in which increased numbers of such cases are reported (typically, during spring and summer months). In part because molecular typing methods are not yet available for C. cayetanensis, it is important to interview all case-patients identified during periods of increased reporting, to help determine if their cases could be part of an outbreak(s).

The CNHGQ is not expected to entail substantial burden for respondents. The estimated total annualized burden associated with administering the CNHGQ is 1875 hours (approximately 2,500 individuals interviewed × 45 minutes/response). There will be no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| Ill individuals identified as part of an outbreak investigation. | Cyclosporiasis National Hypothesis Generating Questionnaire. | 2,500 | 1 | 45/60 | 1875 |
| Total | | | | | 1875 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2020–03656 Filed 2–24–20; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–20–19BOI]**

### Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled the National Diabetes Prevention Program (DPP) Introductory Session Project to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on September 4th, 2019 to obtain comments from the public and affected agencies. CDC received three comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

**Proposed Project**

National Diabetes Prevention Program (DPP) Introductory Session Project—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Centers for Disease Control and Prevention's (CDC's) National Diabetes Prevention Program lifestyle change program (National DPP LCP) focused on helping participants adopt healthier behaviors (*e.g.,* improving diet, increasing physical activity, reducing stress) to prevent or delay the development of type 2 diabetes. This proposed project's primary purposes are to (1) increase knowledge of recruitment strategies, specifically introductory sessions, used by CDC-recognized organizations to increase enrollment in the National DPP LCP (Phase 1), and (2) evaluate the effectiveness of introductory sessions, specifically a CDC-developed behaviorally-informed introductory session known as the Be Your Best (BYB) Discovery Session, on enrollment compared with other types of introductory sessions that organizations currently use (Phase 2).

CDC is requesting OMB approval to collect information needed for this evaluation. For Phase 1 of this project, the Introductory Session Landscape Assessment, CDC is seeking approval to disseminate a brief Landscape Assessment (survey) to all National DPP CDC-recognized organizations (approximately 1,700) and their affiliate class locations (up to 540). The survey will initially be disseminated electronically (web-based survey), and then a hard copy will be mailed to non-respondents. The overall evaluation objectives of the Introductory Session Landscape Assessment are to increase knowledge of recruitment strategies (specifically introductory sessions) used by CDC-recognized organizations to increase enrollment in LCPs; understand how CDC-recognized organizations are using introductory sessions, including session content and delivery; and inform the subsequent Phase 2 Introductory Session Evaluation that will evaluate the BYB Discovery Session compared with other types of introductory sessions.

For the Phase 2 Introductory Session Evaluation, CDC is seeking approval to disseminate the following data collection tools: (1) Pre-Session Survey (to be completed by up to 2,640 introductory session attendees), (2) Post-Session Survey (to be completed by up to 2,640 introductory session attendees), (3) Registration and Attendance Tracking Form (to be completed by up to 132 LCP staff), and (4) Discovery Session Implementation Fidelity Checklist (to be completed by up to 66 LCP staff). The Pre-Session and Post-Session Surveys will be distributed as hard copies to introductory session attendees. The BYB Discovery Session Implementation Fidelity Checklist and the Registration and Attendance Tracking Form will be designed in Microsoft Excel and distributed to participating LCP staff using secure FTP upload for LCP personnel to complete electronically.

Information collected will be analyzed to evaluate the effectiveness of the BYB Discovery Session intervention in increasing enrollment in the National DPP LCP compared with already occurring introductory sessions (*i.e.,* standard care), with a secondary aim of better understanding how it is implemented and the context of its implementation. This data collection important because if the BYB Discovery Session is determined to be an effective recruitment strategy compared with other existing introductory sessions, it should be promoted to maximize the National DPP's potential to reduce type 2 diabetes incidence.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| LCP Staff | Landscape Assessment | 2,240 | 1 | 15/60 |
| Introductory Session Attendees (Individuals) | Pre-Session Survey | 2,640 | 1 | 10/60 |
| Introductory Session Attendees (Individuals) | Post-Session Survey | 2,640 | 1 | 10/60 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| LCP Staff | Registration and Attendance Tracking Form | 132 | 1 | 15/60 |
| LCP Staff | BYB Discovery Session Implementation Fidelity Checklist. | 66 | 1 | 90/60 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2020–03649 Filed 2–24–20; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifiers: CMS–10593, CMS–2744, and CMS–10652]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by April 27, 2020.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

**FOR FURTHER INFORMATION CONTACT:** William N. Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:**

#### Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10593 Establishment of an Exchange by a State and Qualified Health Plans

CMS–2744 End Stage Renal Disease Annual Facility Survey Form

CMS–10652 Virtual Groups for Merit-Based Incentive Payment System (MIPS)

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''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 requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

#### Information Collection

1. *Type of Information Collection Request:* Reinstatement with change of a previously approved information collection; *Title of Information Collection:* Establishment of an Exchange by a State and Qualified Health Plans; *Use:* The Patient Protection and Affordable Care Act, Public Law 111–148, enacted on March 23, 2010, and the Health Care and Education Reconciliation Act, Public Law 111–152, enacted on March 30, 2010 (collectively, ''Affordable Care Act''), expand access to health insurance for individuals and employees of small businesses through the establishment of new Affordable Insurance Exchanges (Exchanges), including the Small Business Health Options Program (SHOP).

As directed by the rule *Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers* (77 FR 18310) (Exchange rule), each Exchange will assume responsibilities related to the certification and offering of Qualified Health Plans (QHPs). To offer insurance through an Exchange, a health insurance issuer must have its health plans certified as QHPs by the Exchange. A QHP must meet certain minimum certification standards, such as network adequacy, inclusion of Essential Community Providers (ECPs), and non-

discrimination. The Exchange is responsible for ensuring that QHPs meet these minimum certification standards as described in the Exchange rule under 45 CFR 155 and 156, based on the Affordable Care Act, as well as other standards determined by the Exchange. The reporting requirements and data collection in the Exchange rule address Federal requirements that various entities must meet with respect to the establishment and operation of an Exchange; minimum requirements that health insurance issuers must meet with respect to participation in a State based or Federally-facilitated Exchange; and requirements that employers must meet with respect to participation in the SHOP and compliance with other provisions of the Affordable Care Act. *Form Number:* CMS–10593 (OMB Control Number: 0938–1312) *Frequency:* Monthly, Annual; *Affected Public:* Private Sector; *Number of Respondents:* 20; *Number of Responses:* 361; *Total Annual Hours:* 51,805. For policy questions regarding this collection contact Courtney Williams at 301–492–5157.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Annual Facility Survey Form; *Use:* The ESRD Program Management and Medical Information System (PMMIS) Facility Certification/Survey Record contains provider-specific and aggregate patient population data on beneficiaries treated by that provider obtained from the Annual Facility Survey form (CMS–2744). The Facility Certification portion of the record captures certification and other information about ESRD facilities approved by Medicare to provide kidney dialysis and transplant services. The Facility Survey portion of the record captures activities performed during the calendar year as well as aggregate year-end population counts for both Medicare beneficiaries and non-Medicare patients. The survey includes the collection on hemodialysis patients dialyzing more than 4 times per week, vocational rehabilitation and staffing. The aggregate patient information is collected from each Medicare-approved provider of dialysis and kidney transplant services. The information is used to assess and evaluate the local, regional and national levels of medical and social impact of ESRD care and is used extensively by researchers and suppliers of services for trend analysis. *Form Number:* CMS–2744 (OMB control number: 0938–0447); *Frequency:* Yearly; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 7,828; *Total Annual Responses:* 7,828; *Total Annual Hours:* 31,312. (For policy questions regarding this collection contact Gequincia Polk at 410–786–2305)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Virtual Groups for Merit-Based Incentive Payment System (MIPS); *Use:* CMS acknowledges the unique challenges that small practices and practices in rural areas may face with the implementation of the Quality Payment Program. To help support these practices and provide them with additional flexibility, CMS has created a virtual group reporting option starting with the 2018 MIPS performance period. CMS held webinars and small, interactive feedback sessions to gain insight from clinicians as we developed our policies regarding virtual groups. During these sessions, participants expressed a strong interest in virtual groups, and indicated that the right policies could minimize clinician burden and bolster clinician success.

This information collection request is related to the statutorily required virtual group election process finalized in the CY 2018 Quality Payment Program final rule. A virtual group is a combination of Tax Identification Numbers (TINs), which would include at least two separate TINs associated with a solo practitioner TIN and National Provider Identifier (TIN/NPI) or group with 10 or fewer MIPS eligible clinicians and another solo practitioner (TIN/NPI) or group with 10 or fewer MIPS eligible clinicians.

Section 1848(q)(5)(I) of the Act requires that CMS establish and have in place a process to allow an individual MIPS eligible clinician or group consisting of not more than 10 MIPS eligible clinicians to elect, with respect to a performance period for a year to be in a virtual group with at least one other such individual MIPS eligible clinician or group. The Act also provides for the use of voluntary virtual groups for certain assessment purposes, including the election of practices to be a virtual group and the requirements for the election process.

Section 1848(q)(5)(I)(i) of the Act also provides that MIPS eligible clinicians electing to be a virtual group must: (1) Have their performance assessed for all four performance categories in a manner that applies the combined performance of all the MIPS eligible clinicians in the virtual group to each MIPS eligible clinician in the virtual group for the applicable performance period; and (2) be scored for all four performance categories based on such assessment.

CMS will use the data collected from virtual group representatives to determine eligibility to participate in a virtual group, approve the formation of that virtual group, based on determination of each TIN size, and assign a virtual group identifier to the virtual group. The data collected will also be used to assign a performance score to each TIN/NPI in the virtual group. *Form Number:* CMS–10652 (OMB control number: 0938–1343); *Frequency:* Annually; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions and Individuals; *Number of Respondents:* 16; *Total Annual Responses:* 16; *Total Annual Hours:* 160. (For policy questions regarding this collection, contact Michelle Peterman at 410–786–2591.)

Dated: February 19, 2020.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2020–03634 Filed 2–24–20; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**[Document Identifier: OS–0990–0452]**

### Agency Information Collection Request; 30-Day Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

**DATES:** Comments on the ICR must be received on or before March 26, 2020.

**ADDRESSES:** Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990–0452–30D and project title for reference.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the

following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Title of the Collection:* Federal Evaluation of Making Proud Choices! (MPC!).

*Type of Collection:* Revision.

*OMB No.* 0990–0452.

*Abstract:* The Office of Population Affairs (OPA), U.S. Department of Health and Human Services (HHS) is requesting an extension with revision of a currently approved information collection (OMB No: 0990–0452). The purpose of the revision is to complete the nine-month follow-up data collection for the Federal Evaluation of Making Proud Choices! (MPC). The evaluation is being conducted in 15 schools across four school districts nationwide and will provide information about program design, implementation, and impacts through a rigorous assessment of a highly popular teen pregnancy prevention curriculum—MPC. Clearance is requested for three years. This revision is necessary to complete the 9-month post-baseline follow up data collection after enrolling a fourth and final cohort into the study. The follow-up survey data will be used to determine program effectiveness by comparing sexual behavior outcomes, such as postponing sexual activity, and reducing or preventing sexual risk behaviors and STDs and intermediate outcomes, such as improving exposure, knowledge and attitudes between treatment (program) and control youth. The findings from these analyses of program impacts will be of interest to the general public, to policymakers, and to schools and other organizations interested in supporting a comprehensive approach to teen pregnancy prevention. The revision request also updates the burden by removing the second (15 months post baseline) survey from the data collection.

ESTIMATED ANNUALIZED BURDEN TABLE

| Type of respondent | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|
| Youth participants | 200 | 1 | 30/60 | 100 |
| Total | | 1 | | 100 |

Dated: February 19, 2020.

**Terry Clark,**

*Asst Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.*

[FR Doc. 2020–03716 Filed 2–24–20; 8:45 am]

**BILLING CODE 4150–34–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Secretary's Advisory Committee on Human Research Protections

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

**ACTION:** Notice.

**SUMMARY:** Pursuant to Section 10(a) of the Federal Advisory Committee Act, U.S.C. Appendix 2, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold a meeting that will be open to the public. Information about SACHRP and the full meeting agenda will be posted on the SACHRP website at: *http://www.dhhs.gov/ohrp/sachrp-committee/meetings/index.html.*

**DATES:** The meeting will be held on Wednesday, March 11, 2020, from 11 a.m. until 4 p.m., and Thursday, March 12, 2020, from 11 a.m. until 4 p.m. (times are tentative and subject to change). The confirmed times and agenda will be posted at *https://cms-drupal-hhs-ohrp-prod.cloud.hhs.gov/ohrp/sachrp-committee/meetings/index.html* when this information becomes available.

**ADDRESSES:** This meeting will be held via webcast. Members of the public may also attend the meeting via webcast. Instructions for attending via webcast will be posted about one week prior to the meeting at *https://cms-drupal-hhs-ohrp-prod.cloud.hhs.gov/ohrp/sachrp-committee/meetings/index.html*

**FOR FURTHER INFORMATION CONTACT:** Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; telephone: 240–453–8141; fax: 240–453–6909; email address: *SACHRP@hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health, on issues and topics pertaining to or associated with the protection of human research subjects.

The Subpart A Subcommittee (SAS) was established by SACHRP in October 2006 and is charged with developing recommendations for consideration by SACHRP regarding the application of subpart A of 45 CFR part 46 in the current research environment.

The Subcommittee on Harmonization (SOH) was established by SACHRP at its July 2009 meeting and charged with identifying and prioritizing areas in which regulations and/or guidelines for human subjects research adopted by various agencies or offices within HHS would benefit from harmonization, consistency, clarity, simplification and/or coordination.

The SACHRP meeting will open to the public at 11 a.m., on Wednesday, March 11, 2020, followed by opening remarks from Dr. Jerry Menikoff, Director of OHRP and Dr. Stephen Rosenfeld, SACHRP Chair. The meeting will focus on regulatory and ethical issues surrounding Deceased Donor Intervention Research, with a particular focus on recipient informed consent. An additional agenda topic will be a discussion of ethical and regulatory issues surrounding re-consent of subjects for humans subjects research. Other topics will be addressed. For the full meeting agenda, see *https://cms-drupal-hhs-ohrp-prod.cloud.hhs.gov/ohrp/sachrp-committee/meetings/index.html*

The public will have an opportunity to comment to the SACHRP during the meeting's public comment session or by

submitting written public comment. Persons who wish to provide public comment should review instructions at *https://cms-drupal-hhs-ohrp-prod.cloud.hhs.gov/ohrp/sachrp-committee/meetings/index.html* and respond by midnight Wednesday, March 4, 2020, ET. Individuals submitting written statements as public comment should submit their comments to SACHRP at *SACHRP@hhs.gov.* Verbal comments will be limited to three minutes each.

Time will be allotted for public comment on both days. Note that public comment must be relevant to topics currently being addressed by the SACHRP.

Dated: February 6, 2020.

**Julia G. Gorey,**

*Executive Director, Secretary's Advisory Committee on Human Research Protections.*

[FR Doc. 2020–03695 Filed 2–24–20; 8:45 am]

**BILLING CODE 4150–36–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**[Document Identifier: OS–0937–0198]**

### Agency Information Collection Request. 60-Day Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

**DATES:** Comments on the ICR must be received on or before April 27, 2020.

**ADDRESSES:** Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

**FOR FURTHER INFORMATION CONTACT:** When submitting comments or requesting information, please include the document identifier 0937–0198–60D, and project title for reference, to Sherrette Funn, the Reports Clearance Officer, *Sherrette.funn@hhs.gov,* or call 202–795–7714.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Title of the Collection**

*Type of Collection:* Public Health Service Polices on Research Misconduct (42 CFR part 93)—OMB No. 0937–0198—Extension—Office of Research Integrity.

*Abstract:* The Office of Research Integrity is requesting an extension on a currently approved collection. The purpose of the Institutional Assurance and Annual Report on Possible Research Misconduct form PHS–6349 is to provide data on the amount of research misconduct activity occurring in institutions conducting PHS-supported research. The purpose of the Assurance of Compliance by Sub-Award Recipients form PHS–6315 is to establish an assurance of compliance for a sub-awardee institution. Forms PHS 6349 and PHS–6315 are also used to provide an annual assurance that the institution has established and will follow administrative policies and procedures for responding to allegations of research misconduct that comply with the Public Health Service (PHS) Policies on Research Misconduct (42 CFR part 93). Research misconduct is defined as receipt of an allegation of research misconduct and/or the conduct of an inquiry and/or investigation into such allegations. These data enable the ORI to monitor institutional compliance with the PHS regulation.

*Need and Proposed Use:* The information is needed to fulfill section 493 of the Public Health Service Act (42 U.S.C. 289b), which requires assurances from institutions that apply for financial assistance under the Public Health Service Act for any project or program that involves the conduct of biomedical or behavioral research. In addition, the information is also required to fulfill the assurance and annual reporting requirements of 42 CFR part 93. ORI uses the information to monitor institutional compliance with the regulation. Lastly, the information may be used to respond to congressional requests for information to prevent misuse of Federal funds and to protect the public interest.

ESTIMATED ANNUALIZED BURDEN HOUR TABLE

| Forms (if necessary) | Respondents (if necessary) | Number of respondents | Number of responses per respondents | Average burden per response | Total burden hours |
|---|---|---|---|---|---|
| PHS–6349 | Awardee Institutions | 5,748 | 1 | 11/60 | 1054 |
| PHS–6315 | Sub-award Institution's | 110 | 1 | 5/60 | 9 |
| Total | | | 2 | | 1063 |

Dated: February 19, 2020.

**Terry Clark,**

*Asst Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.*

[FR Doc. 2020–03717 Filed 2–24–20; 8:45 am]

**BILLING CODE 4150–31–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Request for Public Comment: 30-Day Information Collection: Indian Self-Determination and Education Assistance Act Contracts

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Notice and request for comments. Request for extension of approval.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (PRA), the Indian Health Service (IHS) invites the general public to comment on the information collection titled, ''Indian Self-Determination and Education Assistance Act Contracts,'' Office of Management and Budget (OMB) Control Number 0917–0037. IHS

is requesting OMB to approve an extension for this collection, which expires on February 29, 2020. This proposed information collection project was previously published in the **Federal Register** (84 FR 70982) on December 26, 2019, and allowed 60 days for public comment, as required by the PRA. The IHS received no comments regarding this collection. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB.

**DATES:**

*Comment Due Date:* March 26, 2020. Your comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

*Direct Your Comments to OMB:* Send your comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

**SUPPLEMENTARY INFORMATION:** This previously approved information collection project was last published in the **Federal Register** (84 FR 70982) on December 26, 2019. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB. A copy of the supporting statement is available at *www.regulations.gov* (see Docket ID IHS–2016–0003).

*Information Collection: Title:* ''Indian Self-Determination and Education Assistance Act Contracts, 25 CFR part 900.''

*OMB Control Number:* 0917–0037.

*Title:* Indian Self-Determination and Education Assistance Act Contracts.

*Brief Description of Collection:* An Indian Tribe or Tribal Organization is required to submit certain information when it proposes to contract with the IHS under the ISDEAA. Each response may vary in its length. In addition, each Subpart of 25 CFR part 900 concerns different parts of the contracting process. For example, Subpart C relates to provisions of the contents for the initial contract proposal. The respondents do not incur the burden associated with Subpart C when contracts are renewed. Subpart F describes minimum standards for management systems used by Indian Tribes or Tribal Organizations under these contracts. Subpart G addresses the negotiability of all reporting and data requirements in the contracts. Responses are required to obtain or retain a benefit.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Federally recognized Indian Tribes and Tribal Organizations.

*Number of Respondents:* 275 Title I contractors.

*Estimated Number of Responses:* On average, IHS receives 10 proposals for new or expanded Title I agreements each fiscal year, plus there are 265 existing Title I contracts and associated annual funding agreements, which must be negotiated each year = 275 responses.

*Estimated Time per Response:* Average of 70 hours for the new/expanded; average of 35 hours for the existing.

*Frequency of Response:* Each time programs, functions, services or activities are contracted from the IHS under the ISDEAA.

*Estimated Total Annual Hour Burden:* 700 [70 × 10] for new/expanded + 9,275 [35 × 265] for existing = 9,975.

*Requests for Comments:* Your written comments and/or suggestions are invited on one or more of the following points: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) 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.

**Michael D. Weahkee,**

*Assistant Surgeon General, U.S. Public Health Service, Principal Deputy Director, Indian Health Service.*

[FR Doc. 2020–03660 Filed 2–24–20; 8:45 am]

**BILLING CODE 4165–16–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Request for Public Comment: 30-Day Information Collection: Indian Health Service Medical Staff Credentials

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Notice and request for comments. Request for revision to a collection.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (PRA), the Indian Health Service (IHS) invites the general public to comment on the information collection titled, ''Indian Health Service Medical Staff Credentials,'' OMB Control Number 0917–0009, that expires February 29, 2020. This proposed information collection project was previously published in the **Federal Register** (84 FR 70197) on December 20, 2019, and allowed 60 days for public comment, as required by the PRA. The IHS received one comment regarding this collection. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB.

**DATES:** *Comment Due Date:* March 26, 2020. Your comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

*Direct Your Comments to OMB:* Send your comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington DC 20503, Attention: Desk Officer for IHS.

*Summary of Comment:* The IHS received one comment. The commenter asked: Any reason why PAs and NPs are not included as part of the requirement to be medical staff members? Non-physician providers are credentialed in the same manner to be able to provide high quality medical care to IHS beneficiaries.

The IHS response to the comment:

The **Federal Register** notice makes reference to IHS policy noting ''IHS policy specifically requires physicians and dentists to be members of the health care facility medical staff where they practice.'' This notice is only making reference to existing IHS policy (not establishing policy in and of itself) as found in Indian Health Manual, Part 3, Chapter 1 which notes ''The medical staff shall include physicians (medical doctors and doctors of osteopathy) and dentists, and other categories of providers as determined by the local medical staff and its governing body, and defined in its policies and procedures manual and bylaws.''

**SUPPLEMENTARY INFORMATION:** This notice announces the IHS intent to revise the collection already approved by OMB, and to solicit comments on specific aspects of the information collection. The purpose of this notice is to allow 30 days for public comment to be submitted to OMB. A copy of the supporting statement is available at

*www.regulations.gov* (see Docket ID IHS–2019–01).

*Information Collection Title:* ''Indian Health Service Medical Staff Credentials and Privileges Files, 0917–0009.'' *Type of Information Collection Request:* Extension of an approved information collection, and revised to, ''Indian Health Service Medical Staff Credentials, 0917–0009.'' *Form Numbers:* 0917–0009. *Need and Use of Information Collection:* This collection of information is used to evaluate individual health care providers applying for medical staff privileges at IHS health care facilities. The IHS operates health care facilities that provide health care services to American Indians and Alaska Natives. To provide these services, the IHS employs (directly and under contract) several categories of health care providers including: Physicians (M.D. and D.O.), dentists, psychologists, optometrists, podiatrists, audiologists, physician assistants, certified registered nurse anesthetists, nurse practitioners, and certified nurse midwives. IHS policy specifically requires physicians and dentists to be members of the health care facility medical staff where they practice. Health care providers become medical staff members depending on the local health care facility's capabilities and medical staff bylaws. There are three types of IHS medical staff applicants: (1) Health care providers applying for direct employment with IHS; (2) contractors who will not seek to become IHS employees; and (3) employed IHS health care providers who seek to transfer between IHS health care facilities.

National health care standards developed by the Centers for Medicare and Medicaid Services, the Joint Commission, and other accrediting organizations require health care facilities to review, evaluate, and verify the credentials, training and experience of medical staff applicants prior to granting medical staff privileges. In order to meet these standards, IHS health care facilities require all medical staff applicants to provide information concerning their education, training, licensure, and work experience and any adverse disciplinary actions taken against them. This information is then verified with references supplied by the applicant and may include: Former employers, educational institutions, licensure and certification boards, the American Medical Association, the Federation of State Medical Boards, the National Practitioner Data Bank, and the applicants themselves.

In addition to the initial granting of medical staff membership and clinical privileges, Joint Commission standards require that a review of the medical staff be conducted not less than every two years. This review evaluates the current competence of the medical staff and verifies whether each is maintaining the licensure or certification requirements of one's specialty.

The medical staff credentials and privileges records are maintained at the health care facility where the health care provider is a medical staff member. The establishment of these records at IHS health care facilities is a Joint Commission requirement. Prior to the establishment of this Joint Commission requirement, the degree to which medical staff applications were maintained at all health care facilities in the United States that are verified for completeness and accuracy varied greatly across the Nation.

The application process has been streamlined and is using information technology to make the application electronically available via the internet. The IHS is transforming credentialing, which includes granting privileges into a centrally installed, automated, standardized, electronic/digital, measurable, portable, accessible, and efficient business process to improve the effectiveness of application and reapplication to medical staffs, movement of practitioners within the IHS system, and recruitment/retention of high-quality practitioners. The credentialing process no longer requires paper/pdf forms for granting privileges. The electronic credentialing system incorporates privileges as part of the overall process for credentialing, eliminating the need for paper, and allows tailoring the needs to site specifications. Privileges will differ across IHS Areas and clinics in compliance with accreditation standards.

The adoption of a central-source IT system for medical practitioner staff credentialing/privileging data will enhance the quality, accuracy, and efficiency of the IHS credentialing/privileging process, which is expected to improve the recruitment and retention rates of medical practitioner staff at IHS. Cost savings will be obtained through the termination of disparate business processes, reduction of paperwork duplication, and eliminating systems that do not provide IHS enterprise access to credentialing/privileging information. Additionally, communicating information electronically can reduce costs and errors, promote collaboration, ensure accreditation/privileging requirements are met, and help bring practitioners on board more quickly, which will improve recruitment and retention.

*Affected Public:* Individuals and households. *Type of Respondents:* Individuals.

*The table below provides:* Types of data collection instruments, Estimated number of respondents, Number of annual number of responses, Average burden per response, and Total annual burden hours.

| Data collection instrument(s) | Estimated number of respondents | Responses per respondent | Average burden hour per response * | Total annual burden (current) |
|---|---|---|---|---|
| Initial Application to Medical Staff | 600 | 1 | 0.583 (35 min) | 350 |
| Application Packet/Signature Documents | 1,300 | 1 | 0.167 (10 min) | 217 |
| Reappointment Application to Medical Staff | 700 | 1 | 0.333 (20 min) | 233 |
| Total | 2,600 | | | 800 |

* For ease of understanding, burden hours are provided in actual minutes.

Annual number of respondents were factored based on total IHS providers credentialed and privileged on the indicated cycles in the paragraphs above. There are no capital costs, operating costs and/or maintenance costs to respondents.

*Requests for Comments:* Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to

provide the requested information); (d) whether the methodology and assumptions used to determine the estimates are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Michael D. Weahkee,**

*Assistant Surgeon General, U.S. Public Health Service, Principal Deputy Director, Indian Health Service.*

[FR Doc. 2020–03659 Filed 2–24–20; 8:45 am]

**BILLING CODE 4165–16–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel; Children with Perinatal HIV in the U.S. Born in Other Countries.

*Date:* March 6, 2020.

*Time:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NICHD Offices, 6710B Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Kimberly Lynette Houston, M.D., Eunice Kennedy Shriver National Institute of Child Health & Human Development, National Institute of Health, Office of Committee Management, 6710B Rockledge Drive, Bethesda, MD 20892, (301) 827–4902, *kimberly.houston@nih.gov*.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel; Fertility and Infertility Preservation for Patients with Diseases that Previously Precluded Reproduction.

*Date:* April 15, 2020.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites—Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

*Contact Person:* Derek J. Mclean, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Rm. 2125B, Bethesda, MD 20892–7002, (301) 443–5082, *Derek.McLean@nih.gov*.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel; IDDRC Review Intellectual and Developmental Disabilities Research Centers 2020.

*Date:* April 21–22, 2020.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites—Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

*Contact Person:* Brad Cooke, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Rm. 2127C, Bethesda, MD 20817, (703) 292–8460, *brad.cooke@nih.gov*.

*Name of Committee:* National Institute of Child Health and Human Development Initial Review Group; Contraceptive Clinical Trials Network (CCTN) Male Sites.

*Date:* May 29, 2020.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* NICHD Offices, 6710B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Steven D. Silverman, Eunice Kennedy Shriver National Institute of Child Health & Human Development, National Institute of Health, Office of Committee Management, 6710B Rockledge Drive, Bethesda, MD 20892, (301) 435–8386, *steven.silverman@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 20, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–03714 Filed 2–24–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.

*Date:* March 19, 2020.

*Time:* 8:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Marriott Georgetown, 1221 22nd Street NW, Washington, DC 20037.

*Contact Person:* Yunshang Piao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, Bethesda, MD 20892, 301.402.8402, *piaoy3@mail.nih.gov*.

*Name of Committee:* Immunology Integrated Review Group; Cellular and Molecular Immunology—B Study Section.

*Date:* March 19–20, 2020.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

*Contact Person:* Andrea Keane-Myers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, 301–435–1221, *andrea.keane-myers@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Electronic Nicotine Delivery Systems (ENDS): Population, Clinical and Applied Prevention Research.

*Date:* March 19, 2020.

*Time:* 10:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Miriam Mintzer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, Bethesda, MD 20892, 301–523–0646, *mintzermz@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Clinical Research and Field Studies of Bacterial Pathogens.

*Date:* March 19, 2020.

*Time:* 10:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Panel Epidemiology and Statistical Methods.

*Date:* March 19, 2020.

*Time:* 11:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Fungai Chanetsa, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Nuclear and Cytoplasmic Dynamics.

*Date:* March 19, 2020.

*Time:* 11:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Thomas Y. Cho, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda 20892, 301–402–4179, *thomas.cho@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Synapses, Neurogenesis, Neurodegeneration and Signaling.

*Date:* March 20, 2020.

*Time:* 10:30 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Vanessa S. Boyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4185, MSC 7850, Bethesda, MD 20892, (301) 402–3726, *boycevs@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Hepatology.

*Date:* March 20, 2020.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR–19–222: Small Grants for New Investigators to Promote Diversity in Health-Related Research (R21 Clinical Trial Optional).

*Date:* March 20, 2020.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health Rockledge II 6701 Rockledge Dr. Bethesda, MD 20892 (Telephone Conference Call)

*Contact Person:* Jianxin Hu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2156 Bethesda, MD 20892 301–827–4417, *jianxinh@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Language and Communication.

*Date:* March 20, 2020.

*Time:* 1:00 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Serena Chu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848 Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 18, 2020.

**Tyeshia M. Roberson,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–03672 Filed 2–24–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Skin, Inflammation, Bone and Auto-Immunity.

*Date:* March 19, 2020.

*Time:* 12:30 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, (301) 496–8551, *ingrahamrh@mail.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowship: Infectious Diseases and Microbiology.

*Date:* March 23–24, 2020.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street NW, Washington, DC 20036.

*Contact Person:* Tamara Lyn McNealy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, Bethesda, MD 20892, (301) 827–2372, *tamara.mcnealy@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR 19–059: Global Noncommunicable Diseases and Injury Across the Lifespan (R21).

*Date:* March 23, 2020.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Palomar, 2121 P Street NW, Washington, DC 20037.

*Contact Person:* Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, (301) 594–3292, *niw@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Infectious Diseases and Microbiology Research Enhancement Review.

*Date:* March 23, 2020.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, (301) 996–5819, *zhengli@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Mobile Health Technologies and Applications.

*Date:* March 23, 2020.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0681, *liangw3@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA–AG–20–025: Neurobiology of Senescence.

*Date:* March 23, 2020.

*Time:* 10:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Charles Selden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, (301) 451–3388, *seldens@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Lung Diseases.

*Date:* March 24–25, 2020.

*Time:* 9:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* George M. Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, (301) 435–0696, *barnasg@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR 19–294: Early-Stage Preclinical Validation of Therapeutic Leads for Diseases of Interest to the NIDDK.

*Date:* March 24–25, 2020.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Raul Rojas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6185, Bethesda, MD 20892, (301) 451–6319, *rojasr@mail.nih.gov*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflicts: Sensory Processes and Pain.

*Date:* March 24, 2020.

*Time:* 10:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 19, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–03673 Filed 2–24–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical, Treatment and Health Services Research Review Subcommittee, March 12, 2020, 8:30 a.m. to March 12, 2020, 5:00 p.m. at the National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20817, which was published in the **Federal Register** on December 27, 2019, 84 FR 71436.

The contact person for the Clinical, Treatment and Health Services Research Review Subcommittee (AA 3) has changed from Ranga V. Srinivas, Ph.D. to Luis Espinoza, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2109, Bethesda, MD 20892, (301) 443–8599, *espinozala@mail.nih.gov.* The meeting is closed to the public.

Dated: February 20, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–03712 Filed 2–24–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; AIDS and AIDS Related Research.

*Date:* March 4, 2020.

*Time:* 9:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Le Meridien Delfina Santa Monica, 530 Pico Blvd., Santa Monica, CA 90405.

*Contact Person:* Shiv A Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852; Bethesda, MD 20892, 301–443–5779; *prasads@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 18, 2020.

**Tyeshia M. Roberson,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–03671 Filed 2–24–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR–19–298 Panel: Noninvasive Neuromodulation for AD/ADRD.

*Date:* February 28, 2020.

*Time:* 5:00 p.m. to 7:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.
*Contact Person:* Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, (301) 435–3009, *elliotro@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 20, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–03713 Filed 2–24–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Biospecimen Banks to Support NCI Clinical Trials.
*Date:* March 18, 2020.
*Time:* 10:00 a.m. to 1:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W112, Rockville, MD 20850 (Telephone Conference Call).
*Contact Person:* Jennifer C. Schiltz, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, Nation Institutes of Health, Rockville, MD 20850, (240) 276–5864, *jennifer.schiltz@nih.gov*.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Feasibility and Planning Studies for SPOREs to Investigate Cancer Health Disparities (P20).
*Date:* March 26, 2020.
*Time:* 10:00 a.m. to 12:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, 7W634, Rockville, MD 20850 (Telephone Conference Call).
*Contact Person:* Michael Edward Lindquist, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, 9609 Medical Center Drive, 7W634, National Cancer Institute, NIH, Rockville, MD 20850, *mike.lindquist@nih.gov*.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Cancer Intervention and Surveillance Modeling Network (CISNET).
*Date:* April 3, 2020.
*Time:* 11:00 a.m. to 4:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, 7W606, Rockville, MD 20850 (Telephone Conference Call).
*Contact Person:* Timothy C. Meeker, M.D., Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W624, Rockville, MD 20850, (240) 276–6464, *meekert@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 19, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–03674 Filed 2–24–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7027–N–01]**

### 60-Day Notice of Proposed Information Collection: Budget-Based Rent Adjustment Requests and Appeals

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* April 27, 2020.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

**A. Overview of Information Collection**

*Title of Information Collection:* Budget Based Rent Adjustment Request and Appeals.
*OMB Approval Number:* 2502–0324.
*OMB Expiration Date:* 6/30/21.
*Type of Request:* Revision of currently approved collection.
*Form Number:* HUD–92457–a.
*Description of the need for the information and proposed use:* Budget worksheet will be used by HUD Field staff, along with other information submitted by owners, as a tool for determining the reasonableness of rent increases. The purposes of the worksheet and the collection of budgetary information are to allow owners to plan for expected increases in expenditures. Owners are able to appeal

denial decisions of their requests. The updated burden hours include the time for owners to prepare and submit appeal requests to the field staff.

*Respondents:* Not-for-profit institutions; Owners and project managers of HUD subsidized properties.

*Estimated Number of Respondents:* 974.

*Estimated Number of Responses:* 1,074.

*Frequency of Response:* Annual.

*Average Hours per Response:* 3 hours 40 minutes.

*Total Estimated Burden:* 5,341.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**C. Authority**

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: February 7, 2020.

**John L. Garvin,**

*General Deputy Assistant Secretary for Housing.*

[FR Doc. 2020–03741 Filed 2–24–20; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–6199–N–01]**

## Notice of HUD Vacant Loan Sales (HVLS 2020–1)

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of sales of reverse mortgage loans.

**SUMMARY:** This notice announces HUD's intention to competitively offer multiple residential reverse mortgage pools consisting of approximately 700 reverse mortgage notes secured by properties with a loan balance of approximately $150 million. The sale will consist of due and payable Secretary-held reverse mortgage loans. The mortgage loans consist of first liens secured by single family, vacant residential properties, where all borrowers are deceased, and no borrower is survived by a non-borrowing spouse. This notice also generally describes the bidding process for the sale and certain persons who are ineligible to bid. This is the sixth sale offering of its type and the sale will be held on March 18, 2020.

**DATES:** For this sale action, the Bidder's Information Package (BIP) was made available to qualified bidders on or about February 14, 2020. Bids for the HVLS 2020–1 sale will be accepted on the Bid Date of March 18, 2020 (Bid Date). HUD anticipates that award(s) will be made on or about March 19, 2020 (the Award Date).

**ADDRESSES:** To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents are available via the HUD website at: *http://www.hud.gov/sfloansales* or via: *http://www.verdiassetsales.com.*

Please mail and fax executed documents to Verdi Consulting, Inc.: Verdi Consulting, Inc., 8400 Westpark Drive, 4th Floor, McLean, VA 22102, Attention: HUD HVLS Loan Sale Coordinator. Fax: 1–703–584–7790.

**FOR FURTHER INFORMATION CONTACT:** John Lucey, Director, Asset Sales Office, Room 3136, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–8000; telephone 202–708–2625, extension 3927. Hearing- or speech-impaired individuals may call 202–708–4594 (TTY). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** HUD announces its intention to sell in HVLS 2020–1 due and payable Secretary-held reverse mortgage loans. The loans consist of first liens secured by single family, vacant residential properties, where all borrowers are deceased, and no borrower is survived by a non-borrowing spouse.

A listing of the mortgage loans is included in the due diligence materials made available to qualified bidders. The mortgage loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the mortgage loans. The loans are expected to be offered in regional pools, with one or more geographically concentrated pools designated for bidding by qualified non-profit or unit of local government entities only. Qualified non-profit or unit of local government bidders will also have the opportunity to bid on up to 10 percent of the loans in the larger regional pools.

**The Bidding Process**

The BIP describes in detail the procedure for bidding in HVLS 2020–1. The BIP also includes a standardized non-negotiable Conveyance, Assignment and Assumption Agreement for HVLS 2020–1 (CAA). Qualified bidders will be required to submit a deposit with their bid. Deposits are calculated based upon each qualified bidder's aggregate bid price.

HUD will evaluate the bids submitted and determine the successful bid, in terms of the best value to HUD, in its sole and absolute discretion. If a qualified bidder is successful, the qualified bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders.

This notice provides some of the basic terms of sale. The CAA, which is included in the BIP, provides comprehensive contractual terms and conditions. To ensure a competitive bidding process, the terms of the bidding process and the CAA are not subject to negotiation.

**Due Diligence Review**

The BIP describes how qualified bidders may access the due diligence materials remotely via a high-speed internet connection.

**Mortgage Loan Sale Policy**

HUD reserves the right to remove mortgage loans from HVLS 2020–1 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, and include any reverse mortgage loans in a later sale. Deliveries of mortgage loans will occur in conjunction with settlement and servicing transfer, approximately 30 to 45 days after the Award Date.

The HVLS 2020–1 reverse mortgage loans were insured by and were assigned to HUD pursuant to section 255 of the National Housing Act, as amended. The sale of the reverse mortgage loans is pursuant to section 204(g) of the National Housing Act.

**Mortgage Loan Sale Procedure**

HUD selected an open competitive whole-loan sale as the method to sell

the mortgage loans for this specific sale transaction. For HVLS 2020–1, HUD has determined that this method of sale optimizes HUD's return on the sale of these loans, affords the greatest opportunity for all qualified bidders to bid on the mortgage loans, and provides the quickest and most efficient vehicle for HUD to dispose of the mortgage loans.

**Bidder Ineligibility**

In order to bid in HVLS 2020–1 as a qualified bidder, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. In the Qualification Statement, the prospective bidder must provide certain representations and warranties regarding the prospective bidder, including but not limited to (i) the prospective bidder's board of directors, (ii) the prospective bidder's direct parent, (iii) the prospective bidder's subsidiaries, (iv) any related entity with which the prospective bidder shares a common officer, director, subcontractor or sub-contractor who has access to Confidential Information as defined in the Confidentiality Agreement or is involved in the formation of a bid transaction (collectively the ''Related Entities''), and (v) the prospective bidder's repurchase lenders. The prospective bidder is ineligible to bid on any of the reverse mortgage loans included in HVLS 2020–1 if the prospective bidder, its Related Entities or its repurchase lenders, is any of the following, unless other exceptions apply as provided for the in the Qualification Statement.

1. An individual or entity that is currently debarred, suspended, or excluded from doing business with HUD pursuant to the Governmentwide Suspension and Debarment regulations at 2 CFR parts 180 and 2424;

2. An individual or entity that is currently suspended, debarred or otherwise restricted by any department or agency of the federal government or of a state government from doing business with such department or agency;

3. An individual or entity that is currently debarred, suspended, or excluded from doing mortgage related business, including having a business license suspended, surrendered or revoked, by any federal, state or local government agency, division or department;

4. An entity that has had its right to act as a Government National Mortgage Association (''Ginnie Mae'') issuer terminated and its interest in mortgages backing Ginnie Mae mortgage-backed securities extinguished by Ginnie Mae;

5. An individual or entity that is in violation of its neighborhood stabilizing outcome obligations or post-sale reporting requirements under a Conveyance, Assignment and Assumption Agreement executed for any previous mortgage loan sale of HUD;

6. An employee of HUD's Office of Housing, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household with household to be inclusive of the employee's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, first cousin, the spouse of any of the foregoing, and the employee's spouse;

7. A contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, or principal of any of the foregoing) who performed services for or on behalf of HUD in connection with the sale;

8. An individual or entity that knowingly acquired or will acquire prior to the sale date material non-public information, other than that information which is made available to Bidder by HUD pursuant to the terms of this Qualification Statement, about mortgage loans offered in the sale;

9. An individual or entity which knowingly employs or uses the services of an employee of HUD's Office of Housing (other than in such employee's official capacity); or

10. An individual or entity that knowingly uses the services, directly or indirectly, of any person or entity ineligible under 1 through 10 to assist in preparing any of its bids on the mortgage loans.

The Qualification Statement has additional representations and warranties which the prospective bidder must make, including but not limited to the representation and warranty that the prospective bidder or its Related Entities are not and will not knowingly use the services, directly or indirectly, of any person or entity that is, any of the following (and to the extent that any such individual or entity would prevent the prospective bidder from making the following representations, such individual or entity has been removed from participation in all activities related to this sale and has no ability to influence or control individuals involved in formation of a bid for this sale):

(1) An entity or individual is ineligible to bid on any included reverse mortgage loan or on the pool containing such reverse mortgage loan because it is an entity or individual that:

(a) Serviced or held such reverse mortgage loan at any time during the six-month period prior to the bid, or

(b) is any principal of any entity or individual described in the preceding sentence;

(c) any employee or subcontractor of such entity or individual during that six-month period; or

(d) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such reverse mortgage loan.

**Freedom of Information Act Requests**

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding HVLS 2020–1, including, but not limited to, the identity of any successful qualified bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to HVLS 2020–1, HUD will disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

**Scope of Notice**

This notice applies to HVLS 2020–1 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: February 19, 2020.

**John L. Garvin,**

*General Deputy Assistant Secretary for Housing.*

[FR Doc. 2020–03743 Filed 2–24–20; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7027–N–05]**

## 60-Day Notice of Proposed Information Collection: Compliance Inspection Report and Mortgagee's Assurance of Completion

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the

Paperwork Reduction Act, HUD is requesting comments from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* April 27, 2020.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access the telephone number through TTY by calling the tollfree Federal Relay Service at 800–877–8339.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–5000, email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400 (this is not a toll free number). Persons with hearing or speech impairments may access the telephone number through TTY by calling the tollfree Federal Relay Service at 800–877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

**A. Overview of Information Collection**

*Title of Information Collection:* Compliance Inspection Report and Mortgagee's Assurance of Completion.

*OMB Control Number, if applicable:* 2502–0189.

*Type of Request:* Extension of currently approved collection.

*Form Numbers:* HUD 92051, HUD–92300.

*Description of the need for the information and proposed use:* Accurate and thorough property information is critical to the accuracy of underwriting for the mortgage insurance process. This information collection is needed to ensure newly built homes financed with FHA mortgage insurance are constructed in accordance with acceptable building standards and that deficiencies found in newly constructed and existing dwellings are corrected.

*Respondents:* Mortgagees.

*Estimated Number of Respondents:* 2,966.

*Estimated Number of Responses:* 34,834.

*Frequency of Response:* Varies.

*Average Hours per Response:* 0.2.

*Total Estimated Burden Hours:* 6,096.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**C. Authority**

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: February 7, 2020.

**John L. Garvin,**

*General Deputy Assistant Secretary for Housing.*

[FR Doc. 2020–03742 Filed 2–24–20; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R8–ES–2019–N112; FXES11140800000–190–FF08EVEN00]**

### Draft Habitat Conservation Plan and Draft Environmental Assessment for Oak Hills Estate, Santa Barbara County, California

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft Habitat Conservation Plan (HCP) and associated draft environmental assessment (EA) for activities associated with an application for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended. The ITP would authorize take of listed species incidental to construction of a residential development proposed by Oak Hills Estate, LLC (applicant). The applicant developed the draft HCP as part of their application for an ITP. The Service prepared a draft EA in accordance with the National Environmental Policy Act to evaluate the potential effects to the natural and human environment resulting from issuing an ITP to the applicant. We invite public comment.

**DATES:** Written comments should be received on or before March 26, 2020.

**ADDRESSES:** *Obtaining Documents:* You may download a copy of the draft habitat conservation plan and draft environmental assessment at *http://www.fws.gov/ventura/,* or you may request copies of the documents by U.S. mail (below) or by phone (see **FOR FURTHER INFORMATION CONTACT**).

*Submitting Written Comments:* Please send us your written comments using one of the following methods:

- *U.S. mail:* Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.
- *Email: Rachel_henry@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kendra Chan, Fish and Wildlife Biologist, by phone at 805–677–3304, via the Federal Relay Service at 1–800–877–8339 for TTY assistance, or at the Ventura address (see **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft habitat conservation plan (HCP) and the associated draft environmental assessment (EA) in association with an application for an incidental take permit (ITP) by Oak Hills Estate, LLC (applicant). The permit would authorize take of listed species incidental to activities associated with the construction of a residential development proposed by the applicant. The residential development consists of the construction of 29 single-family homes and the creation of one common open-space area on the 16.88-acre project site in northern Santa Barbara County, California. The applicant developed the draft HCP as part of its application for an ITP under the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The Service prepared a draft EA in

accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) to evaluate the potential effects to the natural and human environment resulting from issuing an ITP to the applicant. We invite public comment.

**Draft Habitat Conservation Plan Covered Species**

The applicant has developed a draft HCP in support of its application for an ITP that includes measures to mitigate and minimize impacts to the federally endangered El Segundo blue butterfly (*Euphilotes battoides allyni*), the federally threatened California red-legged frog (*Rana draytonii*), and designated critical habitat for the federally endangered Vandenberg monkeyflower (*Diplacus vandenbergensis*). The ITP would authorize take of El Segundo blue butterfly and California red-legged frog incidental to otherwise lawful activities associated with the HCP-covered activities.

**Background**

The Service listed the El Segundo blue butterfly as endangered on June 1, 1976 (41 FR 22041), and the California red-legged frog as threatened on May 23, 1996 (61 FR 25813). The Vandenberg monkeyflower was listed as endangered on August 26, 2014 (79 FR 25797), and critical habitat was designated on August 11, 2015 (80 FR 48141). Section 9 of the ESA and its implementing regulations as applicable to the above-referenced species prohibit the take of fish or wildlife species listed as endangered or threatened. ''Take'' is defined under the ESA to include the following activities: ''[T]o 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); however, under section 10(a)(1)(B) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are in the Code of Federal Regulations (CFR) at 50 CFR 17.32 and 17.22, respectively. Issuance of an incidental take permit also must not jeopardize the existence of federally listed fish, wildlife, or plant species. The permittees would receive assurances under our ''No Surprises'' regulations ((50 CFR 17.22(b)(5) and 17.32(b)(5)) regarding conservation activities for the El Segundo blue butterfly and California red-legged frog.

**Proposed Activities**

The applicant has applied for an ITP that would authorize incidental take of El Segundo blue butterfly and California red-legged frog. Take is likely to occur in association with activities necessary to construct a 16.88-acre residential development and to restore 25.41 acres of suitable habitat for the species.

The HCP includes avoidance and minimization measures for the El Segundo blue butterfly and California red-legged frog, and mitigation for unavoidable loss of suitable habitat for the El Segundo Blue butterfly, California red-legged frog, and Vandenberg monkeyflower through 7.16 acres of on-site mitigation and restoration of an 18.25-acre fallow farm field on the Burton Mesa Ecological Reserve.

**Alternatives**

We are considering two alternatives in the draft EA:

(1) The no action alternative, in which the Service would not issue an ITP to the applicant to exempt take incidental to the covered activities under the HCP for the Oak Hills Estate project; and

(2) The proposed action (preferred alternative), in which the Service would issue an ITP for take of El Segundo blue butterfly and California red-legged frog incidental to the Oak Hills Estate Project, as set out in the HCP.

**Public Comments**

If you wish to comment on the permit application, draft HCP, and associated documents, you may submit comments by one of the methods in **ADDRESSES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

**Authority**

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

**Stephen Henry,**

*Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.*

[FR Doc. 2020–03667 Filed 2–24–20; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[201A2100DD/AAKC001030/A0A501010.999900 253G]**

### Court of Indian Offenses Serving the Kewa Pueblo (Previously Listed as the Pueblo of Santo Domingo)

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of waiver of certain parts of 25 CFR part 11.

**SUMMARY:** This notice follows the action establishing a Court of Indian Offenses (also known as a CFR Court) for the Kewa Pueblo (previously listed as the Pueblo of Santo Domingo). It provides notice that the application of certain sections of the regulations for the Court of Indian Offenses serving the Kewa Pueblo have been waived to allow the Bureau of Indian Affairs (BIA) to unilaterally establish a CFR court. It also allows the Assistant Secretary—Indian Affairs to appoint a magistrate without the need for confirmation by the Tribal governing body.

**DATES:** The waiver took effect on October 7, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, (202) 273–4680; *elizabeth.appel@bia.gov*.

**SUPPLEMENTARY INFORMATION:** Courts of Indian Offenses operate in those areas of Indian country where Tribes retain jurisdiction over Indians that is exclusive of State jurisdiction but where Tribal courts have not been established to fully exercise that jurisdiction. The current Traditional Court System of the Kewa Pueblo is unable to provide minimum protections for due process as set forth in 25 U.S.C. 1302(a). To ensure the administration of justice on the Pueblo, BIA has taken steps to establish a Court of Indian Offenses to protect the rights of individuals and ensure public safety. Therefore, the Secretary determined, in his discretion, that it is necessary to waive 25 CFR 11.104(a) and 25 CFR 11.201(a) on the Kewa Pueblo to ensure that the BIA can establish and operate a Court of Indian Offenses immediately.

Section 11.104(a) provides that 25 CFR 11 applies to Tribes listed under § 11.100 until either BIA and the Tribe enter into a contract or compact for the Tribe to provide judicial services, or until the Tribe has put into effect a law-and-order code that meets certain requirements.

Section 11.201(a) provides that the Assistant Secretary—Indian Affairs

appoints a magistrate subject to confirmation by a majority vote of the Tribal governing bodies.

The waiver allows BIA to unilaterally establish a CFR court and allows the Assistant Secretary—Indian Affairs to appoint a magistrate without the need for confirmation by the Tribal governing body.

Dated: February 4, 2020.

**Tara Sweeney,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2020–03734 Filed 2–24–20; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[120A2100DD/AAKC001030/A0A501010.999900]**

### Rate Adjustments for Indian Irrigation Projects

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Indian Affairs (BIA) owns or has an interest in irrigation projects located on or associated with various Indian reservations throughout the United States. We are required to establish irrigation assessment rates to recover the costs to administer, operate, maintain, and rehabilitate these projects. We request your comments on the proposed rate adjustments.

**DATES:** Interested parties may submit comments on the proposed rate adjustments on or before *April 27, 2020.*

**ADDRESSES:** All comments on the proposed rate adjustments must be in writing and addressed to: Ms. Yulan Jin, Chief, Division of Water and Power, Office of Trust Services, Mail Stop 4637–MIB, 1849 C Street NW, Washington, DC 20240, Telephone (202) 219–0941.

**FOR FURTHER INFORMATION CONTACT:** For details about a particular irrigation project, please use the tables in the **SUPPLEMENTARY INFORMATION** section to contact the regional or local office where the project is located.

**SUPPLEMENTARY INFORMATION:** The first table in this notice provides contact information for individuals who can give further information about the irrigation projects covered by this notice. The second table provides the proposed rates for calendar year (CY) 2021 for all irrigation projects.

**What is the meaning of the key terms used in this notice?**

In this notice:

*Administrative costs* means all costs we incur to administer our irrigation projects at the local project level and are a cost factor included in calculating your operation and maintenance assessment. Costs incurred at the local project level do not normally include agency, region, or central office costs unless we state otherwise in writing.

*Assessable acre* means lands designated by us to be served by one of our irrigation projects, for which we collect assessments in order to recover costs for the provision of irrigation service. (*See total assessable acres.*)

*BIA* means the Bureau of Indian Affairs.

*Bill* means our statement to you of the assessment charges and/or fees you owe the United States for administration, operation, maintenance, and/or rehabilitation. The date we mail or hand-deliver your bill will be stated on it.

*Costs* means the costs we incur for administration, operation, maintenance, and rehabilitation to provide direct support or benefit to an irrigation facility. (*See* administrative costs, operation costs, maintenance costs, and rehabilitation costs).

*Customer* means any person or entity to whom or to which we provide irrigation service.

*Due date* is the date on which your bill is due and payable. This date will be stated on your bill.

*I, me, my, you* and *your* mean all persons or entities that are affected by this notice.

*Irrigation project* means a facility or portion thereof for the delivery, diversion, and storage of irrigation water that we own or have an interest in, including all appurtenant works. The term ''irrigation project'' is used interchangeably with irrigation facility, irrigation system, and irrigation area.

*Irrigation service* means the full range of services we provide customers of our irrigation projects. This includes our activities to administer, operate, maintain, and rehabilitate our projects in order to deliver water.

*Maintenance costs* means costs we incur to maintain and repair our irrigation projects and associated equipment and is a cost factor included in calculating your operation and maintenance assessment.

*Operation and maintenance (O&M) assessment* means the periodic charge you must pay us to reimburse costs of administering, operating, maintaining, and rehabilitating irrigation projects consistent with this notice and our supporting policies, manuals, and handbooks.

*Operation or operating costs* means costs we incur to operate our irrigation projects and equipment and is a cost factor included in calculating your O&M assessment.

*Past due bill* means a bill that has not been paid by the close of business on the 30th day after the due date as stated on the bill. Beginning on the 31st day after the due date, we begin assessing additional charges accruing from the due date.

*Rehabilitation costs* means costs we incur to restore our irrigation projects or features to original operating condition or to the nearest state which can be achieved using current technology and is a cost factor included in calculating your O&M assessment.

*Responsible party* means an individual or entity that owns or leases land within the assessable acreage of one of our irrigation projects and is responsible for providing accurate information to our billing office and paying a bill for an annual irrigation rate assessment.

*Total assessable acres* means the total acres served by one of our irrigation projects.

*Water delivery* is an activity that is part of the irrigation service we provide our customers when water is available.

*We, us,* and *our* mean the United States Government, the Secretary of the Interior, the BIA, and all who are authorized to represent us in matters covered under this notice.

**Does this notice affect me?**

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation projects or if you have a carriage agreement with one of our irrigation projects.

**Where can I get information on the regulatory and legal citations in this notice?**

You can contact the appropriate office(s) stated in the tables for the irrigation project that serves you, or you can use the internet site for the Government Printing Office at *http://www.gpo.gov.*

**Why are you publishing this notice?**

We are publishing this notice to inform you that we propose to adjust our irrigation assessment rates. This notice is published in accordance with the BIA's regulations governing its operation and maintenance of irrigation projects, found at 25 CFR part 171. This regulation provides for the establishment and publication of the

proposed rates for annual irrigation assessments as well as related information about our irrigation projects.

**What authorizes you to issue this notice?**

Our authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary–Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual.

**When will you put the rate adjustments into effect?**

We will put the rate adjustments into effect for CY 2021.

**How do you calculate irrigation rates?**

We calculate annual irrigation assessment rates in accordance with 25 CFR part 171.500 by estimating the annual costs of operation and maintenance at each of our irrigation projects and then dividing by the total assessable acres for that particular irrigation project. The result of this calculation for each project is stated in the rate table in this notice.

**What kinds of expenses do you consider in determining the estimated annual costs of operation and maintenance?**

Consistent with 25 CFR part 171.500, these expenses include the following:

(a) Personnel salary and benefits for the project engineer/manager and project employees under the project engineer/manager's management or control;

(b) Materials and supplies;

(c) Vehicle and equipment repairs;

(d) Equipment costs, including lease fees;

(e) Depreciation;

(f) Acquisition costs;

(g) Maintenance of a reserve fund available for contingencies or emergency costs needed for the reliable operation of the irrigation facility infrastructure;

(h) Maintenance of a vehicle and heavy equipment replacement fund;

(i) Systematic rehabilitation and replacement of project facilities;

(j) Contingencies for unknown costs and omitted budget items; and

(k) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

**When should I pay my irrigation assessment?**

We will mail or hand-deliver your bill notifying you (a) the amount you owe to the United States and (b) when such amount is due. If we mail your bill, we will consider it as being delivered no later than five business days after the day we mail it. You should pay your bill by the due date stated on the bill.

**What information must I provide for billing purposes?**

All responsible parties are required to provide the following information to the billing office associated with the irrigation project where you own or lease land within the project's assessable acreage or to the billing office associated with the irrigation project with which you have a carriage agreement:

(1) The full legal name of the person or entity responsible for paying the bill;

(2) An adequate and correct address for mailing or hand delivering our bill; and

(3) The taxpayer identification number or social security number of the person or entity responsible for paying the bill.

**Why are you collecting my taxpayer identification number or social security number?**

Public Law 104–134, the Debt Collection Improvement Act of 1996, requires that we collect the taxpayer identification number or social security number before billing a responsible party and as a condition to servicing the account.

**What happens if I am a responsible party but I fail to furnish the information required to the billing office responsible for the irrigation project within which I own or lease assessable land or for which I have a carriage agreement?**

If you are late paying your bill because of your failure to furnish the required information listed above, you will be assessed interest and penalties as provided below, and your failure to provide the required information will not provide grounds for you to appeal your bill or any penalties assessed.

**What can happen if I do not provide the information required for billing purposes?**

We can refuse to provide you irrigation service.

**If I allow my bill to become past due, could this affect my water delivery?**

Yes. 25 CFR 171.545(a) states: ''We will not provide you irrigation service until: (1) Your bill is paid; or (2) You make arrangement for payment pursuant to § 171.550 of this part.'' If we do not receive your payment before the close of business on the 30th day after the due date stated on your bill, we will send you a past due notice. This past due notice will have additional information concerning your rights. We will consider your past due notice as delivered no later than five business days after the day we mail it. We follow the procedures provided in 31 CFR 901.2, ''Demand for Payment,'' when demanding payment of your past due bill.

**Are there any additional charges if I am late paying my bill?**

Yes. We will assess you interest on the amount owed, using the rate of interest established annually by the Secretary of the United States Treasury (Treasury) to calculate what you will be assessed. You will not be assessed this charge until your bill is past due. However, if you allow your bill to become past due, interest will accrue from the original due date, not the past due date. Also, you will be charged an administrative fee of $12.50 for each time we try to collect your past due bill. If your bill becomes more than 90 days past due, you will be assessed a penalty charge of six percent per year, which will accrue from the date your bill initially became past due. Pursuant to 31 CFR 901.9, ''Interest, penalties and administrative costs,'' as a Federal agency, we are required to charge interest, penalties, and administrative costs in accordance with 31 U.S.C. 3717.

**What else will happen to my past due bill?**

If you do not pay your bill or make payment arrangements to which we agree, we are required to send your past due bill to the Treasury for further action. Under the provisions of 31 CFR 901.1, ''Aggressive agency collection activity,'' Federal agencies should consider referring debts that are less than 180 days delinquent, and we must send any unpaid annual irrigation assessment bill to Treasury no later than 180 days after the original due date of the bill.

**Who can I contact for further information?**

The following tables are the regional and project/agency contacts for our irrigation facilities.

| Project name | Project/agency contacts |
|---|---|
| **Northwest Region Contacts** | |
| **Bryan Mercier, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4169, Telephone: (503) 231–6702.** | |
| Flathead Indian, Irrigation Project | Robert Compton, Acting Superintendent, Larry Nelson, Acting Irrigation Project Manager, P.O. Box 40, Pablo, MT 59855, Telephones: (406) 675–0207 Acting Superintendent, (406) 745–2661 Project Manager. |
| Fort Hall, Irrigation Project | Tim Gardner, Acting Irrigation Project Manager, Building #2 Bannock Avenue, Fort Hall, ID 83203–0220, Telephone: (208) 238–1992. |
| Wapato, Irrigation Project | Wyeth Wallace, Acting Superintendent, Pete Plant, Acting Project Administrator, 413 South Camas Avenue, Wapato, WA 98951–0220, Telephones: (509) 865–2421 Acting Superintendent, (509) 877–3155 Acting Project Administrator. |
| **Rocky Mountain Region Contacts** | |
| **Susan Messerly, Acting Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 2021 4th Avenue North, Billings, MT 59101, Telephone: (406) 247–7943.** | |
| Blackfeet, Irrigation Project | Thedis Crowe, Superintendent, Greg Tatsey, Irrigation Project Manager, Box 880, Browning, MT 59417, Telephones: (406) 338–7544 Superintendent, (406) 338–7519 Irrigation Project Manager. |
| Crow, Irrigation Project | Clifford Serawop, Superintendent, Jim Gappa, Acting Irrigation Project Manager, (Project operation & maintenance performed by Water Users Association), P.O. Box 69, Crow Agency, MT 59022, Telephones: (406) 638–2672 Superintendent, (406) 247–7998 Acting Irrigation Project Manager. |
| Fort Belknap, Irrigation Project | Mark Azure, Superintendent, Jim Gappa, Irrigation Project Manager (BIA), (Project operation & maintenance contracted to Tribes under PL 93–638), R.R.1, Box 980, Harlem, MT 59526, Telephones: (406) 353–2901 Superintendent, (406) 353–8454 Irrigation Project Manager (Tribal Office). |
| Fort Peck, Irrigation Project | Howard Beemer, Superintendent, Jim Gappa, Acting Irrigation Project Manager, (Project operation & maintenance performed by Fort Peck Water Users Association), P.O. Box 637, Poplar, MT 59255, Telephones: (406) 768–5312 Superintendent, (406) 653–1752 Huber Wright—Lead ISO. |
| Wind River, Irrigation Project | Leslie Shakespeare, Superintendent, Jim Gappa, Acting Irrigation Project Manager, (Project operation & maintenance for Little Wind, Johnstown, and Lefthand Units contracted to Tribes under PL 93–638; Little Wind-Ray and Upper Wind Units operation & maintenance performed by Ray Canal, A Canal, and Crowheart Water Users Associations), P.O. Box 158, Fort Washakie, WY 82514, Telephones: (307) 332–7810 Superintendent, (406) 247–7998 Acting Irrigation Project Manager. |
| **Southwest Region Contacts** | |
| **Patricia L. Mattingly, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road, Albuquerque, NM 87104, Telephone: (505) 563–3100.** | |
| Pine River, Irrigation Project | Priscilla Bancroft, Superintendent, Vickie Begay, Irrigation Project Manager, P.O. Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511, Superintendent, (970) 563–9484, Irrigation Project Manager. |
| **Western Region Contacts** | |
| **Bryan Bowker, Regional Director, Bureau of Indian Affairs, Western Regional Office, 2600 North Central Avenue, 4th Floor Mailroom, Phoenix, AZ 85004, Telephone: (602) 379–6600.** | |
| Colorado River Irrigation Project | Clarence Begay, Acting Superintendent, Gary Colvin, Irrigation Project Manager, 12124 1st Avenue, Parker, AZ 85344, Telephone: (928) 669–7111. |
| Duck Valley Irrigation Project | Joseph McDade, Superintendent, (Project operation & maintenance compacted to Tribes), 2719 Argent Avenue, Suite 4, Gateway Plaza, Elko, NV 89801, Telephone: (775) 738–5165, (208) 759–3100 (Tribal Office). |
| Yuma Project, Indian Unit | Denni Shields, Superintendent, 256 South Second Avenue, Suite D, Yuma, AZ 85364, Telephone: (928) 782–1202. |
| San Carlos Irrigation Project (Indian Works and Joint Works). | Ferris Begay, Project Manager, Clarence Begay, Supervisory Civil Engineer, 13805 North Arizona Boulevard, Coolidge, AZ 85128, Telephone: (520) 723–6225. |
| Uintah Irrigation Project | Antonio Pingree, Superintendent, Ken Asay, Irrigation System Manager, (Project operation & maintenance performed by Uintah Indian Irrigation Project Operation and Maintenance Company), P.O. Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4300, (435) 722–4344. |
| Walker River Irrigation Project | Robert Eben, Superintendent, 311 East Washington Street, Carson City, NV 89701, Telephone: (775) 887–3500. |

**What irrigation assessments or charges are proposed for adjustment by this notice?**

The rate table below contains current final CY 2020 rates for irrigation projects where we recover costs of administering, operating, maintaining, and rehabilitating them. The table also contains proposed CY 2021 rates for all irrigation projects. An asterisk immediately following the rate category notes irrigation projects where rates are proposed for adjustment.

| Project name | Rate category | Final 2020 rate | Proposed 2021 rate |
|---|---|---|---|
| **Northwest Region Rate Table** | | | |
| Flathead Irrigation Project | Basic per acre—A | $33.50 | $33.50 |
| | Basic per acre—B | 16.75 | 16.75 |
| | Minimum Charge per tract | 75.00 | 75.00 |
| Fort Hall Irrigation Project | Basic per acre | 58.50 | 58.50 |
| | Minimum Charge per tract | 39.00 | 39.00 |
| Fort Hall Irrigation Project—Minor Units | Basic per acre | 38.00 | 38.00 |
| | Minimum Charge per tract | 39.00 | 39.00 |
| Fort Hall Irrigation Project—Michaud Unit | Basic per acre | 63.50 | 63.50 |
| | Pressure per acre * | 98.50 | 99.50 |
| | Minimum Charge per tract | 39.00 | 39.00 |
| Wapato Irrigation Project—Toppenish/Simcoe Units | Minimum Charge per bill | 25.00 | 25.00 |
| | Basic per acre | 25.00 | 25.00 |
| Wapato Irrigation Project—Ahtanum Units | Minimum Charge per bill | 30.00 | 30.00 |
| | Basic per acre | 30.00 | 30.00 |
| Wapato Irrigation Project—Satus Unit | Minimum Charge per bill | 79.00 | 79.00 |
| | "A" Basic per acre | 79.00 | 79.00 |
| | "B" Basic per acre | 85.00 | 85.00 |
| Wapato Irrigation Project—Additional Works | Minimum Charge per bill | 80.00 | 80.00 |
| | Basic per acre | 80.00 | 80.00 |
| Wapato Irrigation Project—Water Rental | Minimum Charge per bill | 86.00 | 86.00 |
| | Basic per acre | 86.00 | 86.00 |
| **Rocky Mountain Region Rate Table** | | | |
| Blackfeet Irrigation Project | Basic-per acre * | 20.00 | 20.50 |
| Crow Irrigation Project—Willow Creek O&M (includes Agency, Lodge Grass #1, Lodge Grass #2, Reno, Upper Little Horn, and Forty Mile Units). | Basic-per acre * | 28.00 | 28.50 |
| Crow Irrigation Project—All Others (includes Bighorn, Soap Creek, and Pryor Units). | Basic-per acre * | 28.00 | 28.50 |
| Crow Irrigation Project—Two Leggins Unit | Basic-per acre | 14.00 | 14.00 |
| Crow Irrigation Two Leggins Drainage District | Basic-per acre | 2.00 | 2.00 |
| Fort Belknap Irrigation Project | Basic-per acre | 17.00 | 17.00 |
| Fort Peck Irrigation Project | Basic-per acre | 27.00 | 27.00 |
| Wind River Irrigation Project—Units 2, 3 and 4 | Basic-per acre | 25.00 | 25.00 |
| Wind River Irrigation Project—Unit 6 | Basic-per acre | 22.00 | 22.00 |
| Wind River Irrigation Project—LeClair District (See Note #1) | Basic-per acre | 47.00 | 47.00 |
| Wind River Irrigation Project—Crow Heart Unit | Basic-per acre | 16.50 | 16.50 |
| Wind River Irrigation Project—A Canal Unit | Basic-per acre | 16.50 | 16.50 |
| Wind River Irrigation Project—Riverton Valley Irrigation District (See Note #1). | Basic-per acre | 30.65 | 30.65 |
| **Southwest Region Rate Table** | | | |
| Pine River Irrigation Project | Minimum Charge per tract | 50.00 | 50.00 |
| | Basic-per acre * | 21.50 | 22.00 |
| **Western Region Rate Table** | | | |
| Colorado River Irrigation Project | Basic per acre up to 5.75 acre-feet * | 59.00 | 61.50 |
| | Excess Water per acre-foot over 5.75 acre-feet | 18.00 | 18.00 |
| Duck Valley Irrigation Project (See Note #2) | Basic per acre | 5.30 | 5.30 |
| Yuma Project, Indian Unit (See Note #3) | Basic per acre up to 5.0 acre-feet | 154.50 | (+) |
| | Excess Water per acre-foot over 5.0 acre-feet | 30.00 | (+) |
| | Basic per acre up to 5.0 acre-feet (Ranch 5) | 154.50 | (+) |
| San Carlos Irrigation Project (Joint Works) (See Note #4) | Basic per acre * | 20.00 | 25.78 |

| | Proposed 2021 construction water rate schedule: | | | |
|---|---|---|---|---|
| | | Off project construction | On project construction—gravity water | On project construction—pump water |
| | Administrative Fee | $300.00 | $300.00 | $300.00. |
| | Usage Fee | $250.00 per month | No Fee | $100.00 per acre foot. |
| | Excess Water Rate † | $5.00 per 1,000 gal | No Charge | No Charge. |

| Project name | Rate category | Final 2020 rate | Proposed 2021 rate |
|---|---|---|---|
| San Carlos Irrigation Project (Indian Works) (See Note #5) | Basic per acre * | $86.00 | $104.00. |
| Uintah Irrigation Project | Basic per acre | 23.00 | 23.00 |
| | Minimum Bill | 25.00 | 25.00 |

| Project name | Rate category | Final 2020 rate | Proposed 2021 rate |
|---|---|---|---|
| Walker River Irrigation Project | Basic per acre | 31.00 | 31.00 |

* Notes irrigation projects where rates are adjusted.
+ The Bureau of Reclamation (BOR) rate component has not been established. See Note #3.
† The excess water rate applies to all water used in excess of 50,000 gallons in any one month.
Note #1 O&M rates for LeClair and Riverton Valley Irrigation Districts apply to Trust lands that are serviced by each irrigation district. The annual O&M rates are based on budgets submitted by LeClair and Riverton Valley Irrigation Districts, respectively.
Note #2 The annual O&M rate is established by the Shoshone-Paiute Tribes who perform O&M under a self-governance compact.
Note #3 The O&M rate for the Yuma Project, Indian Unit has two components. The first component of the O&M rate is established by BOR, the owner and operator of the Project. BOR's rate, which is based upon the annual budget submitted by BOR, is $151.00 for 2020 but has not been established for 2021. The second component of the O&M rate is established by BIA to cover administrative costs, which includes billing and collections for the Project. The final 2020 (84 FR 33282 (July 12, 2019)) and proposed 2021 BIA rate component is $3.50/acre.
Note #4 The Construction Water Rate Schedule identifies fees assessed for use of irrigation water for non-irrigation purposes.
Note #5 The O&M rate for the San Carlos Irrigation Project—Indian Works has three components. The first component is established by the San Carlos Irrigation Project—Indian Works (BIA), the owner and operator of the Project; the proposed 2021 BIA rate component is $56.00 per acre. The second component is established by the San Carlos Irrigation Project—Joint Works and determined to be $25.78 per acre for 2021. The third component is established by the San Carlos Irrigation Project Joint Control Board and is $22.22 per acre for 2021.

**Consultation and Coordination With Tribal Governments (Executive Order 13175)**

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this notice under the Department's consultation policy and under the criteria of Executive Order 13175 and have determined there to be substantial direct effects on federally recognized Tribes because the irrigation projects are located on or associated with Indian reservations. To fulfill its consultation responsibility to Tribes and Tribal organizations, BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, and costs of administration, operation, maintenance, and rehabilitation of projects that concern them. This is accomplished at the individual irrigation project by project, agency, and regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of our overall coordination and consultation process to provide notice to, and request comments from, these entities when we adjust irrigation assessment rates.

**Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)**

The proposed rate adjustments are not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

**Regulatory Planning and Review (Executive Order 12866)**

These proposed rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

**Regulatory Flexibility Act**

These proposed rate adjustments are not a rule for the purposes of the Regulatory Flexibility Act because they establish ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

**Unfunded Mandates Reform Act of 1995**

These proposed rate adjustments do not impose an unfunded mandate on state, local, or Tribal governments in the aggregate, or on the private sector, of more than $130 million per year. They do not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, the Department is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

**Takings (Executive Order 12630)**

These proposed rate adjustments do not effect a taking of private property or otherwise have ''takings'' implications under Executive Order 12630. The proposed rate adjustments do not deprive the public, State, or local governments of rights or property.

**Federalism (Executive Order 13132)**

Under the criteria in section 1 of Executive Order 13132, these proposed rate adjustments do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement because they will not affect the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. A federalism summary impact statement is not required.

**Civil Justice Reform (Executive Order 12988)**

This notice complies with the requirements of Executive Order 12988. Specifically, in issuing this notice, the Department has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct as required by section 3 of Executive Order 12988.

**Paperwork Reduction Act of 1995**

These proposed rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires January 31, 2023.

**National Environmental Policy Act**

The Department has determined that these proposed rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370(d)), pursuant to 43 CFR 46.210(i). In addition, the proposed rate adjustments do not present any of the 12 extraordinary circumstances listed at 43 CFR 46.215.

Dated: February 4, 2020.

**Tara Sweeney,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2020–03735 Filed 2–24–20; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVS01000 L5105.0000.EA0000 LVRCF1907120 241A 19XMO# 4500140975]**

## Notice of Temporary Closure of Public Land in Clark County, Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of temporary closure.

**SUMMARY:** The Las Vegas Field Office announces the temporary closure of certain public lands under its administration. The Off-Highway Vehicle (OHV) race area in the Jean/Roach Dry Lakes Special Recreation Management Area is used by OHV recreationists, and the temporary closure is needed to limit their access to the race area and to minimize the risk of potential collisions with spectators and racers during the 2020 Mint 400 Off-Highway Vehicle Race.

**DATES:** The temporary closure for the 2020 Mint 400 will go into effect at 12:01 a.m. on March 6, 2020 and will remain in effect until 11:59 p.m. on March 7, 2020.

**ADDRESSES:** The temporary closure order, communications plan, and map of the closure area will be posted at the BLM Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130 and on the BLM website: *www.blm.gov.* These materials will also be posted at the access points to the Jean/Roach Dry Lakes Special Recreation Management Area.

**FOR FURTHER INFORMATION CONTACT:** Kenny Kendrick, Outdoor Recreation Planner, telephone (702) 515–5073, or email *Kkendrick@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The Las Vegas Field Office announces the temporary closure of certain public lands under its administration. This action is being taken to help ensure public safety during the official permitted running of the 2020 Mint 400.

The public lands affected by this closure are described as follows:

**Mount Diablo Meridian, Nevada**

T. 25 S., R. 59 E.,
Sec. 23, those portions of the S½ lying southeasterly of the southeasterly right-of-way boundary of State Route 604, excepting CC–0360;
Sec. 24, excepting CC–0360;
Sec. 25;
Sec. 26, E½, excepting CC–0360;
Sec. 35, lots 4, 5, and 10, excepting CC–0360, and E½;
Sec. 36.
T. 26 S., R. 59 E.,
Sec. 1;
Sec. 2, lots 1 and 2, S½NE¼, E½SW¼, and SE¼;
Secs. 11 thru 14;
Sec. 22, lot 1, excepting CC–0360, NE¼NE¼, S½NE¼, excepting CC–0360, and SE¼;
Secs. 23 thru 26;
Sec. 27, lots 4, 5, and 8, excepting CC–0360, NE¼, SE¼SW¼, and SE¼;
Sec. 34, lot 1, excepting CC–0360, NE¼, NE¼NW¼, and SE¼;
Secs. 35 and 36.
T. 27 S., R. 59 E.,
Secs. 1 and 2;
Secs. 3 and 4, excepting CC–0360;
Sec. 5, those portions of the E½ lying easterly of the easterly right-of-way boundary of State Route 604;
Sec. 9, NE¼NE¼, excepting CC–0360 and W½SW¼;
Sec. 10, N½NE¼, SE¼NE¼, and N½NW¼;
Secs. 11 thru 17 and secs. 21 thru 24.
T. 24 S., R. 60 E.,
Sec. 13;
Sec. 14, NE¼, those portions of the NW¼NW¼ lying southeasterly of the southeasterly right-of-way boundary of State Route 604, S½NW¼, and S½;
Sec. 15, those portions of the SE¼NW¼ and S½ lying southeasterly of the southeasterly right-of-way boundary of State Route 604;
Sec. 16, those portions of the SE¼SE¼ lying southeasterly of the southeasterly right-of-way boundary of State Route 604;
Sec. 20, those portions of the SE¼SE¼ lying southeasterly of the southeasterly right-of-way boundary of State Route 604;
Sec. 21, those portions lying southeasterly of the southeasterly right-of-way boundary of State Route 604;
Secs. 22 thru 28;
Sec. 29, those portions of the NE¼ and S½ lying southeasterly of the southeasterly right-of-way boundary of State Route 604;
Sec. 31, those portions of the E½ lying southeasterly of the southeasterly right-of-way boundary of State Route 604, excepting CC–0360;
Sec. 32, those portions lying southeasterly of the southeasterly right-of-way boundary of State Route 604;
Secs. 33 thru 36.
T. 25 S., R. 60 E., those portions lying southeasterly of the southeasterly right-of-way boundary of State Route 604, excepting CC–0360.
T. 26 S., R. 60 E.,
Secs. 1 thru 24 and secs. 27 thru 34.
T. 27 S., R. 60 E.,
Secs. 3 thru 10 and secs. 15 thru 22.
T. 24 S., R. 61 E.,
Secs. 16 thru 21 and secs. 28 thru 33.
T. 25 S., R. 61 E.,
Secs. 4 thru 9, secs. 16 thru 21, and secs. 28 thru 33.
T. 26 S., R. 61 E.,
Secs. 6 and 7;
Sec. 8, SW¼NW¼ and NW¼SW¼, excepting those portions affected by Public Law 107–282.

The area described contains 104,226 acres, more or less, according to the BLM National PLSS CadNSDI and the official plats of the surveys of the said land, on file with the BLM.

Roads leading into the public lands under the temporary closure will be posted to notify the public of the closure. The closure area includes the Jean Dry Lake Bed and is bordered by Hidden Valley to the north, the McCullough Mountains to the east, the California State line to the south and Nevada State Route 604 to the west. Under the authority of Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7 and 43 CFR 8364.1, the BLM will enforce the following rules in the area described above:

The entire area as listed in the legal description above is closed to all vehicles and personnel except law enforcement, emergency vehicles, event personnel, event participants and ticketed spectators. Access routes leading to the closed area are closed to vehicles. No vehicle stopping or parking in the closed area except for designated areas will be permitted. Event participants and spectators are required to remain within designated pit and spectator areas only.

The following restrictions will be in effect for the duration of the closure to ensure public safety of participants and spectators. Unless otherwise authorized, the following activities within the closure area are prohibited:

- Camping.
- Possession and/or consumption any alcoholic beverage unless the person has reached the age of 21 years.
- Discharging, or use of firearms or other weapons.
- Possession and/or discharging of fireworks.
- Allowing any pet or other animal in their care to be unrestrained at any time. Animals must be on a leash or other restraint no longer than 3 feet.
- Operation of any vehicle including ALL Terrain Vehicles (ATV), motorcycles, Utility Terrain Vehicles, golf carts, and any OHV which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas.
- Parking any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at the owner's expense.
- Operating a vehicle through, around or beyond a restrictive sign, barricade, fence or traffic control barrier or device.
- Failing to maintain control of a vehicle to avoid danger to persons, property, resources or wildlife.

• Operating a motor vehicle without due care or at a speed greater than 25 mph. Signs and maps directing the public to designated spectator areas will be provided by the event sponsor.

*Exceptions:* Temporary closure restrictions do not apply to activities conducted under contract with the BLM, agency personnel monitoring the event, or activities conducted under an approved plan of operation. Authorized users must have in their possession, a written permit or contract from BLM signed by the authorized officer.

*Enforcement:* Any person who violates this temporary closure may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Nevada law.

(Authority: 43 CFR 8360.0–7 and 8364.1)

**Shonna Dooman,**

*Field Manager—Las Vegas Field Office.*

[FR Doc. 2020–03731 Filed 2–24–20; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLOR93000 L61400000.HN0000 LXLAH9990000 19X; OMB Control Number 1004–0168]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Tramroads and Logging Roads

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is proposing to renew an information collection with revisions.

**DATES:** Interested persons are invited to submit comments on or before March 26, 2020.

**ADDRESSES:** Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the BLM at U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240, Attention: Chandra Little; or by email to *cclittle@blm.gov.* Please reference OMB Control Number 1004–0168 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** Jessica LeRoy at 541–471–6659. Persons who use a telecommunication device for the deaf may call the Federal Relay Service at 1–800–877–8339, to leave a message for Ms. LeRoy.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 16, 2019 (84 FR 48638). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information pertains to this request:

*Abstract:* The BLM Oregon State Office has authority under the Oregon and California Revested Lands Sustained Yield Management Act of 1937 (43 U.S.C. 2601 and 2602) and subchapter V of the Federal Land Policy and Management Act (43 U.S.C. 1761–1771) to grant rights-of-way to private landowners to transport their timber over roads controlled by the BLM. This information collection enables the BLM to calculate and collect appropriate fees for this use of public lands. In response to respondents' suggestions, the BLM is requesting authorization to revise Form OR–2812–6 as follows in order to improve the form's clarity:

1. The BLM proposes to add a comment section so that respondents would not have to put comments on a separate page.

2. The BLM also proposes to add a column for ''operator'' maintenance, so that respondents would not have to include this information on a separate page.

*Title:* Tramroads and Logging Roads (43 CFR part 2810).

*OMB Control Number:* 1004–0168.

*Forms:* Form OR–2812–6, Report of Road Use.

*Type of Review:* Revision of a currently approved collection.

*Description of Respondents:* Private landowners who hold rights-of-way for the use of BLM-controlled roads in western Oregon.

*Total Estimated Number of Annual Respondents:* 1,088.

*Total Estimated Number of Annual Responses:* 1,088.

*Estimated Completion Time per Response:* 8.

*Total Estimated Number of Annual Burden Hours:* 8,704.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* Annually, biannually, quarterly, or monthly, depending on the terms of the pertinent right-of-way.

*Total Estimated Annual Non-Hour Costs:* None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Chandra Little,**

*Bureau of Land Management, Acting Information Collection Clearance Officer.*

[FR Doc. 2020–03733 Filed 2–24–20; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVB02000–L19200000–ET0000; N–94970; LR0RF1709500; MO#4500132064]**

### Public Land Order No. 7891; Withdrawal of Public Lands, Central Nevada Test Area; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This Order withdraws 361 acres of public land from all forms of appropriation and disposition under the public lands, including the mining laws and the mineral leasing laws for a period of 20 years to assist the United States Department of Energy Office of Legacy Management to carry out its responsibilities regarding public health, safety, and national security in connection with a past underground nuclear detonation in Hot Creek Valley, Nye County, Nevada.

**DATES:** This Public Land Order takes effect on February 25, 2020.

**FOR FURTHER INFORMATION CONTACT:** Wendy Seley, Realty Specialist, Bureau of Land Management, Tonopah Field Office, 1553 S. Main St., P.O. Box 911, Tonopah, Nevada 89049; telephone: 775–482–7805; email: *wseley@blm.gov;* or write: Field Manager, BLM Tonopah Field Office, 1553 S. Main St., P.O. Box 911, Tonopah, Nevada 89049. 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. Seley. 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:** In order to fulfill its obligations under the Atomic Energy Act of 1954 (42 U.S.C. 2201) regarding public health, safety, and national security in connection with a past underground nuclear detonation, the United States Department of Energy Office of Legacy Management requests that the 361 acres of public lands be withdrawn.

### Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from all forms of appropriation and other disposition under the public land laws, including the mining laws and the mineral-leasing laws, in order to protect the physical integrity of the subsurface environment and to ensure that the Department of Energy's ongoing, long-term site characterization studies of the Central Nevada Test Area are not invalidated or otherwise adversely affected.

**Mount Diablo Meridian**

T. 9 N. R. 51 E., Unsurveyed

Sections 14, 15, 22, and 23. It is an irregular bounded portion of land being more particularly described as follows:

*Beginning* at a point which is north 35°15′30″ west, 14,986.1 feet from the southeast corner of township 9 north, range 51 east.

*Thence*, north 89°43′10″ west, a distance of 6602.5 feet.

*Thence*, north 0°16′30″ east, a distance of 6602.6 feet.

*Thence*, south 89°43′10″ east, a distance of 6602.5 feet.

*Thence*, south 0°17′20″ west, a distance of 6602.6 feet to the POINT OF BEGINNING.

*Basis of Bearing:* Mean geodetic bearings referenced to the true meridian.

*Excepting* those portions withdrawn by PLO 4338 (UC–1 withdrawal).

The area described is 361 acres, in Nye County.

2. The withdrawal made by this Order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than under the mining laws and the mineral leasing laws. However, leases, licenses, or permits will be issued only if the Department of Energy finds that the proposed use of the lands will not interfere with the protection of human health and safety or the minimization of danger to life or property.

3. This withdrawal will expire on February 25, 2040, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: February 14, 2020.

**Timothy R. Petty,**

*Assistant Secretary for Water and Science.*

[FR Doc. 2020–03732 Filed 2–24–20; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–D–COS–POL–29629; PPWODIREP0] [PPMPSAS1Y.YP0000]**

### Notice of the March 11, 2020, Meeting of the National Park System Advisory Board

**AGENCY:** National Park Service, Interior.

**ACTION:** Meeting notice.

**SUMMARY:** In accordance with the Federal Advisory Committee Act of 1972, the National Park Service (NPS) is hereby giving notice that the National Park System Advisory Board (Board) will meet as noted below.

**DATES:** The meeting will be held on Wednesday, March 11, 2020, from 9:00 a.m. to 5:00 p.m., Pacific Daylight Time.

**ADDRESSES:** The meeting will be conducted in the Surfbird Room at Cavallo Point Lodge, 601 Murray Circle, Sausalito, California 94965, telephone (415) 339–4700.

**FOR FURTHER INFORMATION CONTACT:** Joshua Winchell, Staff Director for the National Park System Advisory Board, Office of Policy, National Park Service, 1849 C Street NW, Mail Stop 2659, Washington, DC 20240, telephone (202) 513–7053, or email *joshua_winchell@nps.gov.*

**SUPPLEMENTARY INFORMATION:** The Board has been established by authority of the Secretary of the Interior (Secretary) under 54 U.S.C. 100906, and is regulated by the Federal Advisory Committee Act.

The Board will convene its meeting at 9:00 a.m. and adjourn at 5:00 p.m. The Board will receive briefings and discuss topics related to improving the visitor experience in NPS managed units and workforce planning for the next century. The final agenda will be posted to the Board's website prior to the meeting at *https://www.nps.gov/advisoryboard.htm.*

The meeting is open to the public. Interested persons may choose to make oral comments at the meeting during the designated time for this purpose. Depending on the number of people wishing to comment and the time available, the amount of time for oral comments may be limited. Interested parties should contact the Staff Director for the Board (see **FOR FURTHER INFORMATION CONTACT**), for advance placement on the public speaker list for this meeting. Members of the public may also choose to submit written comments by emailing them to *joshua_winchell@nps.gov.* Individuals who plan to attend and need special assistance,

such as sign language interpretation, should contact the Staff Director for the Board.

*Public Disclosure of Comments:* Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 5 U.S.C. Appendix 2.

**Alma Ripps,**

*Chief, Office of Policy.*

[FR Doc. 2020–03658 Filed 2–24–20; 8:45 am]

**BILLING CODE 4312–52–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1022 (Third Review)]**

### Refined Brown Aluminum Oxide From China

#### Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on refined brown aluminum oxide from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

#### Background

The Commission instituted this review on September 3, 2019 (84 FR 46047) and determined on December 9, 2019 that it would conduct an expedited review (85 FR 3416, January 21, 2020).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on February 20, 2020. The views of the Commission are contained in USITC Publication 5020 (February 2020), entitled *Refined Brown Aluminum Oxide from China: Investigation No. 731–TA–1022 (Third Review).*

By order of the Commission.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Issued: February 20, 2020.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2020–03755 Filed 2–24–20; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1118]**

### Certain Movable Barrier Operator Systems and Components Thereof; Commission Determination To Review a Final Initial Determination in Part Finding No Violation of Section 337 and Order No. 38 Granting Summary Determination That the Economic Prong Has Been Satisfied; Request for Written Submissions on the Issues Under Review and on Remedy, Public Interest, and Bonding

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission (the ''Commission'') has determined to review in part the final Initial Determination (''ID'') issued in this case as well as Order No. 38 granting summary determination that the economic prong of the domestic industry requirement has been satisfied. The Commission requests briefing from the parties on the issues under review. The Commission also requests written submissions from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

**FOR FURTHER INFORMATION CONTACT:** Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2382. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's Electronic Docket Information System (''EDIS'') (*https://edis.usitc.gov*). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** On June 11, 2018, the Commission instituted the present investigation based on a complaint and supplement thereto filed by The Chamberlain Group, Inc. (''Chamberlain'') of Oak Brook, Illinois. 83 FR 27020–21 (June 11, 2018). The complaint, as supplemented, alleges a violation of 19 U.S.C. 1337, as amended (''Section 337''), in the importation, sale for importation, or sale in the United States after importation of certain movable barrier operator systems that purportedly infringe one or more of the asserted claims of Chamberlain's U.S. Patent Nos. 8,587,404 (''the '404 patent''); 7,755,223 (''the '223 patent''); and 6,741,052 (''the '052 patent''). *Id.* The Commission has partially terminated the investigation with respect to certain patent claims withdrawn by Chamberlain. *See* Order No. 16 (Feb. 5, 2019), *not rev'd,* Comm'n Notice (March 6, 2019); Order No. 27 (June 7, 2019), *not rev'd,* Comm'n Notice (June 27, 2019); Order No. 31 (July 30, 2019), *not rev'd,* Comm'n Notice (Aug. 19, 2019); Order No. 32 (Sept. 27, 2019), *not rev'd,* Comm'n Notice (Oct. 17, 2019). The only asserted claims still at issue are claim 11 of the '404 patent, claims 1 and 21 of the '223 patent, and claim 1 of the '052 patent.

The Commission's notice of investigation named Nortek Security & Control, LLC of Carlsbad, CA; Nortek, Inc. of Providence, RI; and GTO Access Systems, LLC of Tallahassee, FL (collectively, ''Nortek'') as respondents. 83 FR at 270721. The Office of Unfair Import Investigations was not named as a party to this investigation. *See id.*

The parties filed their *Markman* briefs on November 13, 2018, and a revised claim construction chart on February 8, 2019. On June 5, 2019, the presiding administrative law judge (''ALJ'') issued a *Markman* order (Order No. 25) construing the claim terms in dispute.

On December 12, 2018, Chamberlain filed a motion for summary determination, pursuant to 19 CFR 210.18(a), that it has satisfied the economic prong of the domestic industry requirement. Nortek filed a response opposing the motion on February 11, 2019. The ALJ held a teleconference with the parties on May 31, 2019. On June 6, 2019, the ALJ issued a notice advising the parties that the motion would be granted and a formal written order would be issued later. Order No. 26 (June 6, 2019).

The ALJ held a prehearing conference and evidentiary hearing on the issues in dispute on June 10–14, 2019. The parties filed their initial post-hearing briefs on July 11, 2019, and their reply briefs on August 16, 2019. On October

11, 2019, the ALJ issued Order No. 35, which extended the target date for completion of this investigation by 27 business days to March 25, 2020, and the due date for issuance of the final ID to November 25, 2019. Order No. 35 (Oct. 1, 2019), *not rev'd,* Comm'n Notice (Nov. 5, 2019).

On November 25, 2019, the ALJ issued two IDs. The first (Order No. 38) grants a motion for summary determination that the economic prong of the domestic industry requirement has been satisfied, pursuant to 19 CFR 210.42(c). The second is the final Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond. The final ID finds no violation of Section 337 because the asserted claims of the Chamberlain patents are either invalid or not infringed, and, in the case of the '223 patent, the technical prong of the domestic industry requirement has not been met. ID at 1, 286–87. Should the Commission reverse these findings and determine there is a violation of Section 337, the RD recommends issuing a limited exclusion order and cease and desist orders and imposing a bond in the amount of 100 percent during the period of Presidential review. RD at 277–86.

On December 4, 2019, Nortek filed a petition for review and Chamberlain filed a contingent petition for review of Order No. 38 granting summary determination that the economic prong has been satisfied. On December 9, 2019, Chamberlain filed a petition for review of the final ID, while Nortek filed a contingent petition for review of the final ID. On December 16, 2019, the Commission issued a notice of its determination to extend the deadline for determining whether to review Order No. 38 to January 24, 2019, to coincide with the deadline for determining whether to review the final ID. Comm'n Notice (Dec. 16, 2019).

On December 18, 2019, the Commission issued a notice soliciting comments on the public interest from the public. 84 FR 70998–99 (Dec. 26, 2019). No responses were received. Similarly, no party filed a submission, pursuant to 19 CFR 210.50(a)(4).

On January 23, 2020, the Commission extended the deadline for determining whether to review the final ID and Order No. 38 to February 14, 2020. Comm'n Notice (Jan. 23, 2020). The Commission also extended the target date to April 20, 2020. *Id.* On February 14, 2020, the Commission extended the deadline for determining whether to review the final ID and Order No. 38 to February 19, 2020. Comm'n Notice (Feb. 14, 2020). The Commission left the April 20, 2020, target date unchanged. *Id.*

Having reviewed the record in this investigation, including the final ID, Order No. 38, Order No. 25 (*Markman* order), and the parties' petitions and responses thereto, the Commission has determined to review Order No. 38 and the final ID in part, as follows.

With regard to the '404 patent, the Commission has determined to review the ID's claim constructions and application of those constructions, infringement and technical prong findings, and patent-eligibility findings.

With regard to the '223 patent, the Commission has determined to review the ID's finding of no infringement, particularly with respect to the application of the term ''operates'' in this context. The Commission has similarly determined to review the ID's finding that the asserted domestic industry products do not practice the '223 patent claims.

With regard to the '052 patent, the Commission has determined to review the ID's findings with respect to direct infringement, indirect infringement, technical prong, and obviousness.

The Commission has further determined to review Order No. 38 granting summary determination that the economic prong has been satisfied in this investigation.

The Commission has determined not to review the remaining findings in the ID.

The parties are asked to provide additional briefing on the following issues regarding the '223 and '052 patents. For each argument presented, the parties' submissions should include whether and how that argument was presented and preserved in the proceedings before the ALJ, in conformity with the ALJ's Ground Rules (Order No. 2), with citations to the record:

A. With regard to the '404 patent, please discuss whether the ID correctly found that claim 11 is not directed to an abstract idea and that it lacks an inventive concept. Does the claimed system use off-the-shelf technology or a specific implementation of a communication scheme? Please also discuss *SIPCO, LLC* v. *Emerson Elec. Co.,* 939 F.3d 1301, 1312 (Fed. Cir. 2019) and *Certain Road Construction Machines and Components Thereof,* Inv. No. 337–TA–1088, Comm'n Op. (June 27, 2019).

B. With regard to claims 1 and 21 of the '223 patent, please explain how a person skilled in the art would apply the plain and ordinary meaning of the term ''operates'' in the context of this patent and products at issue, and whether in this context ''the obstacle detector operates using a second energy usage . . .'' if the detector can be awoken to perform a function in the higher energy ''first mode of energy usage.''

C. With regard to indirect infringement, please explain whether there is a preponderance of the evidence that Nortek induces indirect infringement of the '052 patent, with particular attention to evidence showing the relevant products or components that Nortek imports into the United States (*e.g.,* gate operators, garage door operators, or controllers); whether or to what extent those imported products or components are assembled into final accused products; where final assembly of the accused products occurs (inside or outside the United States); which party or parties (*e.g.,* Nortek, its customers, etc.) perform such final assembly; and any other matters the parties deem relevant to review of indirect infringement.

D. With regard to the '052 patent, please explain whether the evidence supports finding a motivation to use a potentiometer or other means to manually adjust force thresholds that were previously automatically determined, or whether the prior art teaches away from such a combination, paying particular attention to the Hormann reference (U.S. Patent No. 4,625,291), the Schindler reference (U.S. Patent No. 4,638,433), technology and background of potentiometers, and any other relevant evidence that was timely raised in this investigation.

E. With regard to Order No. 38, explain whether there is a preponderance of evidence that Chamberlain has satisfied the economic prong requirement for the '404 patent, '223 patent or '052 patent—each patent standing alone—as a matter of law. In answering this question be sure to address the contextual analysis required by Commission precedent. *See, e.g., Certain Carburetors and Products Containing Such Carburetors,* Inv. No. 337–TA–1123, Comm'n Op. at 17–19 (Oct. 28, 2019).

The parties are requested to brief only the discrete issues identified above, with reference to the applicable law and evidentiary record. The parties are not to brief any other issues on review, which have already been adequately presented in the parties' previous filings.

In connection with the final disposition of this investigation, the Commission may issue: (1) An exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2)

a cease-and-desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994). In addition, if a party seeks issuance of any cease and desist orders, the written submissions should address that request in the context of recent Commission opinions, including those in *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor,* Inv. No. 337–TA–977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same,* Inv. No. 337–TA–959, Comm'n Op. (Feb. 13, 2017). Specifically, if Complainant seeks a cease and desist order against a respondent, the written submissions should respond to the following requests:

1. Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainant also relies on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.

2. In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.

3. Please discuss any other basis upon which the Commission could enter a cease and desist order.

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease-and-desist order would have on: (1) The public health and welfare; (2) competitive conditions in the U.S. economy; (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation; and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

*Written Submissions:* The parties to this investigation are requested to file written submissions on the issues identified in this Notice. In addition, parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such initial submissions should include views on the recommended determination by the ALJ on the issues of remedy and bonding. Complainant is requested to identify the form of remedy sought and to submit proposed remedial orders for the Commission's consideration in its initial written submission. Complainant is also requested to state the date that the patents expire and the HTSUS numbers under which the accused products are imported. Complainant is further requested to supply the names of known importers of the Respondents' products at issue in this investigation. Complainant is additionally requested to identify and explain, from the record, articles that are ''components of'' the subject products, and thus covered by the proposed remedial orders, if imported separately from the subject products.

The parties' written submissions and proposed remedial orders must be filed no later than the close of business on March 4, 2020. Reply submissions must be filed no later than the close of business on March 11, 2020. Opening submissions are limited to 40 pages. Reply submissions are limited to 30 pages. Third-party submissions should be filed no later than the close of business on March 4, 2020, and may not exceed 10 pages, not including any attachments. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadline stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1118'') in a prominent place on the cover page and/or first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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

By order of the Commission.

Issued: February 19, 2020.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2020–03675 Filed 2–24–20; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under The Clean Water Act

On February 19, 2020, the Department of Justice lodged a proposed consent decree with the United States District Court for the Eastern District of New York in the lawsuit entitled *United States of America and State of New York* v. *Village of Northport,* Civil Action No. 20–CV–890.

In this action the United States seeks, as provided under the Clean Water Act, 33 U.S.C. 1251, *et seq.,* civil penalties and injunctive relief from the Village of Northport (Northport) in connection with its failure to comply with the municipal separate storm sewer system permit and EPA administrative orders. The proposed Consent Judgment resolves the United States' claims and requires Northport to pay $125,000 and imposes injunctive relief.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America and State of New York* v. *Village of Northport,* D.J. Ref. No. 90–5–1–1–11187. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

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

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

Please enclose a check or money order for $13.00 (25 cents per page reproduction cost) payable to the United States Treasury.

**Henry Friedman,**

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

[FR Doc. 2020–03740 Filed 2–24–20; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Personal Protective Equipment for General Industry

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Personal Protective Equipment for General Industry,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before March 26, 2020.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201911–1218–001* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Frederick Licari Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Personal Protective Equipment for General Industry (29 CFR part 1910, subpart1) information collection. Subpart I requires that employers perform hazard assessments of the workplace to determine if personal protective equipment (PPE) is necessary and to communicate PPE selection decisions to affected workers. Employers must document that the hazard assessment has been conducted.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0205.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on February 29, 2020. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 9, 2019 (84 FR 47325).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES**

section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0205. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–OSHA.

*Title of Collection:* Personal Protective Equipment for General Industry (29 CFR part 1910, subpart 1).

*OMB Control Number:* 1218–0205.

*Affected Public:* Private Sector, Business or other for-profits.

*Total Estimated Number of Respondents:* 3,039,775.

*Total Estimated Number of Responses:* 2,419,842.

*Total Estimated Annual Time Burden:* 3,778,003 hours.

*Total Estimated Annual Other Costs Burden:* $ 0.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: February 18, 2020.

**Frederick Licari,**

*Departmental Clearance Officer.*

[FR Doc. 2020–03729 Filed 2–24–20; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2020–0003]**

### Advisory Committee on Construction Safety and Health (ACCSH): Notice of ACCSH Workgroup Meetings

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Announcement of teleconference meetings of ACCSH workgroups.

**SUMMARY:** ACCSH will hold teleconference meetings of the Education, Training and Outreach workgroup and the Emerging and Current Issues workgroup on March 5, 2020.

**DATES:** The Education, Training and Outreach workgroup will meet from 10:00 a.m. to 12:00 p.m., ET, and the Emerging and Current Issues workgroup will meet from 1:00 p.m. to 3:00 p.m., ET, Thursday, March 5, 2020, by teleconference.

**ADDRESSES:**

*Submission of comments and requests to speak:* Submit comments and requests to speak at the ACCSH workgroup meetings by February 28, 2020, identified by the docket number for this **Federal Register** notice (Docket No. OSHA–2020–0003), using one of the following methods:

*Electronically:* You may submit comments, including attachments, electronically at: *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

*Facsimile:* If your comments, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Regular mail, express mail, hand delivery, and messenger or courier service:* You may submit comments and attachments to the OSHA Docket Office, Docket No. OSHA–2020–0003, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (express mail, hand (courier) delivery, and messenger service) are accepted during the OSHA Docket Office's normal business hours, Monday-Friday, 10:00 a.m. to 3:00 p.m., ET.

*Instructions:* All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (Docket No. OSHA–2020–0003). Because of security-related procedures, submissions by regular mail may result in a significant delay in receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by express mail, hand (courier) delivery, and messenger service.

*Requests for special accommodations:* Please submit requests for special accommodations for this ACCSH meeting by February 28, 2020, to Ms. Gretta Jameson, OSHA, Directorate of Construction, Room N–3476, U.S. Department of Labor, telephone: (202) 693–2020; email: *jameson.grettah@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:**

*For press inquiries:* Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*For general information about ACCSH:* Mr. Damon Bonneau, OSHA, Directorate of Construction, U.S. Department of Labor; telephone (202) 693–2183; email: *bonneau.damon@dol.gov.*

*For copies of this* **Federal Register** *Notice:* Electronic copies of this **Federal Register** notice are available at: *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available at OSHA's web page at: *www.osha.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

ACCSH advises the Secretary of Labor and the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) in the formulation of standards affecting the construction industry, and on policy matters arising in the administration of the safety and health provisions under the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA)) (40 U.S.C. 3701 *et seq.*) and the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) (see also 29 CFR 1911.10 and 1912.3). In addition, the OSH Act and CSA require the Assistant Secretary to consult with ACCSH before the agency proposes any occupational safety and health standard affecting construction activities (29 CFR 1911.10; 40 U.S.C. 3704).

ACCSH operates in accordance with the CSA, the OSH Act, the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), and regulations issued pursuant to those statutes (29 CFR part 1912, 41 CFR part 102–3). ACCSH generally meets two times a year.

#### II. Meeting Information

*Attending the meeting:* Attendance at this ACCSH meeting will be by teleconference only. The dial-in number and passcode for the meeting are as follows: Dial-in number: 1–888–658–5408; Passcode: 7001480. For additional information about the telecommunication requirements for the meeting, please contact Ms. Veneta Chatmon, OSHA, Directorate of Construction, Room N–3468, U.S. Department of Labor, telephone (202) 693–2020; email: *chatmon.veneta@dol.gov.*

*Meeting agenda:* The tentative agendas for the workgroup meetings include:

• Education, Training and Outreach workgroup:

1. Trench Safety.

2. Fall Prevention.

• Emerging and Current Issues workgroup:

1. Opioids.

2. Suicides in construction.

*Requests to speak at ACCSH meeting:* Attendees who want to address the workgroups must submit a request to speak, as well as any written or electronic presentation, by February 28, 2020, using one of the methods listed in the **ADDRESSES** section. The request must state:

• The amount of time requested to speak;

• The interest you represent (*e.g.,* business, organization, affiliation), if any; and

• A brief outline of your presentation.

OSHA will place comments and requests to speak, including personal information, in the public docket, which will be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security Numbers and birthdates.

*Docket:* To read or download documents in the public docket for this ACCSH meeting, go to *http://www.regulations.gov.* All documents in the public docket are listed in the index; however, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through *http://www.regulations.gov.* All submissions are available for inspection and, when permitted, copying at the OSHA Docket Office at the above address. For information on using *http://www.regulations.gov* to make submissions or to access the docket, click on the ''Help'' tab at the top of the homepage. Contact the OSHA Docket Office for information about materials not available through that website and for assistance in using the internet to locate submissions and other documents in the docket.

### Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 655(b)(1) and 656(b), 5 U.S.C. App. 2, Secretary of Labor's Order No. 1–2012 (77 FR 3912), and 29 CFR part 1912.

Signed at Washington, DC, on February 13, 2020.

**Loren Sweatt,**

*Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2020–03665 Filed 2–24–20; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

**[NARA–2020–021]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** We are giving notice that we have submitted to OMB for approval the information collection described in this notice. We invite you to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** OMB must receive written comments at the address below on or before March 26, 2020.

**ADDRESSES:** Send comments to Mr. Nicholas A. Fraser, desk officer for NARA, by email to *Nicholas_A._Fraser@omb.eop.gov,* by mail to Office of Management and Budget; New Executive Office Building; Washington, DC 20503, or by fax to 202–395–5167.

**FOR FURTHER INFORMATION CONTACT:** Tamee Fechhelm, by phone at 301.837.1694 or by fax at 301.837.0319, with requests for additional information or for 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 general public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for this information collection on December 5, 2019 (84 FR 66698), and we received no comments. We have therefore submitted the described information collection to OMB for approval.

In response to this notice, 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 the collection affects small businesses. 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. 2020–03678 Filed 2–24–20; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Institute of Museum and Library Services

### Notice of Proposed Information Collection Request: Evaluation of IMLS's Applying Promising Practices for Small and Rural Libraries (APP) Program

**AGENCY:** Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

**ACTION:** Notice, request for comments on this collection of information.

**SUMMARY:** The Institute of Museum and Library Services (IMLS), 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 and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation 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. The purpose of this Notice is to solicit comments

about this assessment process, instructions and data collections.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before April 23, 2020.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

**ADDRESSES:** Send comments to: Ms. Kim Miller, Senior Grants Management Specialist, Office of Grants Management and Policy, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Ms. Miller can be reached by Telephone: 202–653–4762, Fax: 202–653–4608, by email at *kmiller@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

**FOR FURTHER INFORMATION CONTACT:** Marvin Carr, Ph.D., Senior Evaluation Officer, Office of Digital and Information Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Carr can be reached by Telephone: 202–653–4752, Fax: 202–653–4604, by email at *mcarr*@imls.gov, or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

## II. Current Actions

The *Applying Promising Practices for Small and Rural Libraries* (APP) program is a special initiative, funded through the IMLS Office of Library Services. The goal of this initiative is to support projects that strengthen the ability of small and rural libraries and archives to serve their communities in the areas of digital inclusion, community memory, and school library practice.

As IMLS prepares to make new awards under this initiative, the Agency seeks to undertake a systematic assessment to better understand the methods for building the capacity of these small and rural libraries and archives to serve their communities. The proposed evaluation approach is intended to provide a reasonable balance between scientific considerations for valid and reliable evidence and stakeholder utilization of the acquired knowledge. This investigation is intended to inform IMLS decision-making for current and future grant-making in this grant program, as well as for practices in this segment of the library sector.

*Agency:* Institute of Museum and Library Services.

*Title:* Evaluation and Learning for IMLS's Applying Promising Practices for Small and Rural Libraries (APP) program.

*OMB Number:* 3137–TBD.

*Frequency:* Once.

*Affected Public:* Federal, State and local governments.

*Number of Respondents:* TBD.

*Estimated Average Burden per Response:* TBD hours.

*Estimated Total Annual Burden:* TBD hours.

*Total Annualized capital/startup costs:* n/a.

*Total Annual costs:* TBD.

*Public Comments Invited:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: February 20, 2020.

**Kim Miller,**

*Senior Grants Management Specialist, Institute of Museum and Library Services.*

[FR Doc. 2020–03681 Filed 2–24–20; 8:45 am]

**BILLING CODE 7036–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2020–0001]**

### Sunshine Act Meetings

**TIME AND DATE:** Weeks of February 24, March 2, 9, 16, 23, 30, 2020.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public.

**Week of February 24, 2020**

*Tuesday, February 25, 2020*

9:00 a.m. Overview of Accident Tolerant Fuel Activities (Public Meeting); (Contact: Luis Betancourt: 301–415–6146)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/.*

**Week of March 2, 2020—Tentative**

*Thursday, March 5, 2020*

10:00 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

**Week of March 9, 2020—Tentative**

There are no meetings scheduled for the week of March 9, 2020.

**Week of March 16, 2020—Tentative**

There are no meetings scheduled for the week of March 16, 2020.

**Week of March 23, 2020—Tentative**

There are no meetings scheduled for the week of March 23, 2020.

**Week of March 30, 2020—Tentative**

*Tuesday, March 31, 2020*

10:00 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes (Public Meeting); (Contact: Kellee Jamerson: 301–415–7408)

**CONTACT PERSON FOR MORE INFORMATION:** For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne

Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated at Rockville, Maryland, this 21st day of February 2020.

For the Nuclear Regulatory Commission.

**Rochelle C. Bavol,**

*Executive Assistant, Office of the Secretary.*

[FR Doc. 2020–03877 Filed 2–21–20; 4:15 pm]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2020–0053]**

## Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Biweekly notice.

**SUMMARY:** Pursuant to section 189.a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. This biweekly notice includes all amendments issued, or proposed to be issued, from January 28, 2020, to February 10, 2020. The last biweekly notice was published on February 11, 2020.

**DATES:** Comments must be filed by March 26, 2020. A request for a hearing or petitions for leave to intervene must be filed by April 27, 2020.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0053. Address questions about NRC Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Shirley Rohrer, Office of Nuclear Reactor Regulation, 301–415–5411, email: *shirley.rohrer@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2020–0053, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0053.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2020–0053, facility name, unit number(s), docket number(s), application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

### II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown below, the Commission finds that the licensee's analyses provided, consistent with title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.91 is sufficient to support the proposed determination that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination, any hearing will take place after issuance. The Commission expects that the need to take action on an amendment before 60 days have elapsed will occur very infrequently.

*A. Opportunity To Request a Hearing and Petition for Leave To Intervene*

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/*. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

*B. Electronic Submissions (E-Filing)*

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to

intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The table below provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensee's proposed NSHC determination. For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

**Entergy Operations, Inc.; Arkansas Nuclear One, Unit 2; Pope County, AR**

| | |
|---|---|
| Application Date | December 18, 2019. |
| ADAMS Accession No. | ML19352F266. |
| Location in Application of NSHC | Pages 18–19 of the Enclosure. |

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|---|---|
| Brief Description of Amendments | The proposed amendment would modify the individual and average control element assembly (CEA) drop times established in Arkansas Nuclear One, Unit 2 Technical Specification 3.1.3.4, ''CEA Drop Time.'' |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address. | Anna Vinson Jones, Senior Counsel, Entergy Services, Inc., 101 Constitution Avenue NW, Suite 200 East, Washington, DC 20001. |
| Docket Nos. | 50–368. |
| NRC Project Manager, Telephone Number. | Thomas Wengert, 301–415–4037. |

**Entergy Operations, Inc.; Arkansas Nuclear One, Unit 2; Pope County, AR**

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|---|---|
| Application Date | December 16, 2019. |
| ADAMS Accession No. | ML19350B324. |
| Location in Application of NSHC | Pages 37–38 of the Enclosure. |
| Brief Description of Amendments | The proposed amendment would revise several technical specification (TS) requirements by the addition, deletion, modification, or relocation of certain TS limiting conditions for operation, actions, and surveillance requirements, to enhance consistency with NUREG–1432, ''Standard Technical Specifications—Combustion Engineering Plants,'' Revision 4 (ADAMS Accession Nos. ML12102A165 and ML12102A169), and the NRC's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published in the **Federal Register** on July 22, 1993 (58 FR 39132). Relocated TSs would be placed in the ANO–2 Technical Requirements Manual or the associated TS Bases. |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address. | Anna Vinson Jones, Senior Counsel, Entergy Services, Inc., 101 Constitution Avenue NW, Suite 200 East, Washington, DC 20001. |
| Docket Nos. | 50–368. |
| NRC Project Manager, Telephone Number. | Thomas Wengert, 301–415–4037. |

**Nine Mile Point Nuclear Station and Exelon Generation Company, LLC; Nine Mile Point Nuclear Station, Unit 2; Oswego County, NY**

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|---|---|
| Application Date | December 26, 2019. |
| ADAMS Accession No. | ML19360A145. |
| Location in Application of NSHC | Pages 25, 26, and 27 of the Enclosure. |
| Brief Description of Amendments | The proposed amendment would permit the implementation of a risk-informed process for the categorization and treatment of structures, systems, and components, subject to special treatment controls. |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address. | Jason Zorn, Associate General Counsel, Exelon Generation Company, LLC, 101 Constitution Ave. NW, Suite 400, Washington, DC 20001. |
| Docket Nos. | 50–410. |
| NRC Project Manager, Telephone Number. | Michael L. Marshall, Jr., 301–415–2871. |

**Northern States Power Company—Minnesota; Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2; Goodhue County, MN**

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|---|---|
| Application Date | December 16, 2019. |
| ADAMS Accession No. | ML19350C188. |
| Location in Application of NSHC | Attachment 1, pages 13 and 14. |
| Brief Description of Amendments | The proposed amendment would modify the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, technical specifications (TSs) to permit the use of risk informed completion times in accordance with TS Task Force (TSTF) traveler TSTF–505, Revision 2, ''Provide Risk-Informed Extended Completion Times—RITSTF Initiative 4b.'' |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address. | Peter M. Glass, Assistant General Counsel, Xcel Energy, 414 Nicollet Mall—401–8, Minneapolis, MN 55401. |
| Docket Nos. | 50–282, 50–306. |
| NRC Project Manager, Telephone Number. | Robert Kuntz, 301–415–3733. |

**Northern States Power Company—Minnesota; Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2; Goodhue County, MN**

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| Application Date | December 23, 2019. |
| ADAMS Accession No. | ML19357A142. |
| Location in Application of NSHC | Enclosure pages 4–6. |
| Brief Description of Amendments | The proposed amendment would modify the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, technical specifications (TSs) to adopt TS Task Force (TSTF) traveler TSTF–547, ''Clarification of Rod Position Requirements.'' |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address. | Peter M. Glass, Assistant General Counsel, Xcel Energy, 414 Nicollet Mall—401–8, Minneapolis, MN 55401. |
| Docket Nos. | 50–282, 50–306. |
| NRC Project Manager, Telephone Number. | Robert Kuntz, 301–415–3733. |

| **Southern Nuclear Operating Company, Inc.; Joseph M. Farley Nuclear Plant, Units 1 and 2; Houston County, AL** | |
|---|---|
| Application Date | December 12, 2019. |
| ADAMS Accession No. | ML19346E959. |
| Location in Application of NSHC | Pages E6–E8 of the application. |
| Brief Description of Amendments | The proposed amendment would correct Technical Specification (TS) 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' by removing a reference to ''RTP'' [Rated Thermal Power]. The proposed amendment also revises TS 3.3.7, ''Control Room Emergency Filtration/Pressurization System (CREFS) Actuation Instrumentation'' to change the units for the control room ventilation radiation isolation trip setpoint from counts per minute to an equivalent setpoint in units of microcuries per cubic centimeter with a clarifying footnote. The licensee states the changes are considered administrative in nature. |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address. | Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295. |
| Docket Nos. | 50–348, 50–364. |
| NRC Project Manager, Telephone Number. | Shawn Williams, 301–415–1009. |

| **Susquehanna Nuclear, LLC and Allegheny Electric Cooperative, Inc.; Susquehanna Steam Electric Station, Units 1 and 2; Susquehanna County, PA** | |
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| Application Date | January 2, 2020. |
| ADAMS Accession No. | ML20002B254. |
| Location in Application of NSHC | Pages 15–17 of Enclosure 1. |
| Brief Description of Amendments | The proposed amendment would modify the current licensing basis for the design-basis accident (DBA) loss-of-coolant accident (LOCA) analysis described in the Final Safety Analysis Report. The proposed changes would utilize an updated version of the ORIGEN code, introduce a new source term to account for the introduction of ATRIUM 11 fuel, use new inputs/assumptions that decrease the assumed emergency safety feature leakage into secondary containment, increase the assumed maximum allowable standby gas treatment system exhaust flow rate from secondary containment, and increase the allowed control structure unfiltered inleakage that is assumed in the DBA LOCA dose analysis. As a result, the proposed amendment would modify Technical Specification (TS) 5.5.2, ''Primary Coolant Sources Outside Containment,'' and the TS Bases for TS 3 .6.4.1, ''Secondary Containment.'' |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address. | Damon D. Obie, Esq, 835 Hamilton St., Suite 150, Allentown, PA 18101. |
| Docket Nos. | 50–387, 50–388. |
| NRC Project Manager, Telephone Number. | Sujata Goetz, 301–415–8004. |

| **Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN** | |
|---|---|
| Application Date | December 6, 2019. |
| ADAMS Accession No. | ML19340B773. |
| Location in Application of NSHC | Pages E18 and E19 of the Enclosure. |
| Brief Description of Amendments | The proposed amendments would modify Technical Specification 3.6.15 by deleting existing Condition B and would revise the acceptance criteria for annulus pressure in Surveillance Requirement 3.6.15.1. |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address. | Sherry Quirk, Executive VP and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A, Knoxville, TN 37902. |
| Docket Nos. | 50–390, 50–391. |
| NRC Project Manager, Telephone Number. | Perry Buckberg, 301–415–1383. |

| **Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN** | |
|---|---|
| Application Date | December 17, 2019. |
| ADAMS Accession No. | ML19353C089. |
| Location in Application of NSHC | Pages E7–E8 of Enclosure. |
| Brief Description of Amendments | The proposed amendments would delete Technical Specification 3.8.1, ''AC [Alternating Current] Sources—Operating,'' Surveillance Requirement 3.8.1.22 to verify the operability of the automatic transfer from a Unit Service Station Transformer to a Common Station Service Transformer A or B at the associated unit board. |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address. | Sherry Quirk, Executive VP and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A, Knoxville, TN 37902. |
| Docket Nos. | 50–390, 50–391. |
| NRC Project Manager, Telephone Number. | Kimberly Green, 301–415–1627. |

| **Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN** | |
|---|---|
| Application Date | January 17, 2020. |
| ADAMS Accession No. | ML20017A341. |

| | |
|---|---|
| Location in Application of NSHC | Pages E8–E10 of Enclosure. |
| Brief Description of Amendments | The proposed amendments would revise Technical Specification 3.3.5, ''LOP [Loss of Power] DG [Diesel-Generator] Start Instrumentation,'' Condition C, to require restoration of inoperable channels to operable status within one hour when one or more channels per bus are inoperable. |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address. | Sherry Quirk, Executive VP and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A, Knoxville, TN 37902. |
| Docket Nos. | 50–390, 50–391. |
| NRC Project Manager, Telephone Number. | Kimberly Green, 301–415–1627. |

**Vistra Operations Company LLC; Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2; Somervell County, TX**

| | |
|---|---|
| Application Date | November 7, 2019, as supplemented January 16, 2020. |
| ADAMS Accession No. | ML19325C595, ML20028D385. |
| Location in Application of NSHC | Pages 2 and 3 of Attachment 1 to November 7, 2019, document. |
| Brief Description of Amendments | The proposed amendments would adopt Technical Specifications Task Force (TSTF) Traveler TSTF–563, ''Revise Instrument Testing Definitions to Incorporate the Surveillance Frequency Control Program.'' Specifically, the proposed amendments revise the technical specification definitions for Channel Calibration, Channel Operational Test, and Trip Actuating Device Operational Test. |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address. | Timothy P. Matthews, Esq., Morgan, Lewis and Bockius, 1111 Pennsylvania Avenue NW, Washington, DC 20004. |
| Docket Nos. | 50–445, 50–456. |
| NRC Project Manager, Telephone Number. | Dennis Galvin, 301–415–6256. |

## III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action, see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation, and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

**Arizona Public Service Company, et al; Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Maricopa County, AZ**

| | |
|---|---|
| Date Issued | February 10, 2020. |
| ADAMS Accession No. | ML20016A458. |
| Amendment Nos. | 211 (Unit 1), 211 (Unit 2), 211 (Unit 3). |
| Brief Description of Amendments. | The amendments extended the implementation time from February 23, 2020, to August 31, 2020, for the NRC-approved License Amendment Nos. 209, 209, and 209 for the Palo Verde Nuclear Generating Station, Units 1, 2, and 3, issued on May 29, 2019 (ADAMS Accession No. ML19085A525), associated with risk-informed completion times in accordance with Nuclear Energy Institute (NEI) 06–09, Revision 0–A, ''Risk-Informed Technical Specification Initiative 4b, Risk-Managed Technical Specifications (RMTS) Guidelines.'' The licensee requested this extension due to unforeseen circumstances. |
| Docket Nos. | 50–528, 50–529, 50–530. |

**Dominion Energy Nuclear Connecticut, Inc.; Millstone Power Station, Unit No. 2; Waterford, CT**

| | |
|---|---|
| Date Issued | January 30, 2020. |
| ADAMS Accession No. | ML19340A025. |
| Amendment Nos. | 337. |
| Brief Description of Amendments | The amendment added a new license condition to the Millstone Power Station, Unit No. 2, Renewed Facility Operating License to allow the implementation of the risk-informed categorization and treatment of structures, systems, and components of nuclear power reactors in accordance with 10 CFR 50.69. |
| Docket Nos. | 50–336. |

| **Duke Energy Progress, LLC; Brunswick Steam Electric Plant, Units 1 and 2; Brunswick County, NC** | |
|---|---|
| Date Issued | January 8, 2020. |
| ADAMS Accession No. | ML19316B057. |
| Amendment Nos. | 297 (Unit 1) and 325 (Unit 2). |
| Brief Description of Amendments | The amendments modified Technical Specification (TS) 3.4.3, ''Safety/Relief Valves (SRVs),'' Surveillance Requirement (SR) 3.4.3.2 and TS 3.5.1, ''ECCS [Emergency Core Cooling System]—Operating,'' SR 3.5.1.11. The amendments replaced the current requirement in these TS SRs to verify the SRVs open when manually actuated with an alternate requirement that verifies that the SRVs are capable of being opened. |
| Docket Nos. | 50–324, 50–325. |

| **Energy Northwest; Columbia Generating Station; Benton County, WA** | |
|---|---|
| Date Issued | February 6, 2020. |
| ADAMS Accession No. | ML19337C368. |
| Amendment Nos. | 255. |
| Brief Description of Amendments | The amendment revised the Columbia Final Safety Analysis Report to allow use of the main control room chilled water system or the emergency service water system as acceptable cooling sources in support of the main control room air conditioning system. |
| Docket Nos. | 50–397. |

| **Entergy Operations, Inc.; Arkansas Nuclear One, Unit 2; Pope County, AR** | |
|---|---|
| Date Issued | January 29, 2020. |
| ADAMS Accession No. | ML19231A297. |
| Amendment Nos. | 318. |
| Brief Description of Amendments | The amendment revised the Arkansas Nuclear One, Unit 2 (ANO–2) technical specifications (TSs) by establishing Actions and Allowable Outage Times applicable to conditions where the ANO–2 containment building sump is inoperable. Specifically, the amendment revised Surveillance Requirement 4.5.2 in TS Section ¾.5, ''Emergency Core Cooling Systems (ECCS),'' and TS 3.6.2.3, ''Containment Cooling System.'' The amendment also added new TS 3.6.4.1, ''Containment Sump,'' in TS Section ¾.6, ''Containment Systems.'' |
| Docket Nos. | 50–368. |

| **Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Units 1 and 2; Berrien County, MI** | |
|---|---|
| Date Issued | January 31, 2020. |
| ADAMS Accession No. | ML19347B376. |
| Amendment Nos. | 350 (Unit 1) and 331 (Unit 2). |
| Brief Description of Amendments | The amendments revised the Donald C. Cook Nuclear Plant Technical Specification 5.5.5, ''Reactor Coolant Pump [RCP] Flywheel Inspection Program,'' in accordance with Technical Specifications Task Force (TSTF) Traveler TSTF–421–A, ''Revision to RCP Flywheel Inspection Program (WCAP–15666),'' Revision 0. |
| Docket Nos. | 50–315, 50–316. |

| **Nebraska Public Power District; Cooper Nuclear Station; Nemaha County, NE** | |
|---|---|
| Date Issued | January 28, 2020. |
| ADAMS Accession No. | ML19352G194. |
| Amendment Nos. | 264. |
| Brief Description of Amendments | The amendment revised the Cooper Nuclear Station Technical Specifications based on Technical Specifications Task Force (TSTF) Traveler TSTF–447, ''Elimination of Hydrogen Recombiners and Change to Hydrogen and Oxygen Monitors.'' |
| Docket Nos. | 50–298. |

| **Southern Nuclear Operating Company, Inc.; Joseph M. Farley Nuclear Plant, Units 1 and 2; Houston County, AL, Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Appling County, GA, Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA** | |
|---|---|
| Date Issued | January 29, 2020. |
| ADAMS Accession No. | ML19337C322. |
| Amendment Nos. | Farley—226 (Unit 1) and 223 (Unit 2); Hatch—303 (Unit 1) and 248 (Unit 2); Vogtle—201 (Unit 1) and 184 (Unit 2). |
| Brief Description of Amendments | The amendments adopted Technical Specifications Task Force (TSTF) Traveler TSTF–563, ''Revise Instrument Testing Definitions to Incorporate the Surveillance Frequency Control Program.'' TSTF–563 revises the Technical Specification (TS) definitions of Channel Calibration and Channel Functional Test in the Hatch TS, and the definitions of Channel Calibration, Channel Operational Test (COT), and Trip Actuating Device Operational Test (TADOT) in the Farley and Vogtle TSs. The Farley, Hatch, and Vogtle Channel Calibration definition and the Hatch Channel Functional Test definition currently permit performance by means of any series of sequential, overlapping, or total channel steps. The Farley and Vogtle definitions of COT and TADOT are revised to explicitly permit performance by means of any series of sequential, overlapping, or total channel steps. The Channel Calibration, Channel Functional Test, COT, and TADOT definitions are revised to allow the required frequency for testing the components or devices in each step to be determined in accordance with the Surveillance Frequency Control Program. |

| | |
|---|---|
| Docket Nos. | 50–321, 50–348, 50–364, 50–366, 50–424, 50–425. |

**Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Unit 4; Burke County, GA**

| | |
|---|---|
| Date Issued | February 3, 2020. |
| ADAMS Accession No. | ML20013G569. |
| Amendment Nos. | 173. |
| Brief Description of Amendments | The amendment authorized changes to the Vogtle Electric Generating Plant (VEGP) Unit 4 Updated Final Safety Analysis Report in the form of departures from the incorporated plant-specific Design Control Document Tier 2* information. The license amendment authorized Southern Nuclear Operating Company to revise the provided area of horizontal and vertical steel reinforcement for VEGP Unit 4 Wall L from elevation 117′–6″ to 135′–3″; and revise the provided area of horizontal steel reinforcement for VEGP Unit 4 Wall 7.3 from elevation 117′–6″ to 135′–3″. |
| Docket Nos. | 52–026. |

**Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA**

| | |
|---|---|
| Date Issued | January 30, 2020. |
| ADAMS Accession No. | ML19346E463. |
| Amendment Nos. | 202/185. |
| Brief Description of Amendments | The amendments revised the actions of Technical Specification (TS) 3.7.8, ''Nuclear Service Cooling Water (NSCW) System,'' TS 3.8.1, ''AC Sources-Operating,'' TS 3.8.4, ''DC Sources—Operating,'' TS 3.8.7, ''Inverters—Operating,'' and TS 3.8.9, ''Distribution Systems—Operating.'' The amendments modified action end states for the subject TSs in conditions where more than one safety-related train is inoperable or the electrical power system is significantly degraded. Specifically, if the related required action statements are not met, then instead of requiring the plant to achieve Hot Shutdown (*i.e.*, Mode 4), the end state of Cold Shutdown (*i.e.*, Mode 5) is required. |
| Docket Nos. | 50–424, 50–425. |

**Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Burke County, GA**

| | |
|---|---|
| Date Issued | January 2, 2020. |
| ADAMS Accession No. | ML19339H089. |
| Amendment Nos. | 171 (Unit 3) and 169 (Unit 4). |
| Brief Description of Amendments | The amendments revised the Combined License (COL) Numbers NPF–91 and NPF–92 for Vogtle Electric Generating Plant, Units 3 and 4, and Updated Final Safety Analysis Report (UFSAR). Specifically, the requested amendments authorized changes to eliminate the performance of the Pressurizer Surge Line Stratification Evaluation first plant only test during the hot functional testing and during the first operating cycle, by revising COL Condition 2.D.(2)(a)1 and related UFSAR Tier 2 information. This notice is being reissued in its entirety to correct an error in a previously published notice (January 28, 2020; 85 FR 5056). The previous notice incorrectly listed Units 1 and 2 instead of Units 3 and 4 for this amendment. |
| Docket Nos. | 52–025, 52–026. |

**Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Burke County, GA**

| | |
|---|---|
| Date Issued | January 8, 2020. |
| ADAMS Accession No. | ML19343C013. |
| Amendment Nos. | 172 (Unit 3) and 170 (Unit 4). |
| Brief Description of Amendments | The amendments consist of changes to the Combined License Appendix A, Technical Specifications (TS) 3.7.11, Spent Fuel Pool Boron Concentration, Applicability and Required Actions to eliminate an allowance to exit the Applicability of Limiting Condition of Operation 3.7.11, Spent Fuel Pool Boron Concentration, once a spent fuel pool storage verification had been performed. The amendments also eliminated TS 3.7.11 Required Action A.2.2, which provides an option to perform a spent fuel pool storage verification in lieu of restoring spent fuel pool boron concentration to within limits. |
| Docket Nos. | 52–025, 52–026. |

## Previously Published Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, including the applicable notice period, see the individual notice in the **Federal Register** on the day and page cited.

**Exelon FitzPatrick, LLC and Exelon Generation Company, LLC; James A. FitzPatrick Nuclear Power Plant, LLC; Oswego County, NY**

| | |
|---|---|
| Application Date | January 23, 2020. |
| ADAMS Accession No. | ML20023A362. |

| | |
|---|---|
| Brief Description of Amendment ..... | The amendment would adopt Technical Specifications Task Force (TSTF) Traveler TSTF–568, Revision 2, ''Revise Applicability of BWR [Boiling Water Reactor]/4 TS [Technical Specification] 3.6.2.5 and TS 3.6.3.2,'' using the Consolidated Line Item Improvement Process. Specifically, the amendment would revise FitzPatrick TS 3.6.2.4, ''Drywell-to-Suppression Chamber Differential Pressure,'' and TS 3.6.3.1, ''Primary Containment Oxygen Concentration,'' and present the requirements in a manner more consistent with the Standard Technical Specifications format and content. |
| Date & Cite of **Federal Register** Individual Notice. | 1/29/2020; 85 FR 5256. |
| Expiration Dates for Public Comments & Hearing Requests. | 2/28/2020 (comments); 3/30/2020 (hearings). |
| Docket Nos. ..... | 50–333. |

Dated at Rockville, Maryland, this 18th day of February 2020.

For the Nuclear Regulatory Commission.

**Mohamed K. Shams,**

*Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2020–03493 Filed 2–24–20; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. CP2019–165; CP2019–195; and CP2020–96]**

### New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* February 26, 2020.

**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).:* CP2019–165; *Filing Title:* USPS Notice of Amendment to First-Class Package Service Contract 99, Filed Under Seal; *Filing Acceptance Date:* February 18, 2020; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* February 26, 2020.

2. *Docket No(s).:* CP2019–195; *Filing Title:* USPS Notice of Amendment to Priority Mail Express & Priority Mail Contract 96, Filed Under Seal; *Filing Acceptance Date:* February 18, 2020; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* February 26, 2020.

3. *Docket No(s).:* CP2020–96; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package 2 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* February 18, 2020; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* February 26, 2020.

This Notice will be published in the **Federal Register**.

**Erica A. Barker,**

*Secretary.*

[FR Doc. 2020–03683 Filed 2–24–20; 8:45 am]

**BILLING CODE 7710–FW–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88241; File No. SR–NYSENAT–2020–08]**

### Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of Proposed Rule Change To Amend the Schedule of Wireless Connectivity Fees and Charges To Add Wireless Connectivity Services

February 19, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 11, 2020, NYSE National, Inc. (''NYSE National'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II,

[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).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to add wireless connectivity services that transport the market data of the Exchange and certain affiliates to the schedule of Wireless Connectivity Fees and Charges (the ''Wireless Fee Schedule''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to add wireless connectivity services that transport market data of the Exchange and its affiliates New York Stock Exchange LLC (''NYSE'') and NYSE Arca, Inc. (''NYSE Arca'') to the Wireless Fee Schedule.[4]

The wireless connections can be purchased by market participants in three data centers that are owned and operated by third parties unaffiliated with the Exchange: (1) Carteret, New Jersey, (2) Secaucus, New Jersey, and (3) Markham, Canada (collectively, the ''Third Party Data Centers''). A market participant in a Third Party Data Center that purchases a wireless connection (''Wireless Market Data Connection'') receives connectivity to certain Exchange, NYSE and NYSE Arca market data feeds (collectively, the ''Selected Market Data'')[5] distributed from the Mahwah, New Jersey data center. Customers that purchase a wireless connection to Selected Market Data are charged an initial and monthly fee for the service of transporting the Selected Market Data.

The Exchange does not believe that the present proposed change is a change to the ''rules of an exchange''[6] required to be filed with the Commission under the Act. The definition of ''exchange'' under the Act includes ''the market facilities maintained by such exchange.''[7] Based on its review of the relevant facts and circumstances, and as discussed further below, the Exchange has concluded that the Wireless Market Data Connections are not facilities of the Exchange within the meaning of the Act, and therefore do not need to be included in its rules.

The Exchange is making the current proposal solely because the Staff of the Commission has advised the Exchange that it believes the Wireless Market Data Connections are facilities of the Exchange and so must be filed as part of its rules.[8] The Staff has not set forth the basis of its conclusion beyond verbally noting that the Wireless Market Data Connections are provided by an affiliate of the Exchange and a market participant could use a Wireless Market Data Connection to connect to market data feeds of the Exchange and its Affiliate SROs.[9]

The Exchange expects the proposed change to be operative 60 days after the present filing becomes effective.

The Exchange and the ICE Affiliates

To understand the Exchange's conclusion that the Wireless Market Data Connections are not facilities of the Exchange within the meaning of the Act, it is important to understand the very real distinction between the Exchange and its corporate affiliates (the ''ICE Affiliates''). The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Around the world, ICE operates seven regulated exchanges in addition to the Exchange and the Affiliate SROs, including futures markets, as well as six clearing houses. Among others, the ICE Affiliates are subject to the jurisdiction of regulators in the U.S., U.K., E.U., the Netherlands, Canada and Singapore.[10] In all, the ICE Affiliates include hundreds of ICE subsidiaries, including more than thirty that are significant legal entity subsidiaries as defined by Commission rule.[11]

Through its ICE Data Services (''IDS'') business,[12] ICE operates the ICE Global Network, a global connectivity network whose infrastructure provides access to over 150 global markets, including the Exchange and Affiliate SROs, and over 750 data sources. All the ICE Affiliates are ultimately controlled by ICE, as the indirect parent company, but generally they do not control each other. In the present case, it is IDS, not the Exchange, that provides the Wireless Market Data Connections to market participants. The Exchange does not control IDS.

[4] The NYSE, NYSE Arca, NYSE American LLC and NYSE Chicago, Inc. are national securities exchanges that are affiliates of the Exchange (collectively, the ''Affiliate SROs''). The wireless connectivity services described in this filing do not transport the market data of NYSE American LLC and NYSE Chicago, Inc. The Exchange filed a proposed rule change that would establish the Wireless Fee Schedule. *See* SR–NYSENAT–2020–03 (January 30, 2020). Should such filing be approved before the present filing, the changes to the Wireless Fee Schedule proposed herein would appear at the end of the Wireless Fee Schedule, after the text proposed in the January, 2020 filing. In such case, the Exchange will amend the present filing if required.

[5] In the Carteret and Secaucus Third Party Data Centers, a market participant may use a Wireless Market Data Connection to connect to the NYSE Integrated Feed data feed, the NYSE Arca Integrated Feed data feed, and the NYSE National Integrated Feed data feed. In the Markham, Canada Third Party Data Center, a market participant may use a Wireless Market Data Connection to connect to the NYSE BBO and Trades data feeds and the NYSE Arca BBO and Trades data feeds.

[6] *See* 15 U.S.C. 78c(a)(27) (defining the term ''rules of an exchange'').

[7] 15 U.S.C. 78c(a)(1). See 15 U.S.C. 78c(a)(2) (defining the term ''facility'' as applied to an exchange).

[8] Telephone conversation between Commission staff and representatives of the Exchange, December 12, 2019.

[9] *Id.* The Commission has previously stated that services were facilities of an exchange subject to the rule filing requirements without fully explaining its reasoning. In 2010, the Commission stated that exchanges had to file proposed rule changes with respect to co-location because ''[t]he Commission views co-location services as being a material aspect of the operation of the facilities of an exchange.'' The Commission did not specify why it reached that conclusion. *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010), at note 76.

In addition, in 2014, the Commission instituted proceedings to determine whether to disapprove a proposed rule change by The NASDAQ Stock Market LLC (''Nasdaq'') on the basis that Nasdaq's ''provision of third-party market data feeds to co-located clients appears to be an integral feature of its co-location program, and co-location programs are subject to the rule filing process.'' Securities Exchange Act Release No. 72654 (July 22, 2014), 79 FR 43808 (July 28, 2014) (SR–NASDAQ–2014–034). In its order, the Commission did not explain why it believed that the provision of third party data was an integral feature of co-location, or if it believed that it was a facility of Nasdaq, although the Nasdaq filing analyzed each prong of the definition of facility in turn. *See* Securities Exchange Act Release No. 71990 (April 22, 2014), 79 FR 23389 (April 28, 2014) (SR–NASDAQ–2014–034).

[10] Intercontinental Exchange, Inc. Annual Report on Form 10–K for the year ended December 31, 2018, Exhibit 21.1 (filed February 7, 2019), at 15–16.

[11] *Id.* at Exhibit 21.1.

[12] The IDS business operates through several different ICE Affiliates, including NYSE Technologies Connectivity, Inc., an indirect subsidiary of the NYSE.

The Wireless Market Data Connections

As noted above, if a market participant in one of the Third Party Data Centers wishes to connect to one or more of the data feeds that make up the Selected Market Data,[13] it may opt to purchase a Wireless Market Data Connection to the data.

The Selected Market Data is generated at the Mahwah data center in the trading and execution systems of the Exchange, NYSE, and NYSE Arca (collectively, the ''SRO Systems''). In each case, the Exchange, NYSE or NYSE Arca, as applicable, files with the Commission for the Selected Market Data it generates, and the related fees.[14] The filed market data fees apply to all Selected Market Data customers no matter what connectivity provider they use.

When a market participant wants to connect to Selected Market Data, it requests a connection from the provider of its choice. All providers, including ICE Affiliates, may only provide the market participant with connectivity once the provider receives confirmation from the Exchange, NYSE or NYSE Arca, as applicable, that the market participant is authorized to receive the requested Selected Market Data. Accordingly, when a market participant requests a Wireless Market Data Connection, IDS's first step is to obtain authorization.[15]

IDS's next step is to set up the Wireless Market Data Connection for the market participant. In the connection, IDS collects the Selected Market Data, then sends it over the Wireless Market Data Connection to the IDS access center located in the Third Party Data Center. The customer connects to the Selected Market Data at the Third Party Data Center.[16]

The customer is charged by IDS an initial and monthly fee for the Wireless Market Data Connection. By contrast, IDS will not bill the customer for the Selected Market Data: the Exchange, NYSE or NYSE Arca, as applicable, bill market data subscribers directly, irrespective of whether the market data subscribers receive the Selected Market Data over a Wireless Market Data Connection or from another connectivity provider.

Market participants in the Third Party Data Centers that want to connect to Selected Market Data have options, as other providers offer connectivity to Selected Market Data.[17] A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

The Wireless Market Data Connections Are Not Facilities of the Exchange

The Definition of ''Exchange''

The definition of ''exchange'' focuses on the exchange entity and what it does:[18]

> The term ''exchange'' means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

If the ''exchange'' definition included all of an exchange's affiliates, the ''Exchange'' would encompass a global network of futures markets, clearing houses, and data providers, and all of those entities worldwide would be subject to regulation by the Commission. That, however, is not what the definition in the Act provides.

The Exchange and the Affiliate SROs fall squarely within the Act's definition of an ''exchange'': They each provide a market place to bring together purchasers and sellers of securities and perform with respect to securities the functions commonly performed by a stock exchange.

That is not true for the non-exchange ICE Affiliates. Those ICE Affiliates do not provide such a marketplace or perform ''with respect to securities the functions commonly performed by a stock exchange,'' and therefore they are not an ''exchange'' or part of the ''Exchange'' for purposes of the Act. Accordingly, in conducting its analysis, the Exchange does not automatically collapse the ICE Affiliates into the Exchange. The Wireless Market Data Connections are also not part of the Exchange, as they are services, and as such cannot be part of an ''organization, association or group of persons'' with the Exchange.

In Rule 3b–16 the Commission further defined the term ''exchange'' under the Act, stating that:[19]

> (a) An organization, association, or group of persons shall be considered to constitute, maintain, or provide ''a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange,'' as those terms are used in section 3(a)(1) of the Act . . . if such organization, association, or group of persons:

[13] *See* note 5, *supra* for a list of the Selected Market Data available in each Third Party Data Center.

[14] *See* Securities Exchange Act Release Nos. 74128 (January 23, 2015), 80 FR 4951 (January 29, 2015) (SR–NYSE–2015–03) (notice of filing and immediate effectiveness of proposed rule change establishing the NYSE Integrated Feed data feed); 76485 (November 20, 2015), 80 FR 74158 (November 27, 2015) (SR–NYSE–2015–57) (notice of filing and immediate effectiveness of a proposed rule change establishing fees for the NYSE Integrated Feed); 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30) (order approving proposed rule change to establish the NYSE BBO service); 59290 (January 23, 2009), 74 FR 5707 (January 30, 2009) (SR–NYSE–2009–05) (notice of filing and immediate effectiveness of proposed rule change to introduce a pilot program for NYSE Trades); 59606 (March 19, 2009), 74 FR 13293 (March 26, 2009) (SR–NYSE–2009–04) (order approving proposed rule change to establish fees for NYSE Trades); 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR–NYSEArca–2010–23) (order approving proposed rule change to modify the fees for NYSE Arca Trades, to establish the NYSE Arca BBO service and related fees, and to provide an alternative unit-of-count methodology for those services); 59289 (January 23, 2009), 74 FR 5711 (January 30, 2009) (SR–NYSEArca–2009–06) (notice of filing and immediate effectiveness of proposed rule change to introduce a pilot program for NYSE Arca Trades); 59598 (March 18, 2009), 74 FR 12919 (March 25, 2009) (SR–NYSEArca–2009–05) (order approving proposed rule change to establish fees for NYSE Arca Trades); 65669 (November 2, 2011), 76 FR 69311 (November 8, 2011) (SR–NYSEArca–2011–78) (notice of filing and immediate effectiveness of proposed rule change offering the NYSE Arca Integrated Feed); 66128 (January 10, 2012), 77 FR 2331 (January 17, 2012) (SR–NYSEArca–2011–96) (notice of filing and immediate effectiveness of a proposed rule change establishing fees for NYSE Arca Integrated Feed); 83350 (May 31, 2018), 83 FR 26332 (June 6, 2018) (SR–NYSENAT–2018–09) (notice of filing and immediate effectiveness of proposed rule change establishing the NYSE National Integrated Feed data feed); and 87797 (December 18, 2019), 84 FR 71025 (December 26, 2019) (SR–NYSENAT–2019–31) (notice of filing and immediate effectiveness of proposed rule change to establish fees for the NYSE National Integrated Feed).

[15] When requesting authorization from the Exchange, NYSE or NYSE Arca to provide a customer with Selected Market Data, the ICE Affiliate providing the Wireless Market Data Connection uses the same on-line tool as all data vendors.

[16] A cable connects the IDS and customer equipment in the Markham Third Party Data Center. If the customer is located in either the Carteret or Secaucus Third Party Data Center, the customer buys a cross connect from IDS.

[17] The other providers obtain Selected Market Data from IDS at the Mahwah data center and send it over their own networks, fiber or wireless, to the Third Party Data Centers.

[18] 15 U.S.C. 78c(a)(1).

[19] 17 CFR 240.3b–16(a).

(1) Brings together the orders for securities of multiple buyers and sellers; and

(2) Uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade.

The non-exchange ICE Affiliates do not bring ''together orders for securities of multiple buyers and sellers,'' and so are not an ''exchange'' or part of the ''Exchange'' for purposes of Rule 3b–16. Indeed, it is not possible to use a Wireless Market Data Connection to effect a transaction on the Exchange. Rather, they are one-way connections away from the Mahwah data center.

The relevant question, then, is whether the Wireless Market Data Connections are ''facilities'' of the Exchange.

The Definition of ''Facility''

The Act defines a ''facility'' [20] as follows:

The term ''facility'' when used with respect to an exchange includes [1] its premises, [2] tangible or intangible property whether on the premises or not, [3] any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and [4] any right of the exchange to the use of any property or service.

In 2015 the Commission noted that whether something is a ''facility'' is not always black and white, as ''any determination as to whether a service or other product is a facility of an exchange requires an analysis of the particular facts and circumstances.'' [21] Accordingly, the Exchange understands that the specific facts and circumstances of the Wireless Market Data Connections must be assessed before a determination can be made regarding whether or not they are facilities of the Exchange.[22]

The first prong of the definition is that ''facility,'' when used with respect to an exchange, includes ''its premises.'' That prong is not applicable in this case, because the Wireless Market Data Connections are not premises of the Exchange. The term ''premises'' is generally defined as referring to an entity's building, land, and appurtenances.[23] The wireless network that runs from the Mahwah data center to the Third Party Data Centers, much of which is actually owned, operated and maintained by a non-ICE entity,[24] is not the premises of the Exchange. The portion of the Mahwah data center where the ''exchange'' functions are performed—*i.e.,* the SRO Systems that bring together purchasers and sellers of securities and perform with respect to securities the functions commonly performed by a stock exchange—could be construed as the ''premises'' of the Exchange, but the same is not true for a wireless network that is almost completely outside of the Mahwah data center.

The second prong of the definition of ''facility'' provides that a facility includes the exchange's ''tangible or intangible property whether on the premises or not.'' The Wireless Market Data Connections are not the property of the Exchange: They are services. The underlying wireless network is owned by ICE Affiliates and a non-ICE entity. As noted, the Act does not automatically collapse affiliates into the definition of an ''exchange.'' A review of the facts set forth above shows that there is a real distinction between the Exchange and its ICE Affiliates with respect to the Wireless Market Data Connections, and so something owned by an ICE Affiliate is not owned by the Exchange.

The third prong of the definition of ''facility'' provides that a facility includes

any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange).[25]

This prong does not capture the Wireless Market Data Connections because the Exchange does not have the right to use the Wireless Market Data Connections to effect or report a transaction on the Exchange. ICE Affiliates and a non-ICE entity own and maintain the wireless network underlying the Wireless Market Data Connections, and ICE Affiliates, not the Exchange, offer and provide the Wireless Market Data Connections to customers. The Exchange does not know whether or when a customer has entered into an agreement for a Wireless Market Data Connection and has no right to approve or disapprove of the provision of a Wireless Market Data Connection, any more than it would if the provider was a third party.[26] It does not put the Selected Market Data content onto the Wireless Market Data Connections or send it to customers. When a customer terminates a Wireless Market Data Connection, the Exchange does not consent to the termination.

In fact, it is not possible to use a Wireless Market Data Connection to effect a transaction on the Exchange: They are one-way connections away from the Mahwah data center. Customers cannot use them to send trading orders or information of any sort to the SRO Systems, and the Exchange does not use them to send confirmations of trades. Instead, Wireless Market Data Connections solely carry Selected Market Data.

The Exchange believes the example in the parenthetical in the third prong of the definition of ''facility'' cannot be read as an independent prong of the definition. Such a reading would ignore that the parentheses and the word ''including'' clearly indicate that ''any system of communication to or from an exchange . . . maintained by or with the consent of the exchange'' is explaining the preceding text. By its terms, the parenthetical is providing a non-exclusive example of the type of property or service to which the prong refers, and does not remove the requirement that there must be a right to use the premises, property or service to effect or report a transaction on an exchange. It is making sure the reader understands that ''facility'' includes a

[20] 15 U.S.C. 78c(a)(2).

[21] Securities Exchange Act Release No. 76127 (October 9, 2015), 80 FR 62584 (October 16, 2015) (SR–NYSE–2015–36), at note 9 (order approving proposed rule change amending Section 907.00 of the Listed Company Manual). *See also* 79 FR 23389, *supra* note 9, at note 4 (noting that that the definition of the term ''facility'' has not changed since it was originally adopted) and 23389 (stating that the SEC ''has not separately interpreted the definition of 'facility' '').

[22] As with the definition of ''exchange,'' the ICE Affiliates do not automatically fall within the definition of a ''facility.'' The definition focuses on ownership and the right to use properties and services, not corporate relationships. Indeed, if the term ''exchange'' in the definition of a facility included ''an exchange and its affiliates,'' then the rest of the functional prongs of the facility definition would be meaningless. Fundamental rules of statutory construction dictate that statutes be interpreted to give effect to each of their provisions, so as not to render sections of the statute superfluous.

[23] *See, e.g.,* definition of ''premises'' in Miriam-Webster Dictionary, at *https://www.merriam-webster.com/dictionary/premises,* and Cambridge English Dictionary, at *https://dictionary.cambridge.org/us/dictionary/english/premises.*

[24] A non-ICE entity owns, operates and maintains the wireless network between the Mahwah data center and the Carteret and Secaucus Third Party Data Centers pursuant to a contract between the non-ICE entity and an ICE Affiliate.

[25] 15 U.S.C. 78c(a)(2).

[26] The Exchange provides confirmation to IDS that a customer is authorized to receive the relevant Selected Market Data, as noted above, but does not know how or where that customer receives it. If the customer is already taking the relevant Selected Market Data through another medium or at a different site, IDS does not need to seek Exchange approval.

ticker system that an exchange has the right to use, not creating a new fifth prong to the definition. In fact, if the ''right to use'' requirement were ignored, every communication provider that connected to an exchange, including any broker-dealer system and telecommunication network, would become a facility of that exchange so long as the exchange consented to the connection, whether or not the connection was used to trade or report a trade, and whether or not the exchange had any right at all to the use of the connection.

The fourth prong of the definition provides that a facility includes ''any right of the exchange to the use of any property or service.'' As described above, the Exchange does not have the right to use the Wireless Market Data Connections. Instead, the Wireless Market Data Connections are used by market participants who decide to use that service.

Accordingly, for all the reasons discussed above, the wireless connectivity to Selected Market Data provided by ICE Affiliates is not a facility of the Exchange.

The legal conclusion that the Wireless Market Data Connections are not facilities of the Exchange is strongly supported by the facts. The Wireless Market Data Connections are neither necessary for, nor integrally connected to, the operations of the Exchange. They are one-way connections away from the Mahwah data center. In this context, IDS simply acts as a vendor, selling connectivity to Selected Market Data just like the other vendors that offer wireless connections in the Carteret and Secaucus Third Party Data Centers and fiber connections to all the Third Party Data Centers. The fact that in this case it is ICE Affiliates that offer the Wireless Market Data Connections does not make the Wireless Market Data Connections facilities of the Exchange any more than are the connections offered by other parties.

Further, the Exchange believes that requiring it to file this proposed rule change is not necessary in order for the Commission to ensure that the Exchange is satisfying its requirements under the Act. Because, as described above, the Wireless Market Data Connections are not necessary for, nor connected to, the operations of the Exchange, and customers are not required to use the Wireless Market Data Connections, holding the Wireless Market Data Connections to the statutory standards in Section 6(b) serves no purpose.

Instead, the sole impact of the requirement that the Exchange file the Wireless Market Data Connections is to place an undue burden on competition on the ICE Affiliates that offer the market data connections, compared to their market competitors. This filing requirement, thus, itself is inconsistent with the requirement under Section 6(b)(8) of the Act that the rules of the exchange not ''impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [27] This burden on competition arises because IDS would be unable, for example, to offer a client or potential client a connection to a new data feed it requests, without the delay and uncertainty of a filing, but its competitors will. Similarly, if a competitor decides to undercut IDS' fees because IDS, unlike the competitor, has to make its fees public, IDS will not be able to respond quickly, if at all. Indeed, because its competitors are not required to make their services or fees public, and are not subject to a Commission determination of whether such services or fees are ''not unfairly discriminatory'' or equitably allocated, IDS is at a competitive disadvantage from the very start.

The Proposed Service and Fees

As noted above, the Exchange proposes to add to its rules the Wireless Market Data Connections to Selected Market Data, for an initial and monthly fee.

A market participant would be charged a $5,000 non-recurring initial charge for each Wireless Market Data Connection and a monthly recurring charge (''MRC'') per connection that would vary depending upon the feed and the location of the connection. The proposal would waive the first month's MRC, to allow customers to test a new Wireless Market Data Connection for a month before incurring any MRCs, and the Exchange proposes to add text to the Wireless Fee Schedule accordingly.

The Exchange proposes to add a section to the Wireless Fee Schedule under the heading ''B. Wireless Connectivity to Market Data'' to set forth the fees charged by IDS related to the Wireless Market Data Connections, as follows:

| Type of service | Amount of charge |
|---|---|
| NYSE Integrated Feed: Wireless Connection in Carteret access center | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE Arca Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE National Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $5,250. |
| NYSE Integrated Feed and NYSE Arca Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $18,500. |
| NYSE Integrated Feed, NYSE Arca Integrated Feed, and NYSE National Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $21,000. |
| NYSE Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE Arca Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE National Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $5,250. |
| NYSE Integrated Feed and NYSE Arca Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $18,500. |
| NYSE Integrated Feed, NYSE Arca Integrated Feed, and NYSE National Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $21,000. |
| NYSE BBO and Trades: Wireless Connection in Markham, Canada access center. | $5,000 per connection initial charge plus monthly charge per connection of $6,500. |

[27] 15 U.S.C. 78f(b)(8).

| Type of service | Amount of charge |
| --- | --- |
| NYSE Arca BBO and Trades: Wireless Connection in Markham, Canada access center. | $5,000 per connection initial charge plus monthly charge per connection of $6,500. |

There is limited bandwidth available on the wireless network to the Markham, Canada Third Party Data Center. Accordingly, such Wireless Market Data Connections do not transport information for all of the symbols included in the NYSE BBO and Trades and NYSE Arca BBO and Trades data feeds. Rather, IDS provides connectivity to a selection of such data feeds, including the data for which IDS believes there is demand. When a market participant requests a Wireless Market Data Connection to Markham, it receives connectivity to the portions of the NYSE BBO and Trades and NYSE Arca BBO and Trades data that IDS transmits wirelessly. The customer then determines the symbols for which it will receive data. The Exchange does not have visibility into which portion of the data feed a given customer receives.

Application and Impact of the Proposed Change

The proposed change would apply to all customers equally. The proposed change would not apply differently to distinct types or sizes of market participants. Customers that require other types or sizes of network connections between the Mahwah data center and the access centers could still request them. As is currently the case, the purchase of any connectivity service is completely voluntary and the Wireless Fee Schedule is applied uniformly to all customers.

Competitive Environment

Other providers offer connectivity to Selected Market Data in the Third Party Data Centers.[28] Based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

Wireless connections involve beaming signals through the air between antennas that are within sight of one another. Because the signals travel a straight, unimpeded line, and because light waves travel faster through air than through glass (fiber optics), wireless messages have lower latency than messages travelling through fiber optics.[29] At the same time, as a general rule wireless networks have less uptime than fiber networks. Wireless networks are directly and immediately affected by adverse weather conditions, which can cause message loss and outage periods. Wireless networks cannot be configured with redundancy in the same way that fiber networks can. As a result, an equipment or weather issue at any one location on the network will cause the entire network to have an outage. In addition, maintenance can take longer than it would with a fiber based network, as the relevant tower may be in a hard to reach location, or weather conditions may present safety issues, delaying technicians servicing equipment. Even under normal conditions, a wireless network will have a higher error rate than a fiber network of the same length.

The proposed Wireless Market Data Connections traverse through a series of towers equipped with wireless equipment, including, in the case of the Carteret and Secaucus connections, a pole on the grounds of the Mahwah data center. With the exception of the non-ICE entity that owns the wireless network used for the Wireless Connections to Secaucus and Carteret,[30] third parties do not have access to such pole. However, access to such pole is not required for third parties to establish wireless networks that can compete with the Wireless Market Data Connections to the Carteret and Secaucus Third Party Data Centers, as witnessed by the existing wireless connections offered by non-ICE entities competitors.

In addition, proximity to a data center is not the only determinant of a wireless network's latency. Rather, the latency of a wireless network depends on several factors. Variables include the wireless equipment utilized; the route of, and number of towers or buildings in, the network; and the fiber equipment used at either end of the connection. Moreover, latency is not the only consideration that a customer may have in selecting a wireless network to connect to Selected Market Data. Other considerations may include the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

2. Statutory Basis

Although the Exchange does not believe that the present proposed change is a change to the ''rules of an exchange'' [31] required to be filed with the Commission under the Act, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[32] in general, and furthers the objectives of Section 6(b)(5) of the Act,[33] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the

[28] Third party providers obtain Selected Market Data from IDS at the Mahwah data center and send it over their own networks, fiber or wireless, to the Third Party Data Centers.

[29] *See* Securities Exchange Act Release No. 76748 (December 23, 2015), 80 FR 81609 (December 30, 2015) (SR–NYSE–2015–52) (order approving offering of a wireless connection to allow Users to receive market data feeds from third party markets and to reflect changes to the Exchange's price list related to these services).

[30] *See* note 24, *supra.*

[31] *See* 15 U.S.C. 78c(a)(27) (defining the term ''rules of an exchange'').

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(5).

public interest and does not unfairly discriminate between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[34] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change is Reasonable

The Exchange believes its proposal is reasonable.

Based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

Market participants' considerations in determining what connectivity to purchase may include latency; the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

The Exchange believes that the proposed pricing for the Wireless Market Data Connections is reasonable because it allows customers to select the connectivity option that best suits their needs. A market participant that opts for Wireless Market Data Connections would be able to select the specific Selected Market Data feed that it wants to receive in accordance with its needs, thereby helping it tailor its operations to the requirements of its business operations. The fees also reflect the benefit received by market participants in terms of lower latency over the fiber optics options.

There is limited bandwidth available on the wireless network to the Markham, Canada Third Party Data Center. Accordingly, the Exchange believes that it is reasonable not to transport information for all of the symbols included in the NYSE BBO and Trades and NYSE Arca BBO and Trades data feeds to Markham, but rather to transport a subset of that data. Limiting the feeds to the data regarding securities for which IDS believes there is demand allows customers in Canada to receive the relevant Selected Market Data over a wireless network. The customer then determines those symbols for which it will receive data.

Only market participants that voluntarily select to receive Wireless Market Data Connections are charged for them, and those services are available to all market participants with a presence in the relevant Third Party Data Center. Furthermore, the Exchange believes that the services and fees proposed herein are reasonable because, in addition to the services being completely voluntary, they are available to all market participants on an equal basis (*i.e.,* the same products and services are available to all market participants). All market participants that voluntarily select a Wireless Market Data Connection would be charged the same amount for the same service and would have their first month's MRC for the Wireless Market Data Connection waived.

Overall, the Exchange believes that the proposed change is reasonable because the Wireless Market Data Connections described herein are offered as a convenience to market participants, but offering them requires the provision, maintenance and operation of the Mahwah data center, wireless networks and access centers in the Third Party Data Centers, including the installation and monitoring, support and maintenance of the services.

The Exchange believes that the proposed waiver of the first month's MRC is reasonable as it would allow market participants to test a Wireless Market Data Connection for a month before incurring any monthly recurring fees and may act as an incentive to market participants to connect to a Wireless Market Data Connection.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees among its market participants.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all market participants equally. As is currently the case, the purchase of any connectivity service, including Wireless Market Data Connections, would be completely voluntary.

The Exchange believes that it is equitable to not to transport information for all of the symbols included in the NYSE BBO and Trades and NYSE Arca BBO and Trades data feeds to Markham, but rather to transport a subset of that data. There is limited bandwidth available on the wireless network to the Markham, Canada Third Party Data Center. Limiting the feeds to the data regarding securities for which IDS believes there is demand allows customers in Canada to receive the relevant Selected Market Data over a wireless network. The customer then determines those symbols for which it will receive data.

Without this proposed rule change, market participants with a presence in the Third Party Data Centers would have fewer options for connectivity to Selected Market Data. With it, market participants have more choices with respect to the form and price of connectivity to Selected Market Data they use, allowing a market participant that opts for a Wireless Market Data Connection to select the specific Selected Market Data feed that it wants to receive in accordance with what best suits its needs, thereby helping it tailor its operations to the requirements of its business operations.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all market participants equally. As is currently the case, the purchase of any connectivity service, including Wireless Market Data Connections, would be completely voluntary.

A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant in any of the Third

[34] 15 U.S.C. 78f(b)(4).

Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

Without this proposed rule change, market participants with a presence in the Third Party Data Centers would have fewer options for connectivity to Selected Market Data. With it, market participants have more choices with respect to the form and price of connectivity to Selected Market Data they use, allowing a market participant that opts for a Wireless Market Data Connection to select the specific Selected Market Data feed that it wants to receive in accordance with what best suits its needs, thereby helping it tailor its operations to the requirements of its business operations.

The Wireless Market Data Connections provide customers in the Secaucus and Carteret access centers with one means of connectivity to Selected Market Data, but based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the only burden on competition of the proposed change is on IDS and other commercial connectivity providers. Solely because IDS is wholly owned by the same parent company as the Exchange, IDS will be at a competitive disadvantage to its commercial competitors, and its commercial competitors, without a filing requirement, will be at a relative competitive advantage to IDS.

By permitting IDS to continue to offer the Wireless Market Data Connectivity, approval of the proposed changes would contribute to competition by allowing IDS to compete with other connectivity providers, and thus provides market participants another connectivity option. For this reason, the proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[35]

Based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham. The Exchange does not control the Third Party Data Centers and could not preclude other parties from creating new wireless or fiber connections to Selected Market Data in any of the Third Party Data Centers.

The Wireless Market Data Connections provide customers in the Secaucus and Carteret Third Party Data Centers with one means of connectivity to Selected Market Data, but substitute products are available, as witnessed by the existing wireless connections offered by non-ICE entities. A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant in any of the Third Party Data Centers or the Mahwah data center may also create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

The Exchange notes that the proposed Wireless Market Data Connections compete not just with other wireless connections to Selected Market Data, but also with fiber network connections, which may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions. Market participants' considerations in determining what connectivity to purchase may include latency; the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

The proposed Wireless Market Data Connections traverse through a series of towers equipped with wireless equipment, including, in the case of the Carteret and Secaucus Wireless Market Data Connections, a pole on the grounds of the Mahwah data center. With the exception of the non-ICE entity that owns the wireless network used for the Wireless Connections to Secaucus and Carteret,[36] third parties do not have access to such pole, as the IDS wireless network has exclusive rights to operate wireless equipment on the Mahwah data center pole. IDS does not sell rights to third parties to operate wireless equipment on the pole, due to space limitations, security concerns, and the interference that would arise between equipment placed too closely together.

However, access to such pole is not required for other parties to establish wireless networks that can compete with the Wireless Market Data Connections, as witnessed by the existing wireless connections offered by non-ICE entities. Proximity to a data center is not the only determinant of a wireless network's latency. Rather, the latency of a wireless network depends on several factors. Variables include the wireless equipment utilized; the route of, and number of towers or buildings in, the network; and the fiber equipment used at either end of the connection. Moreover, latency is not the only consideration that a customer may have in selecting a wireless network to connect to Selected Market Data. Other considerations may include the amount of network uptime; the equipment that

[35] 15 U.S.C. 78f(b)(8).

[36] *See* note 24, *supra*..

the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather between IDS and its commercial competitors.

For the reasons described above, the Exchange believes that the proposed rule changes reflect this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2020–08 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2020–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2020–08, and should be submitted on or before March 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03644 Filed 2–24–20; 8:45 am]

**BILLING CODE 8011–01–P**

[37] 17 CFR 200–30–3(A)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88246; File No. 4–618]**

## Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of an Amendment to the Plan for the Allocation of Regulatory Responsibilities Between Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., BOX Exchange LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., NYSE Chicago, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, Investors Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, MIAX Emerald, LLC, The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and Long-Term Stock Exchange, Inc. Concerning Covered Regulation NMS and Consolidated Audit Trail Rules

February 20, 2020.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 17d–2 thereunder,[2] notice is hereby given that on February 3, 2020, Cboe BZX Exchange, Inc. (''BZX''), Cboe BYX Exchange, Inc. (''BATS Y''), BOX Exchange LLC (''BOX''), Cboe Exchange, Inc. (''Cboe''), Cboe C2 Exchange, Inc. (''C2''), NYSE Chicago, Inc. (''CHX''), Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX''), Nasdaq MRX, LLC (''MRX''), Investors Exchange LLC (''IEX''), Miami International Securities Exchange, LLC (''MIAX''), MIAX PEARL, LLC (''MIAX PEARL''), MIAX Emerald, LLC (''MIAX Emerald''), The Nasdaq Stock Market LLC (''Nasdaq''), Nasdaq BX, Inc. (''BX''), Nasdaq PHLX LLC (''PHLX''), NYSE National, Inc. (''NYSE National''), New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and Long-Term Stock Exchange, Inc. (''LTSE'') (each, a ''Participating Organization,'' and, together, the ''Participating Organizations'' or the ''Parties'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') an amended plan for the allocation of regulatory responsibilities (''17d–2 Plan'' or the ''Plan''). This

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

Agreement amends and restates the agreement by and among the Participating Organizations approved by the Commission on July 25, 2019.[3] The Commission is publishing this notice to solicit comments on the 17d–2 Plan from interested persons.

## I. Introduction

Section 19(g)(1) of the Act,[4] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.[5] Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

## II. The Plan

On December 3, 2010, the Commission approved the SRO participants' plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[11] On October 29, 2015, the Commission approved an amended plan that added Regulation NMS Rules 606, 607, and 611(c) and (d) and added additional Participating Organizations that are options markets to the Plan.[12] On August 11, 2016, the Commission approved an amended plan that added IEX and ISE Mercury as Participating Organizations.[13] On February 2, 2017, the Commission approved an amended plan that added MIAX PEARL as a Participating Organization.[14] On February 4, 2019, the Commission approved an amended plan that added MIAX Emerald as a Participating Organization and reflected name changes of certain Participating Organizations.[15] On July 25, 2019, the Commission approved an amended plan that added LTSE as a Participating Organization and reflected name changes of certain Participating Organizations.[16]

The proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are members of more than one Participating Organization.[17] The Plan provides for the allocation of regulatory responsibility according to whether the covered rule pertains to NMS stocks or NMS securities. For covered rules that pertain to NMS stocks (*i.e.,* Rules 607, 611, and 612), FINRA serves as the ''Designated Regulation NMS Examining Authority'' (''DREA'') for common members that are members of FINRA, and assumes certain examination and enforcement responsibilities for those members with respect to specified Regulation NMS rules. For common members that are not members of FINRA, the member's DEA serves as the DREA, provided that the DEA exchange operates a national securities exchange or facility that trades NMS stocks and the common member is a member of such exchange or facility. Section 1(c) of the Plan contains a list of principles that are applicable to the allocation of common members in cases not specifically addressed in the Plan. An exchange that does not trade NMS stocks would have no regulatory authority for covered Regulation NMS rules pertaining to NMS stocks. For covered rules that pertain to NMS securities, and thus include options (*i.e.,* Rule 606), the Plan provides that the DREA will be the same as the DREA for the rules pertaining to NMS stocks. For common members that are not members of an exchange that trades NMS stocks, the common member would be allocated according to the principles set forth in Section 1(c) of the Plan.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the ''Covered Regulation NMS Rules'') that lists the federal securities laws, rules,

[3] *See* Securities Exchange Act Release No. 86470, 84 FR 37363 (July 31, 2019).

[4] 15 U.S.C. 78s(g)(1).

[5] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

[6] 15 U.S.C. 78q(d)(1).

[7] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[9] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[10] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[11] *See* Securities Exchange Act Release No. 63430, 75 FR 76758 (December 9, 2010).

[12] *See* Securities Exchange Act Release No. 76311, 80 FR 68377 (November 4, 2015).

[13] *See* Securities Exchange Act Release No. 78552, 81 FR 54905 (August 17, 2016).

[14] *See* Securities Exchange Act Release No. 79928, 82 FR 9814 (February 8, 2017).

[15] *See* Securities Exchange Act Release No. 85046, 84 FR 2643 (February 7, 2019).

[16] *See* Securities Exchange Act Release No. 86470, 84 FR 37363 (July 31, 2019).

[17] The proposed 17d–2 Plan refers to these members as ''Common Members.''

and regulations, for which the applicable DREA would bear examination and enforcement responsibility under the Plan for common members of the Participating Organization and their associated persons.

Specifically, the applicable DREA assumes examination and enforcement responsibility relating to compliance by common members with the Covered Regulation NMS Rules. Covered Regulation NMS Rules do not include the application of any rule of a Participating Organization, or any rule or regulation under the Act, to the extent that it pertains to violations of insider trading activities, because such matters are covered by a separate multiparty agreement under Rule 17d–2.[18] Under the Plan, Participating Organizations retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving their own marketplace.[19]

**III. Proposed Amendment to the Plan**

On February 3, 2020, the parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to: (i) Add Rule 613 under the Act and the rules of each Participating Organization related to Rule 613 listed on Exhibit A to the Plan; and (ii) to reflect the name change of Nasdaq PHLX, Inc. to Nasdaq PHLX LLC.

The text of the proposed amended 17d–2 Plan is as follows (additions are in italics; deletions are in brackets):

* * * * *

**Agreement for the Allocation of Regulatory Responsibility for the Covered Regulation NMS *and Consolidated Audit Trail* Rules Pursuant to § 17(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78q(d), and Rule 17d–2 Thereunder**

This agreement (the ''Agreement'') by and among Cboe BZX Exchange, Inc. (''BZX''), Cboe BYX Exchange, Inc. (''BATS Y''), BOX Exchange LLC (''BOX''), Cboe Exchange, Inc. (''Cboe''), Cboe C2 Exchange, Inc. (''C2''), NYSE Chicago, Inc. (''CHX''), Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX''), Nasdaq MRX, LLC (''MRX''), Investors Exchange LLC (''IEX''), Miami International Securities Exchange, LLC (''MIAX''), MIAX PEARL, LLC (''MIAX PEARL''), MIAX Emerald, LLC (''MIAX Emerald''), The Nasdaq Stock Market LLC (''Nasdaq''), Nasdaq BX, Inc. (''BX''), Nasdaq PHLX[, Inc.] *LLC* (''PHLX''), NYSE National, Inc. (''NYSE National''), New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca'') and Long-Term Stock Exchange, Inc. (''LTSE'') (each, a ''Participating Organization,'' and, together, the ''Participating Organizations''), is made pursuant to § 17(d) of the Securities Exchange Act of 1934 (the ''Act'' or ''SEA''), 15 U.S.C. 78q(d), and Rule 17d–2 thereunder, which allow for plans to allocate regulatory responsibility among self-regulatory organizations (''SROs''). Upon approval by the Securities and Exchange Commission (''Commission'' or ''SEC''), this Agreement shall amend and restate the agreement by and among the Participating Organizations approved by the SEC on [February 4, 2019] *July 25, 2019.*

*WhereaS*, the Participating Organizations desire to: (a) Foster cooperation and coordination among the SROs; (b) remove impediments to, and foster the development of, a national market system; (c) strive to protect the interest of investors; [and] (d) eliminate duplication in their *examination and enforcement* of (i) SEA Rules 606, 607, 611*,* [and] 612 *and 613* (the ''Covered Regulation NMS Rules'') *and (ii) rules of each Participating Organization related to SEA Rule 613 listed on Exhibit A hereto (''SRO Covered CAT Rules,'' together with the Covered Regulation NMS Rules, collectively, the ''Covered Rules'') and (e) eliminate duplication in their surveillance, examination, investigation and enforcement of SEA Rule 613 and the SRO Covered CAT Rules;*

*Whereas*, the Participating Organizations are interested in allocating regulatory responsibilities with respect to broker-dealers that are members of more than one Participating Organization (the ''Common Members'') relating to the examination and *enforcement* of the Covered [Regulation NMS] Rules *and the surveillance, examination, investigation and enforcement of SEA Rule 613 and the SRO Covered CAT Rules;* and

*Whereas*, the Participating Organizations will request regulatory allocation of these regulatory responsibilities by executing and filing with the SEC this plan for the above stated purposes pursuant to the provisions of § 17(d) of the Act, and Rule 17d–2 thereunder, as described below.

*Now, therefore*, in consideration of the mutual covenants contained hereafter, and other valuable consideration to be mutually exchanged, the Participating Organizations hereby agree as follows:

*1. Assumption of Surveillance Responsibility. The Designated CAT Surveillance Authority (the ''DCSA'') shall assume surveillance, investigation and enforcement responsibility relating to compliance by Common Members with SEA Rule 613 and the SRO Covered CAT Rules listed on Exhibit A (''Surveillance Responsibility''). Included in the Surveillance Responsibility assumed hereunder the DCSA shall perform investigations and enforcement resulting from reports and metrics concerning potentially non-compliant CAT reporting generated by the Plan Processor for the National Market System Plan Governing the Consolidated Audit Trail and as provided for in the Monitoring CAT Reporter Compliance Policy (dated August 13, 2019 and as amended from time to time) relating to Common Members. FINRA shall serve as DCSA for Common Members that are members of FINRA. The DREA allocated below shall serve as DCSA for Common Members that are not members of FINRA.*

[1]*2. Assumption of [Regulatory]Examination Responsibility.* The Designated Regulation NMS Examining Authority (the ''DREA'') shall assume examination and enforcement responsibilities relating to compliance by Common Members with the Covered [Regulation NMS] Rules to which the DREA is allocated responsibility (''[Regulatory]*Examination* Responsibility''). A list of the Covered [Regulation NMS] Rules is attached hereto as Exhibit A.

a. For Covered Regulation NMS Rules Pertaining to ''NMS stocks'' (as defined in Regulation NMS) (*i.e.,* Rules 607, 611 and 612): FINRA shall serve as DREA for Common Members that are members of FINRA. The Designated Examining Authority (''DEA'') pursuant to SEA Rule 17d–1 shall serve as DREA *(and accordingly as DCSA as provided in paragraph 1 above)* for Common Members that are not members of FINRA, provided that the DEA operates a national securities exchange or facility that trades NMS stocks and the Common Member is a member of such exchange or facility. For all other Common Members, the Participating Organizations shall allocate Common Members among the Participating

[18] *See* Securities Exchange Act Release No. 84392 (October 10, 2018), 83 FR 52243 (October 16, 2018) (File No. 4–566) (notice of filing and order approving and declaring effective an amendment to the insider trading 17d–2 plan).

[19] *See* paragraph 1(d) of the Plan.

Organizations (other than FINRA) that operate a national securities exchange that trades NMS stocks based on the principles outlined below and the Participating Organization to which such a Common Member is allocated shall serve as the DREA for that Common Member. (A Participating Organization that operates a national securities exchange that does not trade NMS stocks has no regulatory responsibilities related to Covered Regulation NMS Rules pertainining to NMS stocks and will not serve as DREA for such Covered Regulation NMS Rules.)

b. For Covered Regulation NMS Rules Pertaining to ''NMS securities'' (as defined in Regulation NMS) (*i.e.,* Rule 606 *and Rule 613) and the SRO Covered CAT Rules listed on Exhibit A hereto,* the DREA shall be *the* same as the DREA for Covered Regulation NMS Rules pertaining to NMS stocks *(and shall serve as the DCSA in paragraph 1 above).* For Common Members that are not members of a national securities exchange that trades NMS stocks and thus have not been appointed a DREA under paragraph a., the Participating Organizations shall allocate the Common Members among the Participating Organizations (other than FINRA) that operate a national securities exchange that trades NMS securities based on the principles outlined below and the Participating Organization to which such a Common Member is allocated shall serve as the DREA for that Common Member with respect to Covered Regulation NMS Rules pertaining to NMS securities. The allocation of Common Members to DREAs (including FINRA) *and accordingly to serve as DCSA in paragraph 1 above* for all Covered [Regulation NMS] Rules is provided in Exhibit B.

c. For purposes of this paragraph [1]*2,* any allocation of a Common Member to a Participating Organization other than as specified in paragraphs a. and b. above shall be based on the following principles, except to the extent all affected Participating Organizations consent to one or more different principles and any such agreement to different principles would be deemed an amendment to this Agreement as provided in paragraph [22]*24:*

i. The Participating Organizations shall not allocate a Common Member to a Participating Organization unless the Common Member is a member of that Participating Organization.

ii. To the extent practicable, Common Members shall be allocated among the Participating Organizations of which they are members in such a manner as to equalize, as nearly as possible, the allocation among such Participating Organizations.

iii. To the extent practicable, the allocation will take into account the amount of NMS stock activity (or NMS security activity, as applicable) conducted by each Common Member in order to most evenly divide the Common Members with the largest amount of activity among the Participating Organizations of which they are a members. The allocation will also take into account similar allocations pursuant to other plans or agreements to which the Participating Organizations are party to maintain consistency in oversight of the Common Members.[1]

iv. The Participating Organizations may reallocate Common Members from time-to-time and in such manner as they deem appropriate consistent with the terms of this Agreement.

v. Whenever a Common Member ceases to be a member of its DREA (including FINRA), the DREA shall promptly inform the Participating Organizations, who shall review the matter and reallocate the Common Member to another Participating Organization.

vi. The DEA or DREA (including FINRA) may request that a Common Member be reallocated to another Participating Organization (including the DEA or DREA (including FINRA)) by giving 30 days written notice to the Participating Organizations. The Participating Organizations shall promptly consider such request and, in their discretion, may approve or disapprove such request and if approved, reallocate the Common Member to such Participating Organization.

vii. All determinations by the Participating Organizations with respect to allocations shall be by the affirmative vote of a majority of the Participating Organizations that, at the time of such determination, share the applicable Common Member being allocated; a Participating Organization shall not be entitled to vote on any allocation related to a Common Member unless the Common Member is a member of such Participating Organization.

d. The Participating Organizations agree that they shall conduct meetings among them as needed for the purposes of ensuring proper allocation of Common Members and identifying issues or concerns with respect to the regulation of Common Members. *To promote consistency in connection with regulation of Common Members, the Participating Organizations further agree to conduct meetings to discuss the overarching principles as to how Covered Rules, in particular SEA Rule 613 and the SRO Covered CAT Rules, should be surveilled, examined, investigated and enforced. On an ongoing basis, the Participating Organizations agree to consult with and solicit input from the Participating Organizations regarding their surveillance, examination, investigation and enforcement programs regarding SEA Rule 613 and the SRO Covered CAT Rules. In particular, FINRA will consult with Participating Organizations prior to finalizing its disposition and sanctions guidelines with respect to violations of SEA Rule 613 and the SRO Covered CAT Rules. Further, in the period preceding the full implementation of CAT for equities and options securities, FINRA will consult with other Participating Organizations prior to finalizing dispositions other than no further action that involve their Common Members.*

*e. By signing this Agreement, the Participating Organizations hereby certify that the list of SRO Covered CAT Rules listed on Exhibit A hereto are correct and are identical or substantially similar to each other.*

*f. Each year following the commencement date of operation of this Agreement, or more frequently if required by changes in any of the SRO Covered CAT Rules, each Participating Organization shall submit an updated list of SRO Covered CAT Rules to FINRA for review which shall (1) add SRO Covered CAT Rules not included in the current list of SRO Covered CAT Rules that are substantially similar to each other; (2) delete SRO Covered CAT Rules included in the current list that are no longer substantially similar; and (3) confirm that the remaining rules on the current list of SRO Covered CAT Rules continue to be substantially similar. FINRA shall review each Participating Organization's annual certification and confirm whether FINRA agrees with the submitted certified and updated list of SRO Covered CAT Rules. The DREA/DCSA shall not have Regulatory Responsibility for any provision in a SRO Covered CAT Rule provision requiring a member of a Participating Organization to provide notice, reports or any other filings directly to a Participating Organization.*

*3. Scope of Responsibility.*

Notwithstanding anything herein to the

[1] [1] For example, if one Participating Organization was allocated responsibility for a particular Common Member pursuant to a separate Rule 17d–2 Agreement, that Participant Organization would be assigned to be the DREA of that Common Member, unless there is good cause not to make that assignment.

contrary, it is explicitly understood that the terms ''*Surveillance Responsibility*'' *and* ''*Examination Responsibility*'' *(collectively referred to herein as the* ''Regulatory Responsibility''*)* do[es] not include *any responsibilities beyond those concerning the Covered Rules,* and each of the Participating Organizations shall retain full responsibility for, examination, surveillance and enforcement with respect to trading activities or practices involving its own marketplace unless otherwise allocated pursuant to a separate Rule 17d–2 Agreement. *The allocation of DCSA Responsibility to a Participating Organization shall not limit another Participating Organization's ability to utilize data from the Consolidated Audit Trail to perform examination, surveillance, investigative, enforcement or other regulatory work concerning potential or identified violations of statutes or rules other than the SRO Covered CAT Rules.*

[2]*4. No Retention of Regulatory Responsibility.* The Participating Organizations do not contemplate the retention of any responsibilities with respect to the regulatory activities being assumed by the DREA/*DCSA* under the terms of this Agreement. Nothing in this Agreement will be interpreted to prevent a DREA/*DCSA* from entering into Regulatory Services Agreement(s) to perform its Regulatory Responsibility.

[3]*5. No Charge.* A DREA/*DCSA* shall not charge Participating Organizations for performing the Regulatory Responsibility under this Agreement.

[4]*6. Applicability of Certain Laws, Rules, Regulations or Orders.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the SEC. To the extent such statute, rule, or order is inconsistent with one or more provisions of this Agreement, the statute, rule, or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

[5]*7. Customer Complaints.* If a Participating Organization receives a copy of a customer complaint relating to a DREA's/*DCSA's* Regulatory Responsibility as set forth in this Agreement, the Participating Organization shall promptly forward to such DREA/*DCSA* a copy of such customer complaint. It shall be such DREA's/*DCSA's* responsibility to review and take appropriate action in respect to such complaint.

[6]*8. Parties to Make Personnel Available as Witnesses.* Each Participating Organization shall make its personnel available to the DREA/*DCSA* to serve as testimonial or non-testimonial witnesses as necessary to assist the DREA/*DCSA* in fulfilling the Regulatory Responsibility allocated under this Agreement. *The* DREA/*DCSA* shall provide reasonable advance notice when practicable and shall work with a Participating Organization to accommodate reasonable scheduling conflicts within the context and demands as the entity with ultimate regulatory responsibility. The Participating Organization shall pay all reasonable travel and other expenses incurred by its employees to the extent that the DREA/*DCSA* requires such employees to serve as witnesses, and provide information or other assistance pursuant to this Agreement.

[7]*9. Sharing of Work-Papers, Data and Related Information.*

a. Sharing. A Participating Organization shall make available to the DREA/*DCSA* information necessary to assist the DREA/*DCSA* in fulfilling the Regulatory Responsibility assumed under the terms of this Agreement. Such information shall include *any* information collected by a Participating Organization in the course of performing its regulatory obligations under the Act, including information relating to an on-going disciplinary investigation or action against a member, the amount of a fine imposed on a member, financial information, or information regarding proprietary trading systems gained in the course of examining a member (''Regulatory Information''). This Regulatory Information shall be used by the DREA/*DCSA* solely for the purposes of fulfilling the DREA's/*DCSA's* Regulatory Responsibility.

b. No Waiver of Privilege. The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

[8]*10. Special or Cause Examinations and Enforcement Proceedings.* Nothing in this Agreement shall restrict or in any way encumber the right of a Participating Organization to conduct special or cause examinations of a Common Member, or take enforcement proceedings against a Common Member as a Participating Organization, in its sole discretion, shall deem appropriate or necessary.

[9]*11. Dispute Resolution Under this Agreement.*

a. Negotiation. The Participating Organizations will attempt to resolve any disputes through good faith negotiation and discussion, escalating such discussion up through the appropriate management levels until reaching the executive management level. In the event a dispute cannot be settled through these means, the Participating Organizations shall refer the dispute to binding arbitration.

b. Binding Arbitration. All claims, disputes, controversies, and other matters in question between the Participating Organizations to this Agreement arising out of or relating to this Agreement or the breach thereof that cannot be resolved by the Participating Organizations will be resolved through binding arbitration. Unless otherwise agreed by the Participating Organizations, a dispute submitted to binding arbitration pursuant to this paragraph shall be resolved using the following procedures:

(i) The arbitration shall be conducted in a city selected by the DREA/*DCSA* in which it maintains a principal office or where otherwise agreed to by the Participating Organizations in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof; and

(ii) There shall be three arbitrators, and the chairperson of the arbitration panel shall be an attorney. The arbitrators shall be appointed in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

[10]*12. Limitation of Liability.* As between the Participating Organizations, no Participating Organization, including its respective directors, governors, officers, employees and agents, will be liable to any other Participating Organization, or its directors, governors, officers, employees and agents, for any liability, loss or damage resulting from any delays, inaccuracies, errors or omissions with respect to its performing or failing to perform regulatory responsibilities, obligations, or functions, except: (a) As otherwise provided for under the Act; (b) in instances of a Participating Organization's gross negligence, willful misconduct or reckless disregard with respect to another Participating Organization; or (c) in instances of a breach of confidentiality obligations owed to another Participating Organization. The Participating Organizations understand and agree that the regulatory responsibilities are being performed on a good faith and best effort basis and no warranties, express or implied, are made by any Participating Organization to any other Participating Organization with respect

to any of the responsibilities to be performed hereunder. This paragraph is not intended to create liability of any Participating Organization to any third party.

[11]*13. SEC Approval.*

a. The Participating Organizations agree to file promptly this Agreement with the SEC for its review and approval. FINRA shall file this Agreement on behalf, and with the explicit consent, of all Participating Organizations.

b. If approved by the SEC, the Participating Organizations will notify their members of the general terms of the Agreement and of its impact on their members.

[12]*14. Subsequent Parties; Limited Relationship.* This Agreement shall inure to the benefit of and shall be binding upon the Participating Organizations hereto and their respective legal representatives, successors, and assigns. Nothing in this Agreement, expressed or implied, is intended or shall: (a) Confer on any person other than the Participating Organizations hereto, or their respective legal representatives, successors, and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, (b) constitute the Participating Organizations hereto partners or participants in a joint venture, or (c) appoint one Participating Organization the agent of the other.

[13]*15. Assignment.* No Participating Organization may assign this Agreement without the prior written consent of the DREAs/*DCSAs* performing Regulatory Responsibility on behalf of such Participating Organization, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that any Participating Organization may assign the Agreement to a corporation controlling, controlled by or under common control with the Participating Organization without the prior written consent of such Participating Organization's DREAs/*DCSAs.* No assignment shall be effective without Commission approval.

[14]*16. Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

[15]*17. Termination.* Any Participating Organization may cancel its participation in the Agreement at any time upon the approval of the Commission after 180 days written notice to the other Participating Organizations (or in the case of a change of control in ownership of a Participating Organization, such other notice time period as that Participating Organization may choose). The cancellation of its participation in this Agreement by any Participating Organization shall not terminate this Agreement as to the remaining Participating Organizations.

[16]*18. General.* The Participating Organizations agree to perform all acts and execute all supplementary instruments or documents that may be reasonably necessary or desirable to carry out the provisions of this Agreement.

[17]*19. Written Notice.* Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, or by a comparable means of electronic communication to each Participating Organization entitled to receipt thereof, to the attention of the Participating Organization's representative at the Participating Organization's then principal office or by email.

[18]*20. Confidentiality.* The Participating Organizations agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations under this Agreement, provided, however, that each Participating Organization may disclose such documents or information as may be required to comply with applicable regulatory requirements or requests for information from the SEC. Any Participating Organization disclosing confidential documents or information in compliance with applicable regulatory or oversight requirements will request confidential treatment of such information. No Participating Organization shall assert regulatory or other privileges as against the other with respect to Regulatory Information that is required to be shared pursuant to this Agreement.

[19]*21. Regulatory Responsibility.* Pursuant to Section 17(d)(1)(A) of the Act, and Rule 17d–2 thereunder, the Participating Organizations request the SEC, upon its approval of this Agreement, to relieve the Participating Organizations which are participants in this Agreement that are not the DREA *or DCSA* as to a Common Member of any and all responsibilities with respect to the matters allocated to the DREA *or DCSA* pursuant to this Agreement for purposes of §§ 17(d) and 19(g) of the Act.

[20]*22. Governing Law.* This Agreement shall be deemed to have been made in the State of New York, and shall be construed and enforced in accordance with the law of the State of New York, without reference to principles of conflicts of laws thereof. Each of the Participating Organizations hereby consents to submit to the jurisdiction of the courts of the State of New York in connection with any action or proceeding relating to this Agreement.

[21]*23. Survival of Provisions.* Provisions intended by their terms or context to survive and continue notwithstanding delivery of the regulatory services by the DREA/*DCSA* and any expiration of this Agreement shall survive and continue.

[22]*24. Amendment.*

a. This Agreement may be amended to add a new Participating Organization, provided that such Participating Organization does not assume regulatory responsibility, by an amendment executed by all applicable DREAs/*DCSAs* and such new Participating Organization. All other Participating Organizations expressly consent to allow such DREAs/*DCSAs* to jointly add new Participating Organizations to the Agreement as provided above. Such DREAs/*DCSAs* will promptly notify all Participating Organizations of any such amendments to add a new Participating Organization.

b. All other amendments must be approved by each Participating Organization. All amendments, including adding a new Participating Organization but excluding changes to Exhibit B, must be filed with and approved by the Commission before they become effective.

[23]*25. Effective Date.* The Effective Date of this Agreement will be the date the SEC declares this Agreement to be effective pursuant to authority conferred by § 17(d) of the Act, and Rule 17d–2 thereunder.

[24]*26. Counterparts.* This Agreement may be executed in any number of counterparts, including facsimile, each of which will be deemed an original, but all of which taken together shall constitute one single agreement among the Participating Organizations.

* * * * *

**Exhibit A**

**Covered [Regulation NMS] Rules**

*Covered Regulation NMS Rules*

SEA Rule 606—Disclosure of Order Routing Information.*

SEA Rule 607—Customer Account Statements.

SEA Rule 611—Order Protection Rule.
SEA Rule 612—Minimum Pricing Increment.
*SEA Rule 613(g)(2)—Consolidated Audit Trail* *
* Covered Regulation NMS Rules with asterisks (*) pertain to NMS securities. Covered Regulation NMS Rules without asterisks pertain to NMS stocks.
*SRO Covered CAT Rules*
*BZX–Rules 4.5–4.16*
*BATS–Y—Rules 4.5–4.16*
*BOX—Rules 16020–16095*
*Cboe—Rules 7.20–7.32*
*C2—Chapter 6, Section F*
*EDGA—Rules 4.5–4.16*
*EDGX—Rules 4.5–4.16*
*FINRA—Rules 6810–6895*
*IEX—Rules 11.610–11.695*
*MIAX—Rules 1701–1712*
*MIAX PEARL—Rules 1701–1712*
*MIAX Emerald—Rules 1701–1712*
*Nasdaq—General 7, Sections 1–13*
*BX Equities Rules—General 7*
*PHLX—General 7*
*ISE—General 7*
*GEMX—General 7*
*MRX—General 7*
*NYSE—Rules 6810–6895*
*NYSE Arca—Rules—11.6810–11.6895*
*NYSE American—Rules 6810–6895*
*NYSE Chicago—Rules 6810–6895*
*NYSE National—Rules 6.6810–6.6895*
*LTSE—Rules 11.610–11.695*

## IV. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act[20] and Rule 17d–2 thereunder,[21] after March 11, 2020, the Commission may, by written notice, declare the plan submitted by the Participating Organizations, File No. 4–618, to be effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

## V. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d–2 Plan and to relieve the Participating Organizations of the responsibilities which would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number 4–618 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number 4–618. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of the Participating Organizations. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–618 and should be submitted on or before March 11, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03739 Filed 2–24–20; 8:45 am]

**BILLING CODE 8011–01–P**

[20] 15 U.S.C. 78q(d)(1).

[21] 17 CFR 240.17d–2.

[22] 17 CFR 200.30–3(a)(34).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88237; File No. SR–NYSE–2020–11]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend the Schedule of Wireless Connectivity Fees and Charges To Add Wireless Connectivity Services

February 19, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 11, 2020, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add wireless connectivity services that transport the market data of the Exchange and certain affiliates to the schedule of Wireless Connectivity Fees and Charges (the ''Wireless Fee Schedule''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to add wireless connectivity services that transport market data of the Exchange and its affiliates NYSE Arca, Inc. (''NYSE Arca'') and NYSE National, Inc. (''NYSE National'') to the Wireless Fee Schedule.[4]

The wireless connections can be purchased by market participants in three data centers that are owned and operated by third parties unaffiliated with the Exchange: (1) Carteret, New Jersey, (2) Secaucus, New Jersey, and (3) Markham, Canada (collectively, the ''Third Party Data Centers''). A market participant in a Third Party Data Center that purchases a wireless connection (''Wireless Market Data Connection'') receives connectivity to certain Exchange, NYSE Arca and NYSE National market data feeds (collectively, the ''Selected Market Data'') [5] distributed from the Mahwah, New Jersey data center. Customers that purchase a wireless connection to Selected Market Data are charged an initial and monthly fee for the service of transporting the Selected Market Data.

The Exchange does not believe that the present proposed change is a change to the ''rules of an exchange'' [6] required to be filed with the Commission under the Act. The definition of ''exchange'' under the Act includes ''the market facilities maintained by such exchange.'' [7] Based on its review of the relevant facts and circumstances, and as discussed further below, the Exchange has concluded that the Wireless Market Data Connections are not facilities of the Exchange within the meaning of the Act, and therefore do not need to be included in its rules.

The Exchange is making the current proposal solely because the Staff of the Commission has advised the Exchange that it believes the Wireless Market Data Connections are facilities of the Exchange and so must be filed as part of its rules.[8] The Staff has not set forth the basis of its conclusion beyond verbally noting that the Wireless Market Data Connections are provided by an affiliate of the Exchange and a market participant could use a Wireless Market Data Connection to connect to market data feeds of the Exchange and its Affiliate SROs.[9]

The Exchange expects the proposed change to be operative 60 days after the present filing becomes effective.

The Exchange and the ICE Affiliates

To understand the Exchange's conclusion that the Wireless Market Data Connections are not facilities of the Exchange within the meaning of the Act, it is important to understand the very real distinction between the Exchange and its corporate affiliates (the ''ICE Affiliates''). The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Around the world, ICE operates seven regulated exchanges in addition to the Exchange and the Affiliate SROs, including futures markets, as well as six clearing houses. Among others, the ICE Affiliates are subject to the jurisdiction of regulators in the U.S., U.K., E.U., the Netherlands, Canada and Singapore.[10] In all, the ICE Affiliates include hundreds of ICE subsidiaries, including more than thirty that are significant legal entity subsidiaries as defined by Commission rule.[11]

Through its ICE Data Services (''IDS'') business,[12] ICE operates the ICE Global Network, a global connectivity network whose infrastructure provides access to over 150 global markets, including the Exchange and Affiliate SROs, and over 750 data sources. All the ICE Affiliates are ultimately controlled by ICE, as the indirect parent company, but generally they do not control each other. In the present case, it is IDS, not the Exchange, that provides the Wireless Market Data Connections to market participants. The Exchange does not control IDS.

The Wireless Market Data Connections

As noted above, if a market participant in one of the Third Party Data Centers wishes to connect to one or more of the data feeds that make up the Selected Market Data,[13] it may opt to purchase a Wireless Market Data Connection to the data.

The Selected Market Data is generated at the Mahwah data center in the trading and execution systems of the Exchange, NYSE Arca and NYSE National (collectively, the ''SRO Systems''). In each case, the Exchange, NYSE Arca or NYSE National, as applicable, files with the Commission for the Selected Market Data it generates, and the related fees.[14]

[4] NYSE Arca, NYSE National, NYSE American LLC and NYSE Chicago, Inc. are national securities exchanges that are affiliates of the Exchange (collectively, the ''Affiliate SROs''). The wireless connectivity services described in this filing do not transport the market data of NYSE American LLC and NYSE Chicago, Inc. The Exchange filed a proposed rule change that would establish the Wireless Fee Schedule. *See* SR–NYSE–2020–05 (January 30, 2020). Should such filing be approved before the present filing, the changes to the Wireless Fee Schedule proposed herein would appear at the end of the Wireless Fee Schedule, after the text proposed in the January, 2020 filing. In such case, the Exchange will amend the present filing if required.

[5] In the Carteret and Secaucus Third Party Data Centers, a market participant may use a Wireless Market Data Connection to connect to the NYSE Integrated Feed data feed, the NYSE Arca Integrated Feed data feed, and the NYSE National Integrated Feed data feed. In the Markham, Canada Third Party Data Center, a market participant may use a Wireless Market Data Connection to connect to the NYSE BBO and Trades data feeds and the NYSE Arca BBO and Trades data feeds.

[6] *See* 15 U.S.C. 78c(a)(27) (defining the term ''rules of an exchange'').

[7] 15 U.S.C. 78c(a)(1). See 15 U.S.C. 78c(a)(2) (defining the term ''facility'' as applied to an exchange).

[8] Telephone conversation between Commission staff and representatives of the Exchange, December 12, 2019.

[9] *Id.* The Commission has previously stated that services were facilities of an exchange subject to the rule filing requirements without fully explaining its reasoning. In 2010, the Commission stated that exchanges had to file proposed rule changes with respect to co-location because ''[t]he Commission views co-location services as being a material aspect of the operation of the facilities of an exchange.'' The Commission did not specify why it reached that conclusion. *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010), at note 76.

In addition, in 2014, the Commission instituted proceedings to determine whether to disapprove a proposed rule change by The NASDAQ Stock Market LLC (''Nasdaq'') on the basis that Nasdaq's ''provision of third-party market data feeds to co-located clients appears to be an integral feature of its co-location program, and co-location programs are subject to the rule filing process.'' Securities Exchange Act Release No. 72654 (July 22, 2014), 79 FR 43808 (July 28, 2014) (SR–NASDAQ–2014–034). In its order, the Commission did not explain why it believed that the provision of third party data was an integral feature of co-location, or if it believed that it was a facility of Nasdaq, although the Nasdaq filing analyzed each prong of the definition of facility in turn. *See* Securities Exchange Act Release No. 71990 (April 22, 2014), 79 FR 23389 (April 28, 2014) (SR–NASDAQ–2014–034).

[10] Intercontinental Exchange, Inc. Annual Report on Form 10–K for the year ended December 31, 2018, Exhibit 21.1 (filed February 7, 2019), at 15–16.

[11] *Id.* at Exhibit 21.1.

[12] The IDS business operates through several different ICE Affiliates, including NYSE Technologies Connectivity, Inc., an indirect subsidiary of the NYSE.

[13] *See* note 5, *supra* for a list of the Selected Market Data available in each Third Party Data Center.

[14] *See* Securities Exchange Act Release Nos. 74128 (January 23, 2015), 80 FR 4951 (January 29, 2015) (SR–NYSE–2015–03) (notice of filing and immediate effectiveness of proposed rule change establishing the NYSE Integrated Feed data feed); 76485 (November 20, 2015), 80 FR 74158 (November 27, 2015) (SR–NYSE–2015–57) (notice of filing and immediate effectiveness of a proposed rule change establishing fees for the NYSE Integrated Feed); 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30) (order approving proposed rule change to establish the NYSE BBO service); 59290 (January 23, 2009), 74 FR 5707 (January 30, 2009) (SR–NYSE–2009–05) (notice of filing and immediate effectiveness of proposed rule change to introduce a pilot program for NYSE Trades); 59606 (March 19, 2009), 74 FR 13293 (March 26, 2009) (SR–NYSE–2009–04) (order approving proposed rule change to establish fees for NYSE Trades); 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR–NYSEArca–2010–23) (order

Continued

The filed market data fees apply to all Selected Market Data customers no matter what connectivity provider they use.

When a market participant wants to connect to Selected Market Data, it requests a connection from the provider of its choice. All providers, including ICE Affiliates, may only provide the market participant with connectivity once the provider receives confirmation from the Exchange, NYSE Arca or NYSE National, as applicable, that the market participant is authorized to receive the requested Selected Market Data. Accordingly, when a market participant requests a Wireless Market Data Connection, IDS's first step is to obtain authorization.[15]

IDS's next step is to set up the Wireless Market Data Connection for the market participant. In the connection, IDS collects the Selected Market Data, then sends it over the Wireless Market Data Connection to the IDS access center located in the Third Party Data Center. The customer connects to the Selected Market Data at the Third Party Data Center.[16]

The customer is charged by IDS an initial and monthly fee for the Wireless Market Data Connection. By contrast, IDS will not bill the customer for the Selected Market Data: The Exchange, NYSE Arca or NYSE National, as applicable, bill market data subscribers directly, irrespective of whether the market data subscribers receive the Selected Market Data over a Wireless Market Data Connection or from another connectivity provider.

Market participants in the Third Party Data Centers that want to connect to Selected Market Data have options, as other providers offer connectivity to Selected Market Data.[17] A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

The Wireless Market Data Connections Are Not Facilities of the Exchange

The Definition of ''Exchange''

The definition of ''exchange'' focuses on the exchange entity and what it does:[18]

> The term ''exchange'' means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

If the ''exchange'' definition included all of an exchange's affiliates, the ''Exchange'' would encompass a global network of futures markets, clearing houses, and data providers, and all of those entities worldwide would be subject to regulation by the Commission. That, however, is not what the definition in the Act provides.

The Exchange and the Affiliate SROs fall squarely within the Act's definition of an ''exchange'': they each provide a market place to bring together purchasers and sellers of securities and perform with respect to securities the functions commonly performed by a stock exchange.

That is not true for the non-exchange ICE Affiliates. Those ICE Affiliates do not provide such a marketplace or perform ''with respect to securities the functions commonly performed by a stock exchange,'' and therefore they are not an ''exchange'' or part of the ''Exchange'' for purposes of the Act. Accordingly, in conducting its analysis, the Exchange does not automatically collapse the ICE Affiliates into the Exchange. The Wireless Market Data Connections are also not part of the Exchange, as they are services, and as such cannot be part of an ''organization, association or group of persons'' with the Exchange.

In Rule 3b–16 the Commission further defined the term ''exchange'' under the Act, stating that:[19]

> (a) An organization, association, or group of persons shall be considered to constitute, maintain, or provide ''a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange,'' as those terms are used in section 3(a)(1) of the Act . . . if such organization, association, or group of persons:
>
> (1) Brings together the orders for securities of multiple buyers and sellers; and
>
> (2) Uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade.

The non-exchange ICE Affiliates do not bring ''together orders for securities of multiple buyers and sellers,'' and so are not an ''exchange'' or part of the ''Exchange'' for purposes of Rule 3b–16. Indeed, it is not possible to use a Wireless Market Data Connection to effect a transaction on the Exchange. Rather, they are one-way connections away from the Mahwah data center.

The relevant question, then, is whether the Wireless Market Data Connections are ''facilities'' of the Exchange.

The Definition of ''Facility''

The Act defines a ''facility'' [20] as follows:

> The term ''facility'' when used with respect to an exchange includes [1] its premises, [2] tangible or intangible property whether on the premises or not, [3] any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and [4] any

approving proposed rule change to modify the fees for NYSE Arca Trades, to establish the NYSE Arca BBO service and related fees, and to provide an alternative unit-of-count methodology for those services); 59289 (January 23, 2009), 74 FR 5711 (January 30, 2009) (SR–NYSEArca–2009–06) (notice of filing and immediate effectiveness of proposed rule change to introduce a pilot program for NYSE Arca Trades); 59598 (March 18, 2009), 74 FR 12919 (March 25, 2009) (SR–NYSEArca–2009–05) (order approving proposed rule change to establish fees for NYSE Arca Trades); 65669 (November 2, 2011), 76 FR 69311 (November 8, 2011) (SR–NYSEArca–2011–78) (notice of filing and immediate effectiveness of proposed rule change offering the NYSE Arca Integrated Feed); 66128 (January 10, 2012), 77 FR 2331 (January 17, 2012) (SR–NYSEArca–2011–96) (notice of filing and immediate effectiveness of a proposed rule change establishing fees for NYSE Arca Integrated Feed); 83350 (May 31, 2018), 83 FR 26332 (June 6, 2018) (SR–NYSENAT–2018–09) (notice of filing and immediate effectiveness of proposed rule change establishing the NYSE National Integrated Feed data feed); and 87797 (December 18, 2019), 84 FR 71025 (December 26, 2019) (SR–NYSENAT–2019–31) (notice of filing and immediate effectiveness of proposed rule change to establish fees for the NYSE National Integrated Feed).

[15] When requesting authorization from the Exchange, NYSE Arca or NYSE National to provide a customer with Selected Market Data, the ICE Affiliate providing the Wireless Market Data Connection uses the same on-line tool as all data vendors.

[16] A cable connects the IDS and customer equipment in the Markham Third Party Data Center. If the customer is located in either the Carteret or Secaucus Third Party Data Center, the customer buys a cross connect from IDS.

[17] The other providers obtain Selected Market Data from IDS at the Mahwah data center and send it over their own networks, fiber or wireless, to the Third Party Data Centers.

[18] 15 U.S.C. 78c(a)(1).

[19] 17 CFR 240.3b–16(a).

[20] 15 U.S.C. 78c(a)(2).

right of the exchange to the use of any property or service.

In 2015 the Commission noted that whether something is a ''facility'' is not always black and white, as ''any determination as to whether a service or other product is a facility of an exchange requires an analysis of the particular facts and circumstances.'' [21] Accordingly, the Exchange understands that the specific facts and circumstances of the Wireless Market Data Connections must be assessed before a determination can be made regarding whether or not they are facilities of the Exchange.[22]

The first prong of the definition is that ''facility,'' when used with respect to an exchange, includes ''its premises.'' That prong is not applicable in this case, because the Wireless Market Data Connections are not premises of the Exchange. The term ''premises'' is generally defined as referring to an entity's building, land, and appurtenances.[23] The wireless network that runs from the Mahwah data center to the Third Party Data Centers, much of which is actually owned, operated and maintained by a non-ICE entity,[24] is not the premises of the Exchange. The portion of the Mahwah data center where the ''exchange'' functions are performed—*i.e.* the SRO Systems that bring together purchasers and sellers of securities and perform with respect to securities the functions commonly performed by a stock exchange—could be construed as the ''premises'' of the Exchange, but the same is not true for a wireless network that is almost completely outside of the Mahwah data center.

The second prong of the definition of ''facility'' provides that a facility includes the exchange's ''tangible or intangible property whether on the premises or not.'' The Wireless Market Data Connections are not the property of the Exchange: They are services. The underlying wireless network is owned by ICE Affiliates and a non-ICE entity. As noted, the Act does not automatically collapse affiliates into the definition of an ''exchange.'' A review of the facts set forth above shows that there is a real distinction between the Exchange and its ICE Affiliates with respect to the Wireless Market Data Connections, and so something owned by an ICE Affiliate is not owned by the Exchange.

The third prong of the definition of ''facility'' provides that a facility includes

> any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange). [25]

This prong does not capture the Wireless Market Data Connections because the Exchange does not have the right to use the Wireless Market Data Connections to effect or report a transaction on the Exchange. ICE Affiliates and a non-ICE entity own and maintain the wireless network underlying the Wireless Market Data Connections, and ICE Affiliates, not the Exchange, offer and provide the Wireless Market Data Connections to customers. The Exchange does not know whether or when a customer has entered into an agreement for a Wireless Market Data Connection and has no right to approve or disapprove of the provision of a Wireless Market Data Connection, any more than it would if the provider was a third party.[26] It does not put the Selected Market Data content onto the Wireless Market Data Connections or send it to customers. When a customer terminates a Wireless Market Data Connection, the Exchange does not consent to the termination.

In fact, it is not possible to use a Wireless Market Data Connection to effect a transaction on the Exchange: they are one-way connections away from the Mahwah data center. Customers cannot use them to send trading orders or information of any sort to the SRO Systems, and the Exchange does not use them to send confirmations of trades. Instead, Wireless Market Data Connections solely carry Selected Market Data.

The Exchange believes the example in the parenthetical in the third prong of the definition of ''facility'' cannot be read as an independent prong of the definition. Such a reading would ignore that the parentheses and the word ''including'' clearly indicate that ''any system of communication to or from an exchange . . . maintained by or with the consent of the exchange'' is explaining the preceding text. By its terms, the parenthetical is providing a non-exclusive example of the type of property or service to which the prong refers, and does not remove the requirement that there must be a right to use the premises, property or service to effect or report a transaction on an exchange. It is making sure the reader understands that ''facility'' includes a ticker system that an exchange has the right to use, not creating a new fifth prong to the definition. In fact, if the ''right to use'' requirement were ignored, every communication provider that connected to an exchange, including any broker-dealer system and telecommunication network, would become a facility of that exchange so long as the exchange consented to the connection, whether or not the connection was used to trade or report a trade, and whether or not the exchange had any right at all to the use of the connection.

The fourth prong of the definition provides that a facility includes ''any right of the exchange to the use of any property or service.'' As described above, the Exchange does not have the right to use the Wireless Market Data Connections. Instead, the Wireless Market Data Connections are used by market participants who decide to use that service.

Accordingly, for all the reasons discussed above, the wireless connectivity to Selected Market Data provided by ICE Affiliates is not a facility of the Exchange.

The legal conclusion that the Wireless Market Data Connections are not facilities of the Exchange is strongly supported by the facts. The Wireless Market Data Connections are neither necessary for, nor integrally connected to, the operations of the Exchange. They are one-way connections away from the Mahwah data center. In this context,

[21] Securities Exchange Act Release No. 76127 (October 9, 2015), 80 FR 62584 (October 16, 2015) (SR–NYSE–2015–36), at note 9 (order approving proposed rule change amending Section 907.00 of the Listed Company Manual). *See also* 79 FR 23389, *supra* note 9, at note 4 (noting that that the definition of the term ''facility'' has not changed since it was originally adopted) and 23389 (stating that the SEC ''has not separately interpreted the definition of 'facility'").

[22] As with the definition of ''exchange,'' the ICE Affiliates do not automatically fall within the definition of a ''facility.'' The definition focuses on ownership and the right to use properties and services, not corporate relationships. Indeed, if the term ''exchange'' in the definition of a facility included ''an exchange and its affiliates,'' then the rest of the functional prongs of the facility definition would be meaningless. Fundamental rules of statutory construction dictate that statutes be interpreted to give effect to each of their provisions, so as not to render sections of the statute superfluous.

[23] *See, e.g.,* definition of ''premises'' in Miriam-Webster Dictionary, at *https://www.merriam-webster.com/dictionary/premises,* and Cambridge English Dictionary, at *https://dictionary.cambridge.org/us/dictionary/english/premises.*

[24] A non-ICE entity owns, operates and maintains the wireless network between the Mahwah data center and the Carteret and Secaucus Third Party Data Centers pursuant to a contract between the non-ICE entity and an ICE Affiliate.

[25] 15 U.S.C. 78c(a)(2).

[26] The Exchange provides confirmation to IDS that a customer is authorized to receive the relevant Selected Market Data, as noted above, but does not know how or where that customer receives it. If the customer is already taking the relevant Selected Market Data through another medium or at a different site, IDS does not need to seek Exchange approval.

IDS simply acts as a vendor, selling connectivity to Selected Market Data just like the other vendors that offer wireless connections in the Carteret and Secaucus Third Party Data Centers and fiber connections to all the Third Party Data Centers. The fact that in this case it is ICE Affiliates that offer the Wireless Market Data Connections does not make the Wireless Market Data Connections facilities of the Exchange any more than are the connections offered by other parties.

Further, the Exchange believes that requiring it to file this proposed rule change is not necessary in order for the Commission to ensure that the Exchange is satisfying its requirements under the Act. Because, as described above, the Wireless Market Data Connections are not necessary for, nor connected to, the operations of the Exchange, and customers are not required to use the Wireless Market Data Connections, holding the Wireless Market Data Connections to the statutory standards in Section 6(b) serves no purpose.

Instead, the sole impact of the requirement that the Exchange file the Wireless Market Data Connections is to place an undue burden on competition on the ICE Affiliates that offer the market data connections, compared to their market competitors. This filing requirement, thus, itself is inconsistent with the requirement under Section 6(b)(8) of the Act that the rules of the exchange not ''impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [27] This burden on competition arises because IDS would be unable, for example, to offer a client or potential client a connection to a new data feed it requests, without the delay and uncertainty of a filing, but its competitors will. Similarly, if a competitor decides to undercut IDS' fees because IDS, unlike the competitor, has to make its fees public, IDS will not be able to respond quickly, if at all. Indeed, because its competitors are not required to make their services or fees public, and are not subject to a Commission determination of whether such services or fees are ''not unfairly discriminatory'' or equitably allocated, IDS is at a competitive disadvantage from the very start.

The Proposed Service and Fees

As noted above, the Exchange proposes to add to its rules the Wireless Market Data Connections to Selected Market Data, for an initial and monthly fee.

A market participant would be charged a $5,000 non-recurring initial charge for each Wireless Market Data Connection and a monthly recurring charge (''MRC'') per connection that would vary depending upon the feed and the location of the connection. The proposal would waive the first month's MRC, to allow customers to test a new Wireless Market Data Connection for a month before incurring any MRCs, and the Exchange proposes to add text to the Wireless Fee Schedule accordingly.

The Exchange proposes add a section to the Wireless Fee Schedule under the heading ''B. Wireless Connectivity to Market Data'' to set forth the fees charged by IDS related to the Wireless Market Data Connections, as follows:

| Type of service | Amount of charge |
|---|---|
| NYSE Integrated Feed: Wireless Connection in Carteret access center | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE Arca Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE National Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $5,250. |
| NYSE Integrated Feed and NYSE Arca Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $18,500. |
| NYSE Integrated Feed, NYSE Arca Integrated Feed, and NYSE National Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $21,000. |
| NYSE Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE Arca Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE National Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $5,250. |
| NYSE Integrated Feed and NYSE Arca Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $18,500. |
| NYSE Integrated Feed, NYSE Arca Integrated Feed, and NYSE National Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $21,000. |
| NYSE BBO and Trades: Wireless Connection in Markham, Canada access center. | $5,000 per connection initial charge plus monthly charge per connection of $6,500. |
| NYSE Arca BBO and Trades: Wireless Connection in Markham, Canada access center. | $5,000 per connection initial charge plus monthly charge per connection of $6,500. |

There is limited bandwidth available on the wireless network to the Markham, Canada Third Party Data Center. Accordingly, such Wireless Market Data Connections do not transport information for all of the symbols included in the NYSE BBO and Trades and NYSE Arca BBO and Trades data feeds. Rather, IDS provides connectivity to a selection of such data feeds, including the data for which IDS believes there is demand. When a market participant requests a Wireless Market Data Connection to Markham, it receives connectivity to the portions of the NYSE BBO and Trades and NYSE Arca BBO and Trades data that IDS transmits wirelessly. The customer then determines the symbols for which it will receive data. The Exchange does not have visibility into which portion of the data feed a given customer receives.

Application and Impact of the Proposed Change

The proposed change would apply to all customers equally. The proposed

[27] 15 U.S.C. 78f(b)(8).

change would not apply differently to distinct types or sizes of market participants. Customers that require other types or sizes of network connections between the Mahwah data center and the access centers could still request them. As is currently the case, the purchase of any connectivity service is completely voluntary and the Wireless Fee Schedule is applied uniformly to all customers.

Competitive Environment

Other providers offer connectivity to Selected Market Data in the Third Party Data Centers.[28] Based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

Wireless connections involve beaming signals through the air between antennas that are within sight of one another. Because the signals travel a straight, unimpeded line, and because light waves travel faster through air than through glass (fiber optics), wireless messages have lower latency than messages travelling through fiber optics.[29] At the same time, as a general rule wireless networks have less uptime than fiber networks. Wireless networks are directly and immediately affected by adverse weather conditions, which can cause message loss and outage periods. Wireless networks cannot be configured with redundancy in the same way that fiber networks can. As a result, an equipment or weather issue at any one location on the network will cause the entire network to have an outage. In addition, maintenance can take longer than it would with a fiber based network, as the relevant tower may be in a hard to reach location, or weather conditions may present safety issues, delaying technicians servicing equipment. Even under normal conditions, a wireless network will have a higher error rate than a fiber network of the same length.

The proposed Wireless Market Data Connections traverse through a series of towers equipped with wireless equipment, including, in the case of the Carteret and Secaucus connections, a pole on the grounds of the Mahwah data center. With the exception of the non-ICE entity that owns the wireless network used for the Wireless Connections to Secaucus and Carteret,[30] third parties do not have access to such pole. However, access to such pole is not required for third parties to establish wireless networks that can compete with the Wireless Market Data Connections to the Carteret and Secaucus Third Party Data Centers, as witnessed by the existing wireless connections offered by non-ICE entities competitors.

In addition, proximity to a data center is not the only determinant of a wireless network's latency. Rather, the latency of a wireless network depends on several factors. Variables include the wireless equipment utilized; the route of, and number of towers or buildings in, the network; and the fiber equipment used at either end of the connection. Moreover, latency is not the only consideration that a customer may have in selecting a wireless network to connect to Selected Market Data. Other considerations may include the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

2. Statutory Basis

Although the Exchange does not believe that the present proposed change is a change to the ''rules of an exchange'' [31] required to be filed with the Commission under the Act, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[32] in general, and furthers the objectives of Section 6(b)(5) of the Act,[33] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and does not unfairly discriminate between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[34] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

The Exchange believes its proposal is reasonable.

Based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections

[28] Third party providers obtain Selected Market Data from IDS at the Mahwah data center and send it over their own networks, fiber or wireless, to the Third Party Data Centers.

[29] *See* Securities Exchange Act Release No. 76748 (December 23, 2015), 80 FR 81609 (December 30, 2015) (SR–NYSE–2015–52) (order approving offering of a wireless connection to allow Users to receive market data feeds from third party markets and to reflect changes to the Exchange's price list related to these services).

[30] *See* note 24, *supra.*

[31] *See* 15 U.S.C. 78c(a)(27) (defining the term ''rules of an exchange'').

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78f(b)(4).

offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

Market participants' considerations in determining what connectivity to purchase may include latency; the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

The Exchange believes that the proposed pricing for the Wireless Market Data Connections is reasonable because it allows customers to select the connectivity option that best suits their needs. A market participant that opts for Wireless Market Data Connections would be able to select the specific Selected Market Data feed that it wants to receive in accordance with its needs, thereby helping it tailor its operations to the requirements of its business operations. The fees also reflect the benefit received by market participants in terms of lower latency over the fiber optics options.

There is limited bandwidth available on the wireless network to the Markham, Canada Third Party Data Center. Accordingly, the Exchange believes that it is reasonable not to transport information for all of the symbols included in the NYSE BBO and Trades and NYSE Arca BBO and Trades data feeds to Markham, but rather to transport a subset of that data. Limiting the feeds to the data regarding securities for which IDS believes there is demand allows customers in Canada to receive the relevant Selected Market Data over a wireless network. The customer then determines those symbols for which it will receive data.

Only market participants that voluntarily select to receive Wireless Market Data Connections are charged for them, and those services are available to all market participants with a presence in the relevant Third Party Data Center. Furthermore, the Exchange believes that the services and fees proposed herein are reasonable because, in addition to the services being completely voluntary, they are available to all market participants on an equal basis (*i.e.,* the same products and services are available to all market participants). All market participants that voluntarily select a Wireless Market Data Connection would be charged the same amount for the same service and would have their first month's MRC for the Wireless Market Data Connection waived.

Overall, the Exchange believes that the proposed change is reasonable because the Wireless Market Data Connections described herein are offered as a convenience to market participants, but offering them requires the provision, maintenance and operation of the Mahwah data center, wireless networks and access centers in the Third Party Data Centers, including the installation and monitoring, support and maintenance of the services.

The Exchange believes that the proposed waiver of the first month's MRC is reasonable as it would allow market participants to test a Wireless Market Data Connection for a month before incurring any monthly recurring fees and may act as an incentive to market participants to connect to a Wireless Market Data Connection.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees among its market participants.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all market participants equally. As is currently the case, the purchase of any connectivity service, including Wireless Market Data Connections, would be completely voluntary.

The Exchange believes that it is equitable to not to transport information for all of the symbols included in the NYSE BBO and Trades and NYSE Arca BBO and Trades data feeds to Markham, but rather to transport a subset of that data. There is limited bandwidth available on the wireless network to the Markham, Canada Third Party Data Center. Limiting the feeds to the data regarding securities for which IDS believes there is demand allows customers in Canada to receive the relevant Selected Market Data over a wireless network. The customer then determines those symbols for which it will receive data.

Without this proposed rule change, market participants with a presence in the Third Party Data Centers would have fewer options for connectivity to Selected Market Data. With it, market participants have more choices with respect to the form and price of connectivity to Selected Market Data they use, allowing a market participant that opts for a Wireless Market Data Connection to select the specific Selected Market Data feed that it wants to receive in accordance with what best suits its needs, thereby helping it tailor its operations to the requirements of its business operations.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all market participants equally. As is currently the case, the purchase of any connectivity service, including Wireless Market Data Connections, would be completely voluntary.

A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

Without this proposed rule change, market participants with a presence in the Third Party Data Centers would have fewer options for connectivity to Selected Market Data. With it, market participants have more choices with respect to the form and price of connectivity to Selected Market Data they use, allowing a market participant that opts for a Wireless Market Data Connection to select the specific Selected Market Data feed that it wants to receive in accordance with what best suits its needs, thereby helping it tailor its operations to the requirements of its business operations.

The Wireless Market Data Connections provide customers in the Secaucus and Carteret access centers with one means of connectivity to Selected Market Data, but based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data

between the two points, creating a new connectivity option for customers in Markham.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the only burden on competition of the proposed change is on IDS and other commercial connectivity providers. Solely because IDS is wholly owned by the same parent company as the Exchange, IDS will be at a competitive disadvantage to its commercial competitors, and its commercial competitors, without a filing requirement, will be at a relative competitive advantage to IDS.

By permitting IDS to continue to offer the Wireless Market Data Connectivity, approval of the proposed changes would contribute to competition by allowing IDS to compete with other connectivity providers, and thus provides market participants another connectivity option. For this reason, the proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[35]

Based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham. The Exchange does not control the Third Party Data Centers and could not preclude other parties from creating new wireless or fiber connections to Selected Market Data in any of the Third Party Data Centers.

The Wireless Market Data Connections provide customers in the Secaucus and Carteret Third Party Data Centers with one means of connectivity to Selected Market Data, but substitute products are available, as witnessed by the existing wireless connections offered by non-ICE entities. A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant in any of the Third Party Data Centers or the Mahwah data center may also create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

The Exchange notes that the proposed Wireless Market Data Connections compete not just with other wireless connections to Selected Market Data, but also with fiber network connections, which may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions. Market participants' considerations in determining what connectivity to purchase may include latency; the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

The proposed Wireless Market Data Connections traverse through a series of towers equipped with wireless equipment, including, in the case of the Carteret and Secaucus Wireless Market Data Connections, a pole on the grounds of the Mahwah data center. With the exception of the non-ICE entity that owns the wireless network used for the Wireless Connections to Secaucus and Carteret,[36] third parties do not have access to such pole, as the IDS wireless network has exclusive rights to operate wireless equipment on the Mahwah data center pole. IDS does not sell rights to third parties to operate wireless equipment on the pole, due to space limitations, security concerns, and the interference that would arise between equipment placed too closely together.

However, access to such pole is not required for other parties to establish wireless networks that can compete with the Wireless Market Data Connections, as witnessed by the existing wireless connections offered by non-ICE entities. Proximity to a data center is not the only determinant of a wireless network's latency. Rather, the latency of a wireless network depends on several factors. Variables include the wireless equipment utilized; the route of, and number of towers or buildings in, the network; and the fiber equipment used at either end of the connection. Moreover, latency is not the only consideration that a customer may have in selecting a wireless network to connect to Selected Market Data. Other considerations may include the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather between IDS and its commercial competitors.

For the reasons described above, the Exchange believes that the proposed rule changes reflect this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[35] 15 U.S.C. 78f(b)(8).

[36] *See* note 24, *supra.*

change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–11 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–11, and should be submitted on or before March 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03642 Filed 2–24–20; 8:45 am]

**BILLING CODE 8011–01–P**

[37] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88243; File No. SR–CBOE–2020–011]**

## Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

February 19, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 6, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fees Schedule to (1) amend certain SPX fees, (2) amend the standard transaction fee for Clearing Trading Permit Holder Proprietary orders in Underlying Symbol List A, (3) amend certain VIX fees, (4) adopt fee codes for waived linkage transactions, (5) re-adopt the Clearing Trading Permit Holder position re-assignment rebate, (6) clarify that Network Access Ports will be available for physical connections to PULSe through February 29, 2020, and (7) reduce the rebate under the GTH SPX/SPXW LLM program.[3]

SPX Fees

Standard Transaction Fees

The Exchange first proposes to adopt modest fee increases for SPX and SPXW transactions. With respect to Customer orders (capacity ''C'') in SPX and SPXW, the Exchange proposes to increase transaction fees by $0.01 per contract. More specifically, the Exchange proposes to increase Customer transaction fees for SPX/SPXW orders with a premium of (1) $0.00-$0.10 and $0.11-$0.99 from $0.35 per contract to $0.36 per contract and (2) $1.00 or more from $0.44 per contract to $0.45 per contract. The Exchange next proposes to increase transaction fees for Broker-Dealer (capacity ''B''), Joint Back-Office (capacity ''J''), Non-Trading Permit Holder (''TPH'') Market-Maker (capacity ''N''), and Professional (capacity ''U'') orders in SPX and SPXW from $0.40 per contract to $0.42[4] per contract.

SPX Liquidity Provider Sliding Scale

The Exchange proposes to amend its sliding scale for Market-Maker transaction fees in SPX and SPXW (''SPX Liquidity Provider Sliding Scale''). Currently, Market-Makers' transaction fees in SPX and SPXW are determined by their average monthly contracts in SPX and SPXW. The SPX Liquidity Provider Sliding Scale currently provides for five tiers. The Exchange proposes to increase the transaction fees under Tiers 4 and 5 of the SPX Liquidity Provider Sliding Scale by $0.01 per contract (and thereby lessen the current discount). More specifically, the Exchange proposes to increase the transaction rate under Tier 4[5] from $0.22 per contract to $0.23 per contract, and the transaction rate under Tier 5[6] from $0.20 per contract to $0.21 per contract. The Exchange believes that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee changes on February 3, 2020 (SR–CBOE–2020–008). On February 4, 2020, the Exchange withdrew that filing and submitted SR–CBOE–2020–009. On February 6, 2020, the Exchange withdrew that filing and submitted this filing.

[4] The Exchange proposes to adopt new fee code BT for Non-Customer, Non-Market-Maker SPX and SPXW orders.

[5] The volume threshold for Tier 4 is 9.00%–$15.00%.

[6] The volume threshold for Tier 5 is above 15.00%.

notwithstanding the proposed transaction fee increase under Tiers 4 and 5, the SPX Liquidity Provider Sliding Scale will continue to provide incremental incentives for Market-Makers to reach the highest tier level and encourage trading of SPX options, as it continues to provide progressively lower rates if increased volume thresholds in SPX (including SPXW) options are attained during a month.

SPXW Execution Surcharge

The Exchange proposes to amend the Execution Surcharge for SPXW (''SPXW Surcharge''). Currently, the Exchange assesses a SPXW Surcharge of $0.10 per contract for non-Market-Maker orders in SPXW that are executed electronically (with some exceptions).[7] The Exchange proposes to increase the Execution Surcharge for SPXW to $0.13 per contract. The Exchange notes the proposed SPXW Surcharge is still less than the Execution Surcharge assessed for SPX transactions.[8]

SPX Index License Surcharge

The Exchange proposes to increase the Index License Surcharge Fee for SPX (including SPXW) (the ''SPX Surcharge'') from $0.16 per contract to $0.17 per contract. The Exchange licenses from S&P Dow Jones Indices (''SPDJI'') (the ''SPDJI License'') the right to offer an index option product based on the S&P 500 index (that product being SPX and other SPX-based index option products). In order to offset the costs associated with the SPDJI License, the Exchange assesses the SPX Surcharge. The Exchange therefore proposes to increase the SPX Surcharge from $0.16 per contract to $0.17 per contract in order to offset more of the costs associated with the SPX license.

Clearing Trading Permit Holder Proprietary Fees

The Exchange proposes to increase the standard transaction fee for Clearing Trading Permit Holders and for Non-Clearing Trading Permit Holder Affiliates (''Firms'') (capacities ''F'' and ''L'', respectively) in Underlying Symbol List A[9] (excluding VIX) by $0.01. Specifically the Exchange proposes to increase the fee from $0.25 per contract to $0.26 per contract.

VIX Fees

The Exchange next proposes to amend standard Customer (capacity ''C'') transaction fees for VIX transactions. First the Exchange proposes to decrease certain VIX transaction fees, adopt separate fees for simple versus complex VIX transactions, and adopt a new fee for VIX orders with a premium of $2.00 or more, along with the noted fee codes, as follows:

| Current premium | Proposed premium | Current | Proposed simple fees | Fee code | Proposed complex fees | Fee code |
|---|---|---|---|---|---|---|
| $0.00–$0.10 | $0.00–$0.10 | $0.10 | No change | CV | $0.05 | CZ |
| $0.11–$0.99 | $0.11–$0.99 | 0.25 | No change | CW | 0.17 | DA |
| Greater than $1.00 | $1.00–$1.99 | 0.45 | $0.40 | CX | 0.30 | DB |
| N/A | $2.00 and above | N/A | $0.45 | CY | 0.45 | DC |

The Exchange proposes to reduce fees for Customer simple orders with a premium between $1.00–$1.99 to incentivize the sending of more orders within this premium range. Similarly, the Exchange proposes to adopt reduced fees for Customer complex VIX orders in order to encourage the sending of additional complex VIX orders. The Exchange did not believe it was necessary to assess different fees for simple and complex VIX orders with a premium of $2.00 or greater. The Exchange notes that Customer VIX orders with a premium of $2.00 or greater account for a very small percentage of overall VIX trading.

Linkage Waiver

The Exchange proposes to adopt fee codes for linkage transactions for which away transaction fees are waived. More specifically, the Exchange currently provides that it will not pass through or otherwise charge customer orders (of any size) routed to other exchanges that were originally transmitted to the Exchange from the trading floor through an Exchange-sponsored terminal (*e.g.* a PULSe Workstation). Currently, this waiver is implemented manually. Beginning February 3, 2020, this waiver will be automated and the Exchange therefore proposes to adopt specific fee codes for such transactions. Particularly, the Exchange proposes to adopt the following fee codes for customer orders (of any size) routed to other exchanges that were originally transmitted to the Exchange from the trading floor through an Exchange-sponsored terminal:

| Fee Code | | Rate |
|---|---|---|
| TD | Routed to AMEX, BOX, BX, EDGX, MERC, MIAX, PHLX, ≥100 contracts, ETF | [10] $0.18 |
| TE | Routed to AMEX, BOX, BX, EDGX, MERC, MIAX, PHLX, <100 contracts ETF, Equity | [11] 0.00 |
| TF | Routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, NOMX, ≥100 contracts ETF, Penny | 0.18 |
| TG | Routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, NOMX, ≥100 contracts ETF, Non-Penny | 0.18 |
| TH | Routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, NOMX, <100 contracts ETF, Equity, Penny | 0.00 |
| TI | Routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, NOMX, <100 contracts ETF, Equity, Non-Penny | 0.00 |
| TS | Routed, Index | 0.18 |
| TX | Routed, XSP, originating on Exchange-sponsored terminal | [12] 0.04 |

[7] *See* Cboe Options Fees Schedule, Footnote 21.

[8] *See* Cboe Options Fees Schedule, Rate Table—Underlying Symbol List A, Execution Surcharge, SPX only.

[9] Underlying Symbol List A currently includes OEX, XEO, RUT, RLG, RLV, RUI, UKXM, SPX (includes SPXw) and VIX. *See* Cboe Options Fees Schedule, Footnote 34.

[10] The Exchange assesses $0.18 per contract for customer ETF orders that are ≥100 contracts, and customer orders in multi-listed index products. *See* Cboe Options Fees Schedule, Rate Table—All Products Excluding Underlying Symbol List A.

[11] The Exchange does not assess a fee for customer ETF orders that are <100 contracts or for customer orders in equity options. *See* Cboe Options Fees Schedule, Rate Table—All Products Excluding Underlying Symbol List A.

[12] The Exchange assesses a $0.04 per contract fee for customer XSP orders. *See* Cboe Options Fees Schedule, Rate Table—All Products Excluding Underlying Symbol List A.

The Exchange notes the proposed fee codes do not represent a substantive change, but are being adopted merely in light of the Exchange's automation of a current waiver.

Clearing Trading Permit Holder Position Re-Assignment Rebate

The Exchange proposes to adopt a rebate for transaction fees assessed to a Clearing Trading Permit Holder who, as a result of a trade adjustment on any business day following the original trade, re-assigns a position established by the initial trade to a different Clearing Trading Permit Holder. In such a circumstance, the Exchange will rebate, for the party for whom the position is being re-assigned, that party's transaction fees from the original transaction as well as the transaction in which the position is re-assigned. In all other circumstances, including corrective transactions, in which a transaction is adjusted on any day after the original trade date, regular Exchange fees will be assessed. The Exchange notes that the proposed rebate is not novel. Indeed, the Exchange's Fees Schedule had included the proposed rebate prior to the migration to a new billing system on October 7, 2019, but had eliminated the rebate upon migration.[13] After further evaluation, the Exchange now wishes to re-adopt the proposed rebate. The Exchange lastly notes that because the Exchange may not always be able to automatically identify these situations, in order to receive a rebate, the Fees Schedule will also provide that a written request in a form and manner prescribed by the Exchange must be submitted within 3 business days of the original transaction.

Network Access Ports

By way of background, a physical port is utilized by a TPH or non-TPH to connect to the Exchange at the data centers where the Exchange's servers are located. Prior to migration of its trading platform to a new system on October 7, 2019, the Exchange utilized Network Access Ports for these physical connections to the Exchange. Upon migration, the TPHs and non-TPHs had the option to alternatively elect to connect to Cboe Options via new latency equalized Physical Ports. The Exchange had noted in its Fees Schedule that through January 31, 2020, Cboe Options market participants would continue to have the ability to connect to Cboe Options' trading system via the current Network Access Ports. The Exchange notes that all Network Access Ports have been decommissioned as of January 31, 2020, with the exception of a couple Network Access Ports used solely to connect to PULSe. The Exchange notes that although the new latency equalized Physical Ports became available on October 7, 2019, the new Physical Ports were not originally able to be utilized to send orders to PULSe. Accordingly, users who wished to route orders to PULSe via the Exchange's physical ports had to maintain and use a legacy Network Access Fee Port and could not use any of the new Physical Ports for such purpose. The Exchange notes that although the new Physical Ports are now able to be used to connect to PULSe, a couple of TPHs have not yet made the transition from the Exchange's legacy Network Access Ports to the new Physical Ports for purposes of connecting to PULSe. As such, the Exchange proposes to amend the Fees Schedule to clarify that Network Access Ports will be available through February 29, 2020 to connect to PULSe. The fee waiver for Network Access Ports used solely to access PULSe will continue to remain in place.

GTH SPX/SPXW LMM Incentive Program

Pursuant to the Fees Schedule, a LMM in SPX/SPXW will receive a pro-rata share of a compensation pool for SPX equal to $15,000 times the number of LMMs appointment in SPX and if the LMM meets the heightened quoting standard described below for SPXW, the LMM will receive an additional pro-rata share of a compensation pool for SPXW equal to $15,000 times the number of LMMs in that class (for a total of $30,000 per month for meeting the standard for both SPX and SPXW) if the LMM(s) provide continuous electronic quotes that meet or exceed the following heightened quoting standards in at least 99% of each of SPX and SPXW series 90% of the time in a given month during GTH:

| Premium | Expiring | | Near term | | Mid term | | Long term | |
|---|---|---|---|---|---|---|---|---|
| Level | 7 days or less | | 8 days to 60 days | | 61 days to 270 days | | 271 days or greater | |
| | Width | Size | Width | Size | Width | Size | Width | Size |
| $0–$5.00 | $0.50 | 10 | $0.40 | 25 | $0.60 | 15 | $1.00 | 10 |
| $5.01–$15.00 | 2.00 | 7 | 1.60 | 18 | 2.40 | 11 | 4.00 | 7 |
| $15.01–$50.00 | 5.00 | 5 | 4.00 | 13 | 6.00 | 8 | 10.00 | 5 |
| $50.01–$100.00 | 10.00 | 3 | 8.00 | 8 | 12.00 | 5 | 20.00 | 3 |
| $100.01–$200.00 | 20.00 | 2 | 16.00 | 5 | 24.00 | 3 | 40.00 | 2 |
| Greater Than $200.00 | 30.00 | 1 | 24.00 | 3 | 36.00 | 1 | 60.00 | 1 |

A GTH LMM in SPX/SPXW is not currently obligated to satisfy the heightened quoting standards described in the table above. Rather, an LMM is eligible to receive the rebate if they satisfy the heightened quoting standards above. The Exchange now proposes to amend the rebate available to LMM(s) under the program. Specifically, the Exchange proposes to eliminate the current compensation pool structure and reduce a straight rebate per product per LMM. More specifically, the Exchange proposes to provide that if a GTH SPX/SPXW LMM meets the proposed heightened quoting standard described above, it will receive $10,000 per product. As is the case today, SPX/SPXW GTH LMM(s) will still not be obligated to satisfy the amended heightened quoting standard. The Exchange believes the program, as amended, will continue to encourage SPX/SPXW GTH LMM(s) to provide liquidity in SPX/SPXW during GTH. Additionally, the Exchange notes that a SPX/SPXW GTH LMM may need to undertake expenses to be able to quote at a significantly heightened standard in SPX/SPXW, such as purchase more logical connectivity based on its increased capacity needs.

[13] *See* Securities and Exchange Act Release No. 87303 (October 15, 2019), 84 FR 56276 (October 21, 2019) (SR–CBOE–2019–080).

The Exchange also proposes to eliminate (1) the example of how the compensation pool works as it is no longer necessary given the elimination of the compensation pool structure, and (2) obsolete language regarding how the program was billed for October 2019.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and does not unfairly discriminate between customers, issuers, brokers or dealers. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[16] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed increases to Customer SPX transaction fees are reasonable as the proposed increases are modest and modifies fees that have not been otherwise amended in well over 10 years.[17] The Exchange notes the proposed fees are also in line with customer transaction fees assessed in other index products.[18] Similarly, the Exchange believes the proposed fee increase for Broker-Dealer, Joint Back-Office, Non-TPH Market-Maker and Professional SPX/SPX orders is reasonable as it too is a modest increase to a fee that has not been modified in over ten years.[19] The Exchange notes the proposed fee is still in line with transaction fees assessed in other index products.[20] The Exchange believes the proposed standard transaction fee increases are also equitable and not unfairly discriminatory because the changes apply to similarly situated market participants uniformly.

The Exchange believes the proposed amendment to the discounted Market-Maker fees in Tiers 4 and 5 of the SPX Liquidity Provider Sliding Scale is reasonable because Market-Makers are still eligible to receive discounted fees for satisfying the corresponding criteria (albeit less of a discount). The Exchange believes that notwithstanding the proposed transaction fee increase under Tiers 4 and 5, the SPX Liquidity Provider Sliding Scale will continue to provide incremental incentives for Market-Makers to reach the highest tier level and encourage trading of SPX options, as it continues to provide progressively lower rates if increased volume thresholds in SPX (including SPXW) options are attained during a month. The Exchange also believes the rebates, as amended, are still commensurate with the difficultly level of satisfying the respective tier's criteria. The Exchange believes the proposed fee change is equitable and not unfairly discriminatory as it applies uniformly to all Market-Makers.

The Exchange believes amending the Execution Surcharge for SPXW Surcharge is reasonable as such fee is still lower than the Execution Surcharge for SPX transactions.[21] Additionally, the proposed increase helps to ensure that there is reasonable cost equivalence between the primary execution channels for SPXW. More specifically, the SPXW Surcharge was adopted to minimize the cost differentials between manual and electronic executions, which is in the interest of the Exchange as it must both maintain robust electronic systems as well as provide for economic opportunity for floor brokers to continue to conduct business, as they serve an important function in achieving price discovery and customer executions.[22] The Exchange believes the proposed change is also equitable and not unfairly discriminatory as it applies uniformly to all similarly situated market participants.

Increasing the SPX Surcharge is reasonable because the Exchange still pays more for the SPX license than the amount of the proposed SPX Surcharge (meaning that the Exchange is, and will still be, subsidizing the costs associated with the SPX license). This increase is equitable and not unfairly discriminatory because the increased amount will be assessed to all market participants to whom the SPX Surcharge applies.

The Exchange believes the proposed increase to the standard Firm transaction fee in Underlying Symbol List A (excluding VIX) orders is reasonable as the proposed increase is modest and modifies a fee that has not been amended in over 9 years.[23] The Exchange notes the proposed fees are also in line with customer transaction fees assessed in other index products.[24] The Exchange also notes that Firms continue to have an opportunity to earn a discounted fee via the Clearing Trading Permit Holder Proprietary Products Sliding Scale. The Exchange believes the proposed fee increase is also equitable and not unfairly discriminatory because the change applies to Firms uniformly.

The Exchange next believes its proposed change to reduce certain VIX transaction fees is reasonable as Customers will be paying lower fees for such transactions. The Exchange notes the proposed changes to VIX Customer transaction fees are designed to encourage the sending of additional VIX orders, including complex orders. The Exchange notes the proposed change is also in line with other fee programs that are designed to incentivize the sending of complex orders to the Exchange. For example, the Exchange provides higher rebates under the Volume Incentive Program for complex orders as compared to simple orders.[25] The Exchange believes the proposed fee changes are also equitable and not unfairly discriminatory because they apply to all Customers uniformly.

The Exchange believes adopting fee codes for waived linkage transactions is reasonable and equitable because the Exchange believes such fee codes provide further clarity in the Fees

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(4).

[17] *See* Securities Exchange Act Release No. 55193 (January 30, 2007) 72 FR 5476 (February 6, 2007) (SR–CBOE–2006–111) and Securities Exchange Act Release No. 57191 (January 24, 2008) 73 FR 5611 (January 30, 2008) (SR–CBOE–2007–150).

[18] *See e.g.,* Cboe Options Fees Schedule, Rate Table—Underlying Symbol List A, customer transaction fees.

[19] *See* Securities Exchange Act Release No. 55193 (January 30, 2007) 72 FR 5476 (February 6, 2007) (SR–CBOE–2006–111).

[20] *See e.g.,* Cboe Options Fees Schedule, Rate Table—Underlying Symbol List A, Broker-Dealer, Joint Back-Office, Non-TPH Market-Maker and Professional fees for RUT.

[21] *See* Cboe Options Fees Schedule, Rate Table, Underlying Symbol List A, which provides for a $0.21 per contract Execution Surcharge for SPX orders.

[22] *See* Securities Exchange Act Release No. 71295 (January 14, 2014) 79 FR 3443 (January 21, 2014) (SR–CBOE–2013–129).

[23] *See* Securities Exchange Act Release No. 63701 (January 11, 2011) 76 FR 2934 (January 18, 2011) (SR–CBOE–2010–116).

[24] *See, e.g.,* Cboe Options Fees Schedule, Rate Table—Underlying Symbol List A, customer transaction fees.

[25] *See* Cboe Options Fees Schedule, Volume Incentive Program.

Schedule and the fee codes do not amend the current linkage fees or fee waiver. Rather, the Exchange is merely adopting fee codes in light of the transition from manual processing of the current linkage waiver to automated processing. Additionally, the Exchange believes the proposed fee codes allow TPHs to more easily validate the bills they receive from the Exchange, thus alleviating potential confusion.

The Exchange believes it is reasonable to offer a rebate when a Clearing Trading Permit Holder re-assigns a position, as the Clearing Trading Permit Holder may not have elected to take that position in the first place (and may just have been erroneously listed as a party to the transaction). The Exchange believes that this change is equitable and not unfairly discriminatory for the same reason; it is equitable to rebate fees to a Clearing Trading Permit Holder that was assessed fees for taking a position from a transaction to which that Clearing Trading Permit Holder was not a party. Otherwise, the Exchange believes it is equitable for a party that made an error reporting a transaction to be responsible for paying the fees associated with making that error. Further, the proposed changes will apply equally to all market participants. The Exchange also notes that the proposed rebate is not novel. Indeed, the Exchange's Fees Schedule had included the proposed rebate prior to the migration to a new billing system on October 7, 2019, but had eliminated the rebate upon migration.[26] After further evaluation, the Exchange now wishes to re-adopt the proposed rebate.

The Exchange believes the proposal to allow TPHs to continue to utilize legacy Network Access Ports through February 29, 2020 is reasonable as a few TPHs have not yet been able to transition from the Network Access Ports to the new Physical Ports with respect to their connection to PULSe. Any remaining Network Access ports would be configured to only allow routing of orders to PULSe, The Exchange believes updating the notes section for Network Access Ports provides further clarity in the rules as to the availability of such ports. The Exchange believes its proposal to eliminate obsolete language in the notes section of the Network Access Ports also alleviates potential confusion.

The Exchange believes the amount of the amended rebate for SPX/SPXW GTH LMMs ($10,000 per product) is reasonable because it continues to provide a rebate (albeit a reduced rebate) for meeting the heightened quoting standard and takes into consideration additional costs an LMM may incur. Particularly, the Exchange believes the proposed amount is such that it will still incentivize an appointed LMM to meet the GTH quoting standards for SPX and SPXW, thereby protecting investors and the public interest. Additionally, if an LMM does not satisfy the heightened quoting standard, then it will simply not receive the rebate. The Exchange believes it is equitable and not unfairly discriminatory to only offer the rebate to SPX/SPXW LMMs because GTH LMMs provide a crucial role in providing quotes and the opportunity for market participants to trade during GTH, which can lead to increased volume, thereby providing a robust market. The Exchange also notes that the GTH LMM may have added costs each month that it needs to undertake in order to satisfy that heightened quoting standard (*e.g.,* having to purchase additional logical connectivity).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. First, the Exchange believes the proposed rule change does impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes as described above apply to all similarly situated TPHs in a uniform manner. Additionally, while different fees and rebates are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances. For example, Market-Makers, including Lead Market-Makers play a crucial role in providing active and liquid markets in their appointed products, thereby providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that other participants do not have. There is also a history in the options markets of providing preferential treatment to customers, as they often do not have as sophisticated trading operations and systems as other market participants, which often makes other market participants prefer to trade with customers. Further, the Exchange fees and rebates, both current and those proposed to be changed, are intended to encourage market participants to bring increased volume to the Exchange (which benefits all market participants), while still covering Exchange costs (including those associated with the upgrading and maintenance of Exchange systems).

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. First, changes relating to the Exchange's proprietary products only affect trading on Cboe Options, as such products are exclusively listed on Cboe Options. Next, the Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on and director their order flow, including 15 options exchanges, as well as off-exchange venues. Based on publicly available information, no single options exchange has more than 22% of the market share of executed volume of options trades.[27] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [28] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker

[26] *See* Securities and Exchange Act Release No. 87303 (October 15, 2019), 84 FR 56276 (October 21, 2019) (SR–CBOE–2019–080).

[27] See Cboe Global Markets, U.S. Options Market Volume Summary by Month (February 3, 2020) available at *http://markets.cboe.com/us/options/market_share/.*

[28] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

dealers'. . . .''.[29] Accordingly, the Exchange does not believe its proposed changes to extend the above-mentioned fee waivers and incentive programs impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [30] and paragraph (f) of Rule 19b–4 [31] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2020–011 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–011 and should be submitted on or before March 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03646 Filed 2–24–20; 8:45 am]

**BILLING CODE 8011–01–P**

[29] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21).

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f).

[32] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88236; File No. SR–BOX–2020–04]**

## Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of a Proposed Rule Change To Amend the Provisions of Its Limited Liability Company Agreement and Bylaws To Accommodate the Exchange's Regulation of Multiple Facilities

February 19, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 4, 2020, BOX Exchange LLC (''BOX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the provisions of its limited liability company agreement (the ''LLC Agreement'') and bylaws (the ''Bylaws'') to accommodate the Exchange's regulation of multiple facilities. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is a Delaware limited liability company that therefore has an LLC Agreement. The Exchange also has Bylaws. The LLC Agreement and Bylaws, collectively, are the Exchange's source of governance and operating authority. Currently, the Exchange regulates only one facility, BOX Options Market LLC (''BOX Options Market''), which is reflected in the existing LLC Agreement and Bylaws. The Exchange proposes certain discrete amendments to the LLC Agreement and Bylaws that would (i) provide sufficient flexibility in the documents for them to contemplate that there may be multiple Exchange facilities under the Exchange's regulatory authority, (ii) simplify the structure of the defined terms in the LLC Agreement and Bylaws to make

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

them easier to read and understand, and (iii) make certain other changes to the terms of the LLC Agreement and Bylaws to bring them current with the structure of the Exchange and its relationships.

The proposed rule changes are reflected in the LLC Agreement and the Bylaws of the Exchange. The description of the proposed rule changes is organized in three parts below. First, the description addresses the proposed changes to certain definitions that currently appear in the LLC Agreement and the Bylaws. Second, the description addresses proposed changes to the LLC Agreement other than the proposed changes to the LLC Agreement definitions. Third, the description addresses proposed changes to the Bylaws other than the Bylaw definitions.

Proposed Changes to Definitions Used in the LLC Agreement and Bylaws

Article 1, Section 1.1 of the LLC Agreement contains certain defined terms that are used in the LLC Agreement. In addition, Article 1, Section 1.01 of the Bylaws provides that terms that have initial capitalization in the Bylaws without further definition have the meaning assigned to such terms in the LLC Agreement. The following changes are proposed to the definitions that appear in the LLC Agreement and the Bylaws. Where appropriate, changes are also proposed to reorder the appearance of definitions in Article 1, Section 1.01 of the Bylaws based on the proposed additions and deletions.[3]

Proposed Changes to Definitions in the LLC Agreement

*BOX Holdings.* The Exchange is proposing to remove the definition of ''BOX Holdings'' from the LLC Agreement. The term is defined to mean ''BOX Holdings Group LLC, a Delaware limited liability company'' (''BOX Holdings''). BOX Holdings is the parent and 100% owner of BOX Options Market, which is currently the only facility[4] of the Exchange. As described in more detail below, this change would be made in connection with removing BOX Holdings Group LLC as a party to the LLC Agreement and providing representation on the Exchange Board to entities that are facilities of the Exchange rather than to BOX Holdings through a ''BOX Holdings Director'' as that term is defined in the Bylaws.[5] For the reasons explained below, the change is designed to accommodate the Exchange's contemplated regulation of multiple facilities as opposed to the current structure in which BOX Options Market is the only facility of the Exchange.

*BOX Options.* The Exchange is proposing to remove the term ''BOX Options'' from the LLC Agreement. The Exchange is proposing to remove the definition because the definition is specific to the regulation by the Exchange of the BOX Options Market facility. The Exchange would adopt a new defined term ''Exchange Facility'' in the LLC Agreement, as described below, to replace the defined term ''BOX Options'' and make the defined terms in the LLC Agreement flexible enough to accommodate multiple facilities of the Exchange and Exchange rules related thereto. For reasons explained below, the change is designed to accommodate the Exchange's contemplated regulation of multiple facilities as opposed to the current structure in which BOX Options Market is the only facility of the Exchange.

*BOX Options Market.* The Exchange is proposing to remove the term ''BOX Options Market'' from the LLC Agreement. The Exchange is proposing to remove the definition because the definition is specific to the regulation by the Exchange of the BOX Options Market facility. The Exchange would use the proposed new defined term ''Exchange Facility'' in the LLC Agreement, as described below, to replace the defined term ''BOX Options Market'' and make the defined terms in the LLC Agreement flexible enough to accommodate multiple facilities of the Exchange and Exchange rules related thereto. For reasons explained below, the change is designed to accommodate the Exchange's contemplated regulation of multiple facilities as opposed to the current structure in which BOX Options Market is the only facility of the Exchange.

*BOX Options Participant.* The Exchange is proposing to remove the term ''BOX Options Participant'' from the LLC Agreement. The Exchange is proposing to remove the definition because the definition is specific to the regulation by the Exchange of the BOX Options Market facility. The Exchange would adopt a new defined term ''Exchange Facility Participant'' in the LLC Agreement, as described below, to replace the defined term ''BOX Options Participant'' and make the defined terms in the LLC Agreement flexible enough to accommodate multiple facilities of the Exchange and Exchange rules related thereto. For reasons explained below, the change is designed to accommodate the Exchange's contemplated regulation of multiple facilities as opposed to the current structure in which BOX Options Market is the only facility of the Exchange.

*BOX Options Products.* The Exchange is proposing to remove the term ''BOX Options Products'' from the LLC Agreement because it is only used in the defined term ''Trading'' in the LLC Agreement and, as described below, the Exchange is also proposing to delete that term. Upon the deletion of the term ''Trading'' in the LLC Agreement, the defined term ''BOX Options Products'' would no longer be used anywhere in the LLC Agreement or in the Bylaws. Therefore, it would be unnecessary and the Exchange proposes to delete it as a streamlining change to eliminate unnecessary content from the LLC Agreement and to produce a simplified structure for the defined terms in the LLC Agreement that is easier to read and understand.

*BOX Options Rules.* The Exchange is proposing to remove the definition of ''BOX Options Rules'' from the LLC Agreement. The Exchange is proposing to remove the definition because the definition is specific to the regulation by the Exchange of the BOX Options Market facility. The Exchange would adopt a new defined term ''Exchange Rules'' in the LLC Agreement, as described below, to replace the defined term ''BOX Options Rules'' and make the defined terms in the LLC Agreement flexible enough to accommodate multiple facilities of the Exchange and Exchange rules related thereto.

*Confidential Information.* The Exchange is proposing to amend the definition of ''Confidential Information'' in the LLC Agreement to remove the reference to ''BOX Options Market.'' The definition of ''Confidential Information'' currently provides that it includes, but is not limited to, confidential information as it pertains to the Exchange or the BOX Options Market regarding disciplinary matters, trading data, trading practices and audit information. The Exchange would delete the reference to ''BOX Options Market'' and replace it with a reference to the newly proposed defined term

[3] Such reordering changes are not necessary to the LLC Agreement because the definitions that appear in Article 1, Section 1.1 appear only in alphabetical order without any additional subsection numbering or lettering.

[4] 15 U.S.C. 78c(a)(2). Section 3(a)(2) of the Exchange Act defines the term facility when used with respect to an exchange to include ''its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.''

[5] *See* Bylaws, Section 1.01(b).

''Exchange Facility.'' Because the proposed definition of ''Exchange Facility'' in the LLC Agreement would include the ''BOX Options Market,'' the definition of ''Confidential Information'' would continue to cover the same information that it does today in respect of the Exchange and BOX Options Market. However, the revised definition that is proposed would also cover the same information as it pertains to any facility of the Exchange.

*Exchange Facility.* The Exchange is proposing to add the definition of ''Exchange Facility'' to the LLC Agreement. The definition would cover any ''facility'' of the Exchange as that term is defined in Section 3 of the Exchange Act.[6] This change is designed to accommodate the Exchange's contemplated regulation of multiple facilities as opposed to the current structure in which BOX Options Market is the only facility of the Exchange. The addition of this defined term would create a structure in the LLC Agreement that would pertain to every facility regulated by the Exchange, and the Exchange believes that this would promote readability and comprehension of the LLC Agreement and would thereby promote the protection of investors and the public interest.

*Exchange Facility Participant.* The Exchange is proposing to add the definition of ''Exchange Facility Participant'' to the LLC Agreement. The definition would mean ''a firm or organization that is registered with the Exchange pursuant to the Exchange Rules for purposes of participating in trading on any Exchange Facility.'' As described immediately above, the newly proposed term Exchange Facility would mean ''any facility of the Exchange as the term 'facility' is defined in Section 3 of the Exchange Act.'' Therefore, the term ''Exchange Facility Participant'' would create a defined term in the LLC Agreement that would be used to refer generally to any firm or organization that is registered with the Exchange for purposes of participating in trading on any ''Exchange Facility.'' Because the BOX Options Market is currently the only facility of the Exchange, the only participant definition maintained in the LLC Agreement is the definition of ''BOX Options Participant,'' which, as described above, the Exchange is proposing to delete. Therefore, the term ''Exchange Facility Participant'' would be defined broadly enough to refer to a current BOX Options Participant and any other type of ''Exchange Facility Participant'' as may become relevant in the future. Currently, the definition of ''BOX Options Participant'' in the LLC Agreement refers to a firm or organization registered with the Exchange pursuant to the 2000 Series of the BOX Options Rules. With the proposed change to accommodate the Exchange's contemplated regulation of multiple facilities, the Exchange Rules pertaining to participants on various facilities may be addressed in different series of the Exchange Rules yet to be enacted. As a consequence, the new definition of Exchange Facility Participant does not refer to any specific series in the Exchange Rules.

*Exchange Rules.* The Exchange is proposing to add the definition of ''Exchange Rules'' to the LLC Agreement. The term ''Exchange Rules'' would mean ''the rules of the Exchange that constitute 'rules of an exchange' within the meaning of Section 3 of the Exchange Act.'' Currently, the LLC Agreement provides this same definition in respect of the term ''BOX Options Rules.'' However, as described above, the Exchange proposes to delete the term ''BOX Options Rules'' in favor of the more general term ''Exchange Rules'' to make the defined terms in the LLC Agreement flexible enough to contemplate multiple facilities of the Exchange and the rules related thereto. The Exchange notes that as a substantive matter the term ''Exchange Rules'' would be defined in the same way that ''BOX Options Rules'' is currently defined with the exception that it would not also include a specific reference to the ''BOX Options Market.''

*Individual U.S. Equities.* The Exchange is proposing to remove the definition of ''Individual U.S. Equities'' from the LLC Agreement. The Exchange is proposing to remove the definition because the definition is only used in the definition of ''BOX Options Products,'' which the Exchange, as described above, is also proposing to remove. Upon the deletion of the term ''BOX Options Products'' in the LLC Agreement, the defined term ''Individual U.S. Equities'' would no longer be used anywhere in the LLC Agreement or in the Bylaws. Therefore, it would be unnecessary and the Exchange proposes to delete it as a streamlining change to eliminate unnecessary content from the LLC Agreement and to create a more simplified set of defined terms.

*MX.* The Exchange is proposing to remove the definition of ''MX'' from the LLC Agreement. The term ''MX'' is currently defined to mean Bourse de Montréal, Inc. The Exchange is proposing to remove the definition because the term only appears in the defined terms ''System'' and ''TOSA'' in the LLC Agreement and, as described below, the Exchange is also proposing to delete these definitions to achieve a more simplified structure of defined terms in the LLC Agreement that would be easier to understand.

*Regulatory Funds.* The Exchange is proposing to amend the definition of ''Regulatory Funds'' in the LLC Agreement to use the proposed defined term ''Exchange Facility'' within the definition rather than referencing ''a facility of the Exchange.'' The use of the proposed defined term rather than the existing text would not change the meaning of the definition of ''Regulatory Funds'' as it is currently provided for in the LLC Agreement. It is proposed as a conforming change to rely on the defined term ''Exchange Facility'' as it would be established in the LLC Agreement.

*Related Agreements.* The Exchange is proposing to remove the definition of ''Related Agreements'' from the LLC Agreement. The Exchange is proposing to remove the definition because it is only used in one section of the LLC Agreement, Section 15.4 (Ongoing Confidentiality Program), and the Exchange believes that the deletion of the defined term from the LLC Agreement and deletion of the single use of that term in Section 15.4(b) would not change the meaning of Section 15.4(b) or any other provision of the LLC Agreement.

Specifically, Section 15.4(b) is the only provision of the LLC Agreement in which the term ''Related Agreements'' is currently used, and it provides in relevant part that certain representatives of (i) the members of the LLC Agreement, (ii) BOX Options Market and (iii) the Exchange will have procedures designed to maintain confidentiality of certain information of the Exchange while facilitating business activities contemplated by the LLC Agreement and the ''Related Agreements.'' In turn, the term ''Related Agreements'' is defined to mean the Technical and Operational Services Agreement (''TOSA'') between MX and BOX Options Market, as further described below, a facility agreement entered into by and between BOX Options and the Exchange, dated May 7, 2012, and any other agreement between BOX Options Market and the Exchange or any Member, in all cases necessary for the conduct of the business of BOX Options. As currently formulated, the term ''Related Agreements'' encompasses all agreements necessary for the conduct of the business of BOX Options and merely lists a few examples thereof. The Exchange proposes to delete the reference to the defined term

[6] *See supra* note 4.

''Related Agreements'' in Section 15.4(b) and to substitute therefor the words, ''or the conduct of the business of the Exchange and any Exchange Facility,'' which not only fully captures all agreements currently contemplated by the defined term ''Related Agreements'' but would be coextensive with the proposed new language which further extends to all conduct of the business of the Exchange and its Exchange Facilities. This change not only eliminates the superfluous defined term but fully preserves the scope and substantive meaning of Section 15.4(b).

*Related Person.* The Exchange is proposing to amend the definition of ''Related Person'' in the LLC Agreement. Specifically, the Exchange would replace references in the definition to ''BOX Options Participant'' with references to ''Exchange Facility Participant'' to reflect that the ''Related Person'' definition may apply in respect of facilities of the Exchange other than BOX Options Market as proposed herein.

*System.* The Exchange is proposing to remove the definition of ''System'' from the LLC Agreement. The Exchange is proposing to remove the definition because the defined term is currently of limited use in the LLC Agreement and the Exchange believes that where it is used it results in a definitional structure that may be difficult for a user to understand. The definition of ''System'' is only used in the LLC Agreement in the defined term ''Trading,'' which the Exchange is also proposing to delete for similar reasons related to streamlining as described below. The interrelationship between the defined term ''System'' and the defined term ''Trading'' requires a reader to refer to and understand both of these definitions to be able to understand the meaning of the defined term ''Trading'' as it is used in the defined terms ''BOX Options Participant'' and ''BOX Options Products.'' The Exchange believes that this structure is unnecessarily complex and that using the plain meaning of the word ''trading'' in the LLC Agreement instead, such as the Exchange proposes to do in the newly proposed defined term ''Exchange Facility Participant,'' would not materially change the meaning of any provisions in the LLC Agreement or the Bylaws and that the change would also support the existence of multiple facilities of the Exchange given that the current definition of ''Trading'' is specific to ''BOX Options Products.''

*TOSA.* The Exchange is proposing to remove the definition of ''TOSA'' from the LLC Agreement. The term ''TOSA'' means the Technical and Operational Services Agreement entered into by and between ''MX'' and ''BOX Options'' dated September 25, 2005 and amended as of January 1, 2007. The Exchange is proposing to remove the definition because it is an unnecessary defined term that is not used or relied upon outside of the defined terms of the LLC Agreement. Currently, the only use of the defined term ''TOSA'' appears in the defined term ''Related Agreements.'' For the reasons described above, the Exchange is proposing to remove that defined term from the LLC Agreement. Accordingly, the defined term ''TOSA'' would no longer be used in the LLC Agreement and the Exchange therefore proposes to remove the definition as a streamlining change to eliminate unnecessary content from the LLC Agreement and to create a more simplified set of defined terms.

*Trading.* The Exchange is proposing to remove the definition of ''Trading'' from the LLC Agreement. The Exchange is proposing to remove the definition to create a more simplified structure of defined terms in the LLC Agreement, as described above, in connection with the proposed deletion of the defined term ''System.''

Proposed Changes to Definitions in the Bylaws

*BOX Holdings Director.* The Exchange is proposing to remove the definition of ''BOX Holdings Director'' from the Bylaws.[7] As noted above, BOX Holding is the parent and 100% owner of BOX Options Market, which is currently the only facility of the Exchange. While BOX Holdings and BOX Options Market are separate entities that have separate boards of directors, the composition of each board of directors is the same. Because BOX Holdings is the 100% owner of BOX Options Market and the composition of the board of directors for each entity is the same, the Exchange believes that this close alignment between the entities and their interests has allowed BOX Options Market to be fairly represented on the Board of the Exchange through the BOX Holdings Director. However, in anticipation of the Exchange continuing to regulate BOX Options Market but also potentially other facilities, the Exchange believes that it is appropriate to provide direct representation on the Exchange Board to the facilities of the Exchange to promote their fair representation in the administration of the Exchange's affairs and the selection of its directors. The Exchange believes this more direct representation is important because not every facility of the Exchange would necessarily share the same close alignment of interests that currently exists between BOX Holdings and BOX Options Market due to BOX Holdings being the 100% owner of the facility and given that the composition of the boards of directors of the two entities is the same.

The Exchange is therefore proposing to delete the definition of ''BOX Holdings Director'' from the Bylaws and to make certain conforming changes to the Bylaws that are described below that would instead provide representation on the Board and its nominating committee (''Nominating Committee'')[8] to ''Facility Directors'' and ''Facility Representatives'' as those terms are proposed to be added to the Bylaws. Also as described below, the Exchange would make a related conforming change to remove the right of BOX Holdings in the LLC Agreement to appoint one director to the Board.[9]

*BOX Options Participant.* The Exchange is proposing to remove the term ''BOX Options Participant'' from the Bylaws.[10] This change is proposed because the Exchange believes that it would be more appropriate to replace the use of the term ''BOX Options Participant'' throughout the Bylaws with the defined term ''Exchange Facility Participant'' as defined in the LLC Agreement. As noted above in connection with the proposed adoption of the term ''Exchange Facility Participant'' in the LLC Agreement, the term would be defined broadly enough to refer to a participant in the BOX Options Market and to any other type of ''Exchange Facility Participant'' as may become relevant in the future. Therefore, the Exchange believes that the deletion of the term ''BOX Options Participant'' from the Bylaws and the replacement of those references with ''Exchange Facility Participant'' would not change the meaning of the relevant Bylaw provisions other than to make them flexible enough to contemplate that the Exchange may regulate multiple facilities having their own participants. Additionally, the Exchange is proposing to delete the term ''BOX Options Participant'' from the LLC Agreement, as described above.

*Facility Director.* The Exchange is proposing to add the definition of ''Facility Director'' to the Bylaws.[11] The term ''Facility Director'' would mean ''a Director who is a director or senior

[7] *See* Bylaws, Art. 1, Section 1.01(b).

[8] The Nominating Committee is not a Board Committee, but rather a committee of the Exchange.

[9] *See infra* regarding discussion of Section 4.1(a) of the LLC Agreement.

[10] *See* Bylaws, Art. 1, Section 1.01(c).

[11] *See* Bylaws, proposed Section 1.01(j).

executive officer of an Exchange Facility.'' The use of the term ''Director'' in the definition refers to that term as it is defined in the LLC Agreement because it is a capitalized term that is not defined in the Bylaws, and Section 1.01 of the Bylaws states that any such capitalized term used in the Bylaws without definition has the meaning assigned to it in the LLC Agreement.[12] Accordingly, the proposed definition of ''Facility Director'' in the Bylaws refers to an individual who is both a ''Director'' on the Board and a director or senior executive officer of an ''Exchange Facility,'' as the Exchange proposes to add that defined term to its Bylaws.

*Facility Representative.* The Exchange is proposing to add the definition of ''Facility Representative'' to the Bylaws.[13] The term ''Facility Representative'' would mean ''an individual who is a director or senior executive officer of an ''Exchange Facility,'' as the Exchange proposes to add that defined term to its LLC Agreement. In contrast to a ''Facility Director'' as described above, an individual who is a ''Facility Representative'' would not also be a ''Director'' of the Exchange.

*LLC Agreement.* The Exchange is proposing to update the definition of ''LLC Agreement'' in the Bylaws.[14] The definition would be changed to mean the Second Amended and Restated BOX Exchange LLC Limited Liability Company Agreement. The Exchange proposes this change in connection with the proposed changes to the LLC Agreement that are described herein because they would cause the LLC Agreement to be amended and restated a second time.

*Participant Representative.* The Exchange is proposing to amend the defined term ''Participant Representative.'' [15] It would be modified to provide that the term means an officer, director or employee of an ''Exchange Facility Participant'' rather than only applying to a ''BOX Options Participant.[16] The proposed change would accommodate the Exchange's potential regulation of multiple facilities by providing a broader definition. Additionally, the proposed change to the definition conforms to the language changes made throughout to change ''BOX Options Participant'' to ''Exchange Facility Participant.''

*Public Director.* The Exchange is proposing to amend the definition of Public Director.[17] Specifically, the references in the definition to ''BOX Options Participant'' would be removed and replaced with the newly proposed defined term ''Exchange Facility Participant'' from the LLC Agreement. As described above in connection with the proposed deletion of the term ''BOX Options Participant'' from the Bylaws, the Exchange believes that the replacement of those references with ''Exchange Facility Participant'' would not change the meaning of the defined term ''Public Director'' other than to make it flexible enough to contemplate that the Exchange may regulate multiple facilities having their own participants.

*System.* The Exchange is proposing to remove the definition of ''System'' from the Bylaws.[18] The term is defined to mean ''the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions.'' The Exchange is proposing to remove the definition because it is only used in the Bylaws in two places—the definition of ''BOX Options Participant'' and in Section 5.03(b) of the Bylaws. For the reasons described above, the Exchange is also proposing to delete the definition of ''BOX Options Participant'' and therefore the only remaining use of the defined term ''System'' would appear in Section 5.03(b) of the Bylaws as proposed to be revised. However, the Exchange is also proposing to delete the use of ''System'' from Section 5.03(b) of the Bylaws because it believes that using the plain meaning of the word system is more efficient and would not materially change the meaning of any provisions in the Bylaws. Therefore, the Exchange proposes to delete the defined term ''System'' as a streamlining change to eliminate unnecessary content from the Bylaws and to produce a simplified structure for the definitions in the Bylaws that is easier to read and understand.

## Proposed Changes to the LLC Agreement

In addition to the proposed changes to the definitions in the LLC Agreement described above, the Exchange is also proposing to make the following changes to the LLC Agreement.

BOX Holdings Group LLC is proposed to be removed as a party to the LLC Agreement. The current parties to the LLC Agreement are the Exchange, BOX Holdings, and the Exchange's Members, who are each unit holders of the Exchange. BOX Holdings is not a Member of the Exchange and is only a party to the LLC Agreement with respect to its rights to appoint individuals to serve on the Exchange's Board and Nominating Committee. As described above in connection with the description of the proposed changes to delete the defined term ''BOX Holdings'' from the LLC Agreement and the defined term ''BOX Holdings Director'' from the Bylaws, Section 4.1(a) of the LLC Agreement currently provides that BOX Holdings ''shall have the right to appoint one (1) (but not more than one (1)) Director who is also an officer or director of BOX Holdings or an Affiliate of BOX Holdings.'' Because the Exchange is proposing to transfer this right from BOX Holdings directly to the facility, BOX Options Market, for the reasons that are explained above in connection with the proposed removal of the defined term ''BOX Holdings Director,'' there would no longer be any substantive provisions in the LLC Agreement applicable to BOX Holdings that would be relevant for BOX Holdings to continue to be a party to the LLC Agreement. When the LLC Agreement was first approved, BOX Holdings was a holding company which wholly owned the Exchange's only facility, BOX Options Market, and was therefore merely the alter ego of the facility. Since that time, however, BOX Holdings has grown to become the owner of multiple subsidiaries in addition to BOX Options Market. In addition, the Exchange now proposes to be permitted to regulate multiple facilities, each of which would have similar representation on the Exchange and its Board. The right to appoint a director to the Exchange Board is proposed to reside in each Exchange Facility. Therefore, the Exchange believes it is in keeping with the original intent of the LLC Agreement with respect to BOX Options Market to have BOX Options Market's rights reside directly in BOX Options Market, rather than with its upstream owner, and that similar rights will reside directly with any other new Exchange Facility as proposed herein. Accordingly, the Exchange is proposing that BOX Holdings be removed as a party as it is no longer relevant. The Exchange would remain fully authorized to regulate BOX Options Market, and its parent, BOX Holdings,

[12] The term ''Director'' in the LLC Agreement states that it has the meaning set forth in Section 4.1 of the LLC Agreement. Section 4.1 provides that ''[e]xcept as provided in this [LLC Agreement], the business and affairs of the Exchange shall be managed by, or under the direction of, a board of directors (the '*Board*' and each member thereof, a '*Director*').''

[13] *See* Bylaws, proposed Section 1.01(k).

[14] *See* Bylaws, Section 1.01(q).

[15] *See* Bylaws, Section 1.01(v).

[16] *See* proposed changes to Article 1 of the LLC Agreement to introduce the terms ''Exchange Facility'' and ''Exchange Facility Participant.''

[17] *See* Bylaws, Section 1.01(w).

[18] *See* Bylaws, Section 1.01(z).

would not have any ability or incentive to disregard the Exchange's regulatory authority. All of the existing Members and the Exchange would continue to be parties to the LLC Agreement.

The Exchange does not believe the removal of BOX Holdings from the LLC Agreement will change the obligations of BOX Holdings. Although Sections 15.1 and 15.4 of the LLC Agreement currently include references to the ''parties'' to the LLC Agreement, these references do not impose any ongoing obligations upon BOX Holdings or otherwise bind BOX Holdings. In addition, a reference to the Confidential Information of BOX Holdings appears in Section 15.5, which obligates the Exchange to keep such information confidential. BOX Holdings currently has no obligations under Section 15.5 and the Exchange believes it is unlikely to include any Confidential Information of BOX Holdings in its books and records. As a result, the Exchange believes the removal of BOX Holdings as a party to the LLC Agreement will have no effect upon the confidentiality provisions in Article 15 thereof. However, the Exchange notes that BOX Holdings remains obligated, under Section 15.6 of the BOX Holdings limited liability company agreement, to protect and not disclose any confidential information of the Exchange of which BOX Holdings may become aware. The Exchange further notes that BOX Holdings remains obligated, under Section 11.1 of the BOX Holdings limited liability company agreement, to allow the Exchange to access, inspect and copy its books and records and to maintain those books and records in the United States. The Exchange does not propose to alter any provisions of the limited liability company agreement of BOX Holdings.[19]

In Section 2.2 of the LLC Agreement, the Exchange proposes an update to reflect a factual change in the address of its registered agent in Delaware.

The Exchange is proposing to change certain references to ''BOX Options Market'' throughout the LLC Agreement to the newly proposed defined term ''Exchange Facility.'' [20] The proposed changes would modify the relevant provisions to create a structure in the LLC Agreement that contemplates the Exchange's contemplated regulation of multiple facilities.

In Article 3 of the LLC Agreement, the Exchange is proposing to replace ''an options market'' with ''securities markets.'' Article 3 of the LLC Agreement describes the purpose of forming the Exchange. The proposed change would provide that the purpose of the Exchange is, in part, to support the operation, regulation, and surveillance of securities markets—not just an options market as is currently stated. The proposed change would support the Exchange's contemplated regulation of potential new facilities that would facilitate trading in securities instruments that are not options.

The Exchange is proposing to amend Section 4.1(a) of the LLC Agreement to remove the requirement that BOX Holdings shall have the right to appoint one director. As described above, this change is proposed in connection with the Exchange's proposals to remove BOX Holdings as a party to the LLC Agreement, remove the defined term ''BOX Holdings Director'' from the Bylaws and provide direct representation on the Exchange Board to the facilities of the Exchange to promote their fair representation in the administration of the Exchange's affairs and the selection of its directors.

The Exchange is proposing to change references to ''BOX Options Participant'' to ''Exchange Facility Participant'' throughout the LLC Agreement.[21] The proposed change would contemplate the Exchange's potential regulation of multiple facilities and conform the LLC Agreement in response to the related changes in the definitions section.

The Exchange is proposing to change references to ''BOX Options'' to ''any Exchange Facility'' throughout the LLC Agreement.[22] The proposed change would contemplate the Exchange's potential regulation of multiple facilities and conform the LLC Agreement in response to the related changes in the definition section.

As described above, the Exchange is proposing to amend Section 15.4(b) of the LLC Agreement to remove a reference to ''Related Agreements'' because the Exchange is proposing to remove the defined term ''Related Agreements'' from the LLC Agreement. The Exchange would also add the words ''or related to'' in Section 15.4(b). Specifically, Section 15.4(b) currently provides in relevant part that certain representatives of (i) the members of the LLC Agreement, (ii) BOX Options Market and (iii) the Exchange will have procedures designed to maintain confidentiality of certain information of the Exchange while facilitating business activities contemplated by the LLC Agreement and the ''Related Agreements.'' In connection with deleting the reference to ''Related Agreements,'' the Exchange would insert language to state that representatives of the relevant parties would be required to have procedures designed to maintain confidentiality of certain information of the Exchange while facilitating any business activities contemplated by ''or related to'' the LLC Agreement ''or the conduct of the business of the Exchange and any Exchange Facility.'' This change would not bear on the substantive requirements that obligate representatives of the relevant parties to have procedures designed to maintain confidentiality of certain information of the Exchange.

The Exchange is proposing to amend Section 15.5 of the LLC Agreement to contemplate the potential regulation of multiple facilities. Section 15.5 currently provides in relevant part that certain confidential information of BOX Holdings, BOX Options Market or the Exchange pertaining to regulatory matters of BOX Holdings, BOX Options Market or the Exchange that is contained in the books and records of the Exchange or any of its subsidiaries shall be subject to certain confidential treatment. The Exchange is proposing to replace references to BOX Holdings and BOX Options Market with ''any Exchange Facility, any Affiliate thereof.'' The result of this change would be that the confidentiality protections in Section 15.5 pertaining to regulatory matters would continue to apply to BOX Options Market as an ''Exchange Facility'' and would continue to apply to BOX Holdings as an affiliate of BOX Options Market. However, the confidentiality protections would also be broadened to apply to any new ''Exchange Facility'' as that term is proposed to be defined in the LLC Agreement and any affiliate thereof. The Exchange believes that these expanded confidentiality protections regarding certain information in the books and records of the Exchange or any of its subsidiaries is appropriate to promote strong commercial relationships between the Exchange and its facilities.

The Exchange is proposing to amend Section 18.3 of the LLC Agreement. Specifically, the Exchange would remove a provision applicable to providing notice to BOX Holdings

[19] The Exchange notes that the limited liability company agreement of BOX Holdings currently contains a number of provisions intended to provide protections for a regulated market, including, for example, Sections 4.12 and 11.1, Article 15, and Section 18.6 thereof. The changes proposed by this rule filing will not disrupt any of these provisions and will not change going forward.

[20] *See* proposed changes to Articles 2.5(d), 5.6, 5.7, and 8.1 of the LLC Agreement.

[21] *See* proposed changes to Articles 7.3(f), 7.3(g), and 7.3(i) of the LLC Agreement.

[22] *See* proposed changes to Articles 15.2(a), 15.3, 15.4(a), and 15.5 of the LLC Agreement.

because for the reasons described above the Exchange is proposing to remove BOX Holdings as a party to the LLC Agreement.

Proposed Changes to the Bylaws

The Exchange is proposing to change references to ''BOX Options Participant'' to ''Exchange Facility Participant'' throughout the Bylaws [23] The proposed change would contemplate the Exchange's potential regulation of multiple facilities and conform the LLC Agreement in response to the related changes in the definition section.

The Exchange is proposing to change references to ''BOX Holdings Director'' to ''Facility Representative'' or ''Facility Director'' throughout the Bylaws.[24] For the reasons described above in connection with the proposed removal of the definition of ''BOX Holdings Director'' from the Bylaws, the proposed change is a conforming change to accommodate the Exchange's contemplated regulation of multiple facilities as opposed to regulating only a single facility—BOX Options Market. While the same individual may simultaneously fill the roles of Facility Director and Facility Representative, the proposed change allows each facility the flexibility, if the facility deems it prudent and convenient, to have one individual serve as the Facility Director on the Exchange Board and a different individual to serve as the Facility Representative on the Nominating Committee. The qualifications of individuals to serve as a Facility Director and/or a Facility Representative are the same—that such individual be a director or senior executive officer of the Exchange Facility—provided that a Facility Director must also be a Director of the Exchange while a Facility Representative need not be.

Under existing Section 4.02 of the Bylaws, at least twenty percent (20%) of the Board must be comprised of ''Participant Directors.'' [25] The existing definition of a ''Participant Director'' means a ''Director'' [26] who is a Participant Representative by virtue of being an officer, director or employee of a BOX Options Participant. The proposed changes to Section 4.02 would continue to require that at least twenty percent (20%) of the Board would be comprised of Participant Directors. In order to qualify as a Participant Director, any person would be required to be serving as an officer, director or employee of an Exchange Facility Participant. The proposed changes would also provide that at least one (1) Participant Director shall be selected from among the Exchange Facility Participants of each Exchange Facility.

Section 4.02 of the Bylaws currently provides that the Board includes one (1) director who is a ''BOX Holdings Director.'' The Exchange proposes to remove this provision and replace it with a requirement that a number of directors that is equal to the number of Exchange Facilities shall be ''Facility Directors'' and that one (1) such ''Facility Director'' would be selected by each Exchange Facility. The existing provision provides the existing Exchange Facility (in this case, through its alter-ego parent entity, BOX Holdings) with representation on the Exchange Board, which fosters cooperation and communication between the Board and the Exchange Facility. The allowance of a single representative from the Exchange Facility to sit on the Exchange's Board is appropriate but does not permit the Exchange Facility to exert control over the Exchange.

The proposed change here would accomplish two things. First, the change would allow each Exchange Facility to have the same representation on the Exchange Board. This would promote equal treatment of each Exchange Facility regulated by the Exchange. Second, since each potential new Exchange Facility may have a different ownership structure, this proposed change would uniformly require that each such representative would come from the leadership of, and be directly designated by, the actual Exchange Facility rather than a parent organization. This would create the best and closest representation to the Exchange for each Exchange Facility. The proposed change would apply to the existing Exchange Facility, BOX Options Market (and its parent, BOX Holdings), and would move the existing BOX Holdings Director to be a Facility Director. The Exchange believes this change is not substantive with respect to the BOX Options Market and BOX Holdings because, as described above, the two entities are under common control.

The proposed change would ensure that each Exchange Facility would have one (1) Facility Director serving on the Board. In order to qualify as a Facility Director, any person would be required to be serving as a director or senior executive officer of an Exchange Facility. This proposal is the same as currently applies to BOX Options Market through its parent, BOX Holdings.

The existing BOX Holdings Director serves on committees of the Board but is prohibited from serving on the Exchange Board's Compensation Committee and Regulatory Oversight Committee. This existing prohibition helps to ensure that the existing Exchange Facility, BOX Options Market (or its parent, BOX Holdings), will not have access to the confidential information considered by these committees and to eliminate any influence by BOX Options Market (or its parent, BOX Holdings) with respect to the matters decided by these committees, including regulatory matters related to BOX Options Market and compensation paid to Exchange directors, officers and employees who have supervisory authority over BOX Options Market. The proposed change provides that one (1) Facility Director from each Exchange Facility would serve on Board committees but would continue to prohibit Facility Directors from serving on the Compensation and Regulatory Oversight Committees. This proposed prohibition would continue to help ensure that no Exchange Facility would have access to the confidential information considered by these committees and to help prevent any Exchange Facility from exercising influence with respect to the matters decided by these committees, including regulatory matters related to an Exchange Facility and compensation paid to Exchange directors, officers and employees who have supervisory authority over Exchange Facilities. In the event an Executive Committee is appointed by the Board, each Exchange Facility would have the right to have one (1) of its Facility Directors sit on the Executive Committee, pursuant to Section 6.04 of the Bylaws.

As proposed in Section 4.02 of the Bylaws, as soon as practicable after a new Exchange Facility begins operating as an Exchange Facility, a Participant Director and a Facility Director of the new facility would be appointed by the Board and would serve until the next annual meeting of the Members, when the regular selection processes shall govern. The process for selecting, appointing and electing Participant Directors and Facility Directors to serve on the Board would remain essentially the same—with the only difference being that each Exchange Facility would be represented.

In accordance with Section 4.06 of the Bylaws, at least twenty percent (20%) of the Nominating Committee must be comprised of ''Participant

[23] *See* proposed changes to Sections 4.02, 4.04(c), 4.06(d), 5.03(b)–(h), and 6.08(a)–(b) of the Bylaws.

[24] *See* proposed changes to proposed Sections 4.06(c) and 4.06(d) of the Bylaws and Sections 6.01, 6.06 and 6.07 of the Bylaws.

[25] *See* Bylaws, Section 1.01(u).

[26] *See* LLC Agreement, Article 1, Section 1.1 and Article 4, Section 4.1(a).

Representatives,'' [27] which, as described above, would be defined in the Bylaws to mean officers, directors or employees of firms or organizations that are registered with the Exchange for purposes of participating in trading on the Exchange's existing facility as an order flow provider or market maker. In order to qualify as a Participant Representative, any person would be required to be serving as an officer, director or employee of an Exchange Facility Participant. The proposed changes would continue to ensure that at least twenty percent (20%) of the Nominating Committee would be comprised of ''Participant Representatives'' but Section 4.06(a) would also provide that at least one (1) Participant Representative would be selected from each Exchange Facility.

Section 4.06(a) of the Bylaws also provides that the Nominating Committee currently includes one ''BOX Holdings Director'' unless that director declines to serve. The Exchange is proposing to delete this provision for the reasons described above regarding the proposed removal of the defined term ''BOX Holdings Director'' from the Bylaws. In order to qualify as a Facility Representative, any person would be required to be serving as a director or senior executive officer of an Exchange Facility. This proposal is the same as currently applies to BOX Options Market through its parent, BOX Holdings. In addition, the Exchange is proposing changes that would ensure that each Exchange Facility would have one (1) Facility Representative serving on the Nominating Committee.

As generally proposed in Section 4.02 of the Bylaws, as soon as practicable after a new Exchange Facility begins operating as a facility of the Exchange, a ''Participant Representative'' [28] and a ''Facility Representative'' [29] of the new Exchange Facility would be appointed by the Board and would serve until the next annual meeting of the Members, when the regular selection processes shall govern. The process for selecting, appointing and electing ''Participant Representatives'' and ''Facility Representatives'' to serve on the Nominating Committee would remain essentially the same—with the only difference being that each Exchange Facility would be represented.

Text that is no longer applicable would be eliminated from the end of Section 4.06(b) and (c) of the Bylaws. The text is no longer applicable because it is specific to the first annual meeting of the Board that occurred after the Exchange was approved as an SRO and so the provisions are outdated and no longer relevant. Accordingly, these removals are streamlining changes that the Exchange is proposing to eliminate unnecessary content from the Bylaws and produce Bylaws that are easier to read and understand.

The Exchange proposes to eliminate the provision in Section 4.11(e) of the Bylaws that allows only a ''BOX Holdings Director'' to appoint an observer to attend Board meetings in such Director's place. The provision would be removed in connection with the proposed removal of the defined term ''BOX Holdings Director'' from the Bylaws. This change is due to the proposed increased number of individuals serving as Facility Directors when multiple facilities are being regulated, resulting in a higher administrative burden on the Exchange to monitor and vet potential individuals who may only be briefly involved in the business of the Exchange. The Exchange believes this change will allow the Exchange to maintain its ability to regulate the individuals who have access to Exchange confidential information.

The Exchange is proposing a ministerial change to Section 4.11(f) to spell out the full legal name of BOX Holdings Group LLC. While the Exchange is proposing to remove the representation of BOX Holdings on the Board through the current ''BOX Holdings Director'' as described above, the reference to BOX Holdings in this Section 4.11(f) remains relevant as the provision establishes more general constraints on who may attend meetings of the Board.

The Exchange is proposing changes to Section 5.03 of the Bylaws that would provide rulemaking authority to the Exchange over multiple facilities. Specifically, Section 5.03 addresses the Board's authority to adopt, amend or repeal rules of the Exchange. Existing references to ''BOX Options Participants'' would be replaced by references to the proposed term ''Exchange Facility Participants'' to contemplate that the Exchange may regulate other facilities in the future other than only the BOX Options Market and that the Exchange would also have rules in place that would apply to participants using those facilities. In addition, as described above, the Exchange proposes to eliminate the defined term ''System'' from the LLC Agreement and therefore Section 5.03(b) of the Bylaws is proposed to be revised to replace the term ''System'' with descriptive text that conveys substantially the same meaning.

2. Statutory Basis

Section 6(b)(5) of the Exchange Act [30] requires, among other things, that the rules of a national securities exchange be designed to ''foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities'' and ''to protect investors and the public interest.'' The Exchange believes that the proposed rule change is consistent with these requirements for two primary reasons. First, the Exchange is proposing changes to the LLC Agreement and Bylaws that are designed to allow the Exchange to regulate multiple facilities. As described above, the Exchange currently regulates only the BOX Options Market as a facility, but it proposes to be able to add other facilities. Therefore, the changes to the LLC Agreement and Bylaws would promote the Exchange's ability to regulate other facilities and the Exchange believes that this, in turn, would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities traded through the facilities of the Exchange by notifying such persons of the potential for the Exchange to regulate multiple facilities in the future. Second, certain defined terms in the LLC Agreement and the Bylaws would be added, modified or removed to produce a simplified set of defined terms that is easier to read and understand and that is flexible enough to accommodate the potential for multiple facilities of the Exchange and rules related thereto. The Exchange believes that simplifying the defined terms used throughout the LLC Agreement and the Bylaws and making the terms consistent with the Exchange's intent to regulate multiple facilities would promote readability and comprehension of the LLC Agreement and Bylaws that would promote the protection of investors and the public interest by making the related rights and responsibilities under the LLC Agreement and Bylaws clear and concise.

Section 6(b)(3) of the Exchange Act [31] requires, among other things, that the rules of a national securities exchange must ''assure a fair representation of its members in the selection of its directors and administration of its affairs[.]'' The

[27] *See* Bylaws, Section 1.01(v).

[28] *See* Bylaws, proposed Section 1.01(v).

[29] *See* Bylaws, proposed Section 1.01(k).

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(3).

Exchange believes that the proposed rule change is consistent with the fair representation requirements of Section 6(b)(3) of the Exchange Act because proposed Section 4.02 of the Bylaws would continue to provide that ''Participant Directors'' who are officers, directors, or employees of an ''Exchange Facility Participant'' would have at least twenty percent (20%) representation on the Board. This parallels the existing structure of the Bylaws as currently applicable to the BOX Options Market (through its parent, BOX Holdings) as the only facility of the Exchange. The proposed difference is that the requirements would be applied to ''Exchange Facility Participants'' as a more general mechanism to achieve fair representation on the Board of ''Exchange Facility Participants'' across all potential facilities of the Exchange. In addition, the proposed changes provide that each Exchange Facility will have at least one representative on the Board so that every Exchange Facility would be represented.

Similarly, the Exchange believes that the proposed rule change with respect to Section 4.06 of the Bylaws is also consistent with the fair representation requirements of Section 6(b)(3) of the Exchange Act because proposed Section 4.06 of the Bylaws would continue to provide that ''Participant Representatives'' who are officers, directors, or employees of an ''Exchange Facility Participant'' would have at least twenty percent (20%) representation on the Nominating Committee. This parallels the existing structure of those Bylaw provisions as currently applicable to the BOX Options Market as the only facility of the Exchange. The proposed difference is that the requirements would be applied to ''Exchange Facility Participants'' as a more general mechanism to achieve fair representation on the Nominating Committee of ''Exchange Facility Participants'' across all potential facilities of the Exchange. In addition, the proposed changes provide that each Exchange Facility will have at least one representative on the Nominating Committee so that every Exchange Facility is represented.

The Exchange believes that the proposed removal of BOX Holdings from the LLC Agreement is consistent with Section 6(b)(3) of the Exchange Act. As discussed above, BOX Holdings is not a Member of the Exchange and is only a party to the LLC Agreement with respect to its rights to appoint individuals to serve on the Exchange's Board and Nominating Committee. The right to appoint a director to the Exchange Board is now proposed to reside in each Exchange Facility, which is consistent with the fair representation requirements of Section 6(b)(3) of the Exchange Act by providing a more general mechanism to achieve fair representation on the Board.

The Exchange now proposes to be permitted to regulate multiple facilities, each of which would have similar representation on the Exchange and its Board. As such, removal of BOX Holdings is consistent with the requirements of the Act, particularly with Section 6(b)(1),[32] which requires, in part, an exchange be so organized and have the capacity to carry of the purposes of the Act by providing representation of each facility.

The Exchange believes the removal of BOX Holdings from the LLC Agreement is consistent with Section 6(b)(5) of the Exchange Act because, as explained above, with the proposed changes to the LLC Agreement designed to allow the Exchange to regulate multiple facilities it is no longer necessary to include BOX Holdings in the LLC Agreement. As such, the proposed change would promote readability and comprehension of the LLC Agreement that would promote the protection of investors and the public interest by making the related rights and responsibilities under the LLC Agreement clear and concise. As such, the Exchange believes the proposal to remove BOX Holdings is consistent with the requirements of Section 6(b) of the Act in general.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition. As described above, the Exchange is proposing certain discrete amendments to the LLC Agreement and Bylaws that would (i) provide sufficient flexibility in the documents for them to contemplate that there may be multiple Exchange facilities under the Exchange's regulatory authority, (ii) simplify the structure of the defined terms in the LLC Agreement and Bylaws to make them easier to read and understand, and (iii) make certain other changes to the terms of the LLC Agreement and Bylaws to bring them current with the structure of the Exchange and its relationships. To the extent that the proposed changes to the LLC Agreement and the Bylaws would apply to Exchange Facilities or participants in an Exchange Facility, the proposed changes would apply equally and would therefore not favor any particular Exchange Facility over any other or any particular participant in any Exchange Facility over any other. For these reasons, the Exchange believes that the proposed changes are consistent with the Exchange Act because they would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.[33]

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2020–04 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2020–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/*

[32] 15 U.S.C. 78f(b)(1)

[33] 15 U.S.C. 78f(b)(8).

*rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2020–04, and should be submitted on or before March 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03640 Filed 2–24–20; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 33800; File No. 812–15037]**

## Prospect Capital Management L.P., et al.

February 19, 2020.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c), and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees, and early withdrawal charges (''EWCs'').

**APPLICANTS:** Prospect Capital Management L.P. (the ''Adviser''), Priority Senior Secured Income Management, LLC (''PSSIM''), and Priority Income Fund, Inc. (the ''Initial Fund'').

**FILING DATES:** The application was filed on May 28, 2019 and amended on September 17, 2019 and December 10, 2019.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 16, 2020, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: 10 East 40th Street, 42nd Floor, New York, NY 10016.

**FOR FURTHER INFORMATION CONTACT:** Barbara T. Heussler, Senior Counsel, at (202) 551–6990, or Trace W. Rakestraw, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

### Applicants' Representations

1. The Initial Fund is a Maryland corporation that is registered under the Act as an externally managed, non-diversified, closed-end management investment company. The Initial Fund's investment objective is to generate current income and, as a secondary objective, long-term capital appreciation.

2. PSSIM is a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and currently serves as investment adviser to the Initial Fund pursuant to an advisory agreement. The Adviser is a Delaware limited partnership and is registered as an investment adviser under the Advisers Act. The Adviser owns 50% of PSSIM and is the operating member of PSSIM, responsible for making all investment and operational decisions for PSSIM.

3. The applicants seek an order to permit the Initial Fund to issue multiple classes of shares and to impose asset-based distribution and/or service fees, and EWCs.

4. Applicants request that the order also apply to any continuously offered registered closed-end management investment company, existing now or in the future, for which the Adviser or any entity controlling, controlled by, or under common control with the Adviser, or any successor in interest to any such entity,[1] acts as investment adviser and that operates as an interval fund pursuant to rule 23c–3 under the Act or provides periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Securities Exchange Act of 1934 (''Exchange Act'') (each, a ''Future Fund'' and together with the Initial Fund, the ''Funds'').[2]

5. The Initial Fund currently makes a continuous public offering of its shares. Applicants state that additional offerings by any Fund relying on the order may be on a private placement or public offering basis. Shares of the Funds will not be listed on any securities exchange, nor quoted on any quotation medium. The Funds do not expect there to be a secondary trading market for their shares.

6. If the requested relief is granted, the Initial Fund may also offer additional classes of shares in the future, with each class having its own fee and expense structure.

7. Applicants state that, from time to time, the Funds may create additional classes of shares, the terms of which may differ from the initial class pursuant to and in compliance with rule 18f-3 under the Act.

8. The Initial Fund provides periodic liquidity with respect to its shares

[34] 17 CFR 200.30–3(a)(12)

[1] A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Any Fund relying on this relief in the future will do so in compliance with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

pursuant to rule 13e–4 under the Exchange Act. Each Future Fund will either adopt fundamental investment policies in compliance with rule 23c–3 under the Act and make periodic repurchase offers to its shareholders, or provide periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Exchange Act.[3] Any repurchase offers made by the Funds, whether pursuant to rule 13e–4 under the Exchange Act or rule 23c–3 under the Act, will be made to all holders of shares of each such Fund.

9. Applicants represent that any asset-based distribution and/or service fees for each class of shares will comply with the provisions of Rule 2341 (''Sales Charge Rule'') of the Financial Industry Regulatory Authority, Inc. (''FINRA'').[4] Applicants also represent that each Fund will disclose in its prospectus the fees, expenses, and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N–1A. As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and describe any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.[5] In addition, applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge funds.[6]

10. Each Fund will comply with any requirements that the Commission or FINRA may adopt regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements, as if those requirements applied to each Fund. In addition, each Fund will contractually require that any distributor of the Fund's shares comply with such requirements in connection with the distribution of such Fund's shares.

11. Applicants state that each Fund may impose an EWC on shares submitted for repurchase that have been held less than a specified period and may waive the EWC for certain categories of shareholders or transactions to be established from time to time. Applicants state that each Fund will apply the EWC (and any waivers, scheduled variations or eliminations of the EWC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d-1 under the Act as if the Funds were open-end investment companies.

12. Each Fund operating as an interval fund pursuant to rule 23c–3 under the Act may offer its shareholders an exchange feature under which the shareholders of the Fund may, in connection with the such Fund's periodic repurchase offers, exchange their shares of the Fund for shares of the same class of (i) registered open-end investment companies or (ii) other registered closed-end investment companies that comply with rule 23c–3 under the Act and continuously offer their shares at net asset value, that are in the Fund's group of investment companies (collectively, ''Other Funds''). Shares of a Fund operating pursuant to rule 23c–3 that are exchanged for shares of Other Funds will be included as part of the amount of the repurchase offer amount for such Fund as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act, as if the Fund were an open-end investment company subject to rule 11a–3. In complying with rule 11a–3, each Fund will treat an EWC as if it were a contingent deferred sales load (''CDSL'').

**Applicants' Legal Analysis**

*Multiple Classes of Shares*

1. Section 18(a)(2) of the Act makes it unlawful for a closed-end investment company to issue a senior security that is a stock unless certain requirements are met. Applicants state that the creation of multiple classes of shares of the Funds may violate section 18(a)(2) because the Funds may not meet such requirements with respect to a class of shares that may be a senior security.

2. Section 18(c) of the Act provides, in relevant part, that a registered closed-end investment company may not issue or sell any senior security that is stock if, immediately thereafter, the company has outstanding more than one class of senior security that is stock. Section 18(g) of the Act defines ''senior security'' that is stock as ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends''. Applicants state that the creation of multiple classes of shares of a Fund proposed herein may result in shares of a class having priority over another class as to payment of dividends, and being deemed a ''senior security,'' because shareholders of different classes may pay different distribution fees, different shareholder services fees, and any other expense (as described elsewhere in this notice). Accordingly applicants state that the creation of multiple classes of shares of a Fund with different fees and expenses may be prohibited by section 18(c).

3. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(a)(2), 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

5. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

[3] Applicants submit that rule 23c–3 and Regulation M under the Exchange Act permit an interval fund to make repurchase offers to repurchase its shares while engaging in a continuous offering of its shares pursuant to rule 415 under the Securities Act of 1933.

[4] Any references in the application to the Sales Charge Rule include any FINRA successor or replacement rule to the Sales Charge Rule.

[5] Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Rel. No. 26372 (Feb. 27, 2004) (adopting release); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Rel. No. 26464 (June 7, 2004) (adopting release).

[6] Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). *See* also Rules 12d1–1, *et seq.* of the Act.

*Early Withdrawal Charges*

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company shall purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits an interval fund to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase. A Fund will not impose a repurchase fee on investors who purchase and tender their shares.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c–3 to the extent necessary for the Funds to impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the EWCs they intend to impose are functionally similar to CDSLs imposed by open-end investment companies under rule 6c–10 under the Act. Rule 6c–10 permits open-end investment companies to impose CDSLs, subject to certain conditions. Applicants note that rule 6c–10 is grounded in policy considerations supporting the employment of CDSLs where there are adequate safeguards for the investor and state that the same policy considerations support imposition of EWCs in the interval fund context. In addition, applicants state that EWCs may be necessary for the distributor to recover distribution costs. Applicants represent that any EWC imposed by the Funds will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. The Funds will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSLs.

*Asset-Based Distribution and/or Service Fees*

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit the Funds to impose asset-based distribution and/or service fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based distribution and/or service fees.

3. For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based distribution and/or service fees is consistent with the provisions, policies, and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

**Applicants' Condition**

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1, and, where applicable, 11a–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03676 Filed 2–24–20; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88238; File No. SR–NYSEAMER–2020–10]**

## Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change To Amend the Schedule of Wireless Connectivity Fees and Charges To Add Wireless Connectivity Services

February 19, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 12, 2020, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add wireless connectivity services that transport the market data of certain affiliates of the Exchange to the schedule of Wireless Connectivity Fees and Charges (the ''Wireless Fee Schedule''). The proposed rule change is available on the Exchange's website at

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to add wireless connectivity services that transport market data of three Exchange affiliates, New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca'') and NYSE National, Inc. (''NYSE National'') to the Wireless Fee Schedule.[4] A market participant is not able to use the wireless connectivity services to connect to Exchange market data.

The wireless connections can be purchased by market participants in three data centers that are owned and operated by third parties unaffiliated with the Exchange: (1) Carteret, New Jersey, (2) Secaucus, New Jersey, and (3) Markham, Canada (collectively, the ''Third Party Data Centers''). A market participant in a Third Party Data Center that purchases a wireless connection (''Wireless Market Data Connection'') receives connectivity to certain NYSE, NYSE Arca and NYSE National market data feeds (collectively, the ''Selected Market Data'') [5] distributed from the Mahwah, New Jersey data center. Customers that purchase a wireless connection to Selected Market Data are charged an initial and monthly fee for the service of transporting the Selected Market Data.

The Exchange does not believe that the present proposed change is a change to the ''rules of an exchange'' [6] required to be filed with the Commission under the Act. The definition of ''exchange'' under the Act includes ''the market facilities maintained by such exchange.'' [7] Based on its review of the relevant facts and circumstances, and as discussed further below, the Exchange has concluded that the Wireless Market Data Connections are not facilities of the Exchange within the meaning of the Act, and therefore do not need to be included in its rules.

The Exchange is making the current proposal solely because the Staff of the Commission has advised the Exchange that it believes the Wireless Market Data Connections are facilities of the Exchange and so must be filed as part of its rules.[8] The Staff has not set forth the basis of its conclusion beyond verbally noting that the Wireless Market Data Connections are provided by an affiliate of the Exchange and a market participant could use a Wireless Market Data Connection to connect to market data feeds of Affiliate SROs.[9]

The Exchange expects the proposed change to be operative 60 days after the present filing becomes effective.

The Exchange and the ICE Affiliates

To understand the Exchange's conclusion that the Wireless Market Data Connections are not facilities of the Exchange within the meaning of the Act, it is important to understand the very real distinction between the Exchange and its corporate affiliates (the ''ICE Affiliates''). The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Around the world, ICE operates seven regulated exchanges in addition to the Exchange and the Affiliate SROs, including futures markets, as well as six clearing houses. Among others, the ICE Affiliates are subject to the jurisdiction of regulators in the U.S., U.K., E.U., the Netherlands, Canada and Singapore.[10] In all, the ICE Affiliates include hundreds of ICE subsidiaries, including more than thirty that are significant legal entity subsidiaries as defined by Commission rule.[11]

Through its ICE Data Services (''IDS'') business,[12] ICE operates the ICE Global Network, a global connectivity network whose infrastructure provides access to over 150 global markets, including the Exchange and Affiliate SROs, and over 750 data sources. All the ICE Affiliates are ultimately controlled by ICE, as the indirect parent company, but generally they do not control each other. In the present case, it is IDS, not the Exchange, that provides the Wireless Market Data Connections to market participants. The Exchange does not control IDS.

The Wireless Market Data Connections

As noted above, if a market participant in one of the Third Party Data Centers wishes to connect to one or more of the data feeds of the Affiliate SROs that make up the Selected Market Data,[13] it may opt to purchase a Wireless Market Data Connection to the data.

The Selected Market Data is generated at the Mahwah data center in the trading

[4] The NYSE, NYSE Arca, NYSE National, and NYSE Chicago, Inc. are national securities exchanges that are affiliates of the Exchange (collectively, the ''Affiliate SROs''). The wireless connectivity services described in this filing do not transport the market data of the Exchange or NYSE Chicago, Inc. The Exchange filed a proposed rule change that would establish the Wireless Fee Schedule. *See* SR–NYSEAmer–2020–05 (January 30, 2020). Should such filing be approved before the present filing, the changes to the Wireless Fee Schedule proposed herein would appear at the end of the Wireless Fee Schedule, after the text proposed in the January, 2020 filing. In such case, the Exchange will amend the present filing if required.

[5] In the Carteret and Secaucus Third Party Data Centers, a market participant may use a Wireless Market Data Connection to connect to the NYSE Integrated Feed data feed, the NYSE Arca Integrated Feed data feed, and the NYSE National Integrated Feed data feed. In the Markham, Canada Third Party Data Center, a market participant may use a Wireless Market Data Connection to connect to the NYSE BBO and Trades data feeds and the NYSE Arca BBO and Trades data feeds.

[6] *See* 15 U.S.C. 78c(a)(27) (defining the term ''rules of an exchange'').

[7] 15 U.S.C. 78c(a)(1). See 15 U.S.C. 78c(a)(2) (defining the term ''facility'' as applied to an exchange).

[8] Telephone conversation between Commission staff and representatives of the Exchange, December 12, 2019.

[9] *Id.* The Commission has previously stated that services were facilities of an exchange subject to the rule filing requirements without fully explaining its reasoning. In 2010, the Commission stated that exchanges had to file proposed rule changes with respect to co-location because ''[t]he Commission views co-location services as being a material aspect of the operation of the facilities of an exchange.'' The Commission did not specify why it reached that conclusion. *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010), at note 76.

In addition, in 2014, the Commission instituted proceedings to determine whether to disapprove a proposed rule change by The NASDAQ Stock Market LLC (''Nasdaq'') on the basis that Nasdaq's ''provision of third-party market data feeds to co-located clients appears to be an integral feature of its co-location program, and co-location programs are subject to the rule filing process.'' Securities Exchange Act Release No. 72654 (July 22, 2014), 79 FR 43808 (July 28, 2014) (SR–NASDAQ–2014–034). In its order, the Commission did not explain why it believed that the provision of third party data was an integral feature of co-location, or if it believed that it was a facility of Nasdaq, although the Nasdaq filing analyzed each prong of the definition of facility in turn. *See* Securities Exchange Act Release No. 71990 (April 22, 2014), 79 FR 23389 (April 28, 2014) (SR–NASDAQ–2014–034).

[10] Intercontinental Exchange, Inc. Annual Report on Form 10–K for the year ended December 31, 2018, Exhibit 21.1 (filed February 7, 2019), at 15–16.

[11] *Id.* at Exhibit 21.1.

[12] The IDS business operates through several different ICE Affiliates, including NYSE Technologies Connectivity, Inc., an indirect subsidiary of the NYSE.

[13] *See* note 5, *supra* for a list of the Selected Market Data available in each Third Party Data Center.

and execution systems of the NYSE, NYSE Arca and NYSE National (collectively, the ''SRO Systems''). In each case, the NYSE, NYSE Arca or NYSE National, as applicable, files with the Commission for the Selected Market Data it generates, and the related fees.[14] The filed market data fees apply to all Selected Market Data customers no matter what connectivity provider they use.

When a market participant wants to connect to Selected Market Data, it requests a connection from the provider of its choice. All providers, including ICE Affiliates, may only provide the market participant with connectivity once the provider receives confirmation from the NYSE, NYSE Arca or NYSE National, as applicable, that the market participant is authorized to receive the requested Selected Market Data. Accordingly, when a market participant requests a Wireless Market Data Connection, IDS's first step is to obtain authorization.[15]

IDS's next step is to set up the Wireless Market Data Connection for the market participant. In the connection, IDS collects the Selected Market Data, then sends it over the Wireless Market Data Connection to the IDS access center located in the Third Party Data Center. The customer connects to the Selected Market Data at the Third Party Data Center.[16]

The customer is charged by IDS an initial and monthly fee for the Wireless Market Data Connection. By contrast, IDS will not bill the customer for the Selected Market Data: the NYSE, NYSE Arca or NYSE National, as applicable, bill market data subscribers directly, irrespective of whether the market data subscribers receive the Selected Market Data over a Wireless Market Data Connection or from another connectivity provider.

Market participants in the Third Party Data Centers that want to connect to Selected Market Data have options, as other providers offer connectivity to Selected Market Data.[17] A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

## The Wireless Market Data Connections Are Not Facilities of the Exchange

### The Definition of ''Exchange''

The definition of ''exchange'' focuses on the exchange entity and what it does: [18]

> The term ''exchange'' means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

If the ''exchange'' definition included all of an exchange's affiliates, the ''Exchange'' would encompass a global network of futures markets, clearing houses, and data providers, and all of those entities worldwide would be subject to regulation by the Commission. That, however, is not what the definition in the Act provides.

The Exchange and the Affiliate SROs fall squarely within the Act's definition of an ''exchange'': they each provide a market place to bring together purchasers and sellers of securities and perform with respect to securities the functions commonly performed by a stock exchange.

That is not true for the non-exchange ICE Affiliates. Those ICE Affiliates do not provide such a marketplace or perform ''with respect to securities the functions commonly performed by a stock exchange,'' and therefore they are not an ''exchange'' or part of the ''Exchange'' for purposes of the Act. Accordingly, in conducting its analysis, the Exchange does not automatically collapse the ICE Affiliates into the Exchange. The Wireless Market Data Connections are also not part of the Exchange, as they are services, and as such cannot be part of an ''organization, association or group of persons'' with the Exchange.

In Rule 3b–16 the Commission further defined the term ''exchange'' under the Act, stating that:[19]

> (a) An organization, association, or group of persons shall be considered to constitute, maintain, or provide ''a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange,'' as those terms are used in section 3(a)(1) of the Act . . . if such organization, association, or group of persons:
>
> (1) Brings together the orders for securities of multiple buyers and sellers; and
>
> (2) Uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade.

The non-exchange ICE Affiliates do not bring ''together orders for securities of multiple buyers and sellers,'' and so are not an ''exchange'' or part of the ''Exchange'' for purposes of Rule 3b–16. Indeed, it is not possible to use a Wireless Market Data Connection to effect a transaction on the Exchange.

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[14] *See* Securities Exchange Act Release Nos. 74128 (January 23, 2015), 80 FR 4951 (January 29, 2015) (SR–NYSE–2015–03) (notice of filing and immediate effectiveness of proposed rule change establishing the NYSE Integrated Feed data feed); 76485 (November 20, 2015), 80 FR 74158 (November 27, 2015) (SR–NYSE–2015–57) (notice of filing and immediate effectiveness of a proposed rule change establishing fees for the NYSE Integrated Feed); 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30) (order approving proposed rule change to establish the NYSE BBO service); 59290 (January 23, 2009), 74 FR 5707 (January 30, 2009) (SR–NYSE–2009–05) (notice of filing and immediate effectiveness of proposed rule change to introduce a pilot program for NYSE Trades); 59606 (March 19, 2009), 74 FR 13293 (March 26, 2009) (SR–NYSE–2009–04) (order approving proposed rule change to establish fees for NYSE Trades); 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR–NYSEArca–2010–23) (order approving proposed rule change to modify the fees for NYSE Arca Trades, to establish the NYSE Arca BBO service and related fees, and to provide an alternative unit-of-count methodology for those services); 59289 (January 23, 2009), 74 FR 5711 (January 30, 2009) (SR–NYSEArca–2009–06) (notice of filing and immediate effectiveness of proposed rule change to introduce a pilot program for NYSE Arca Trades); 59598 (March 18, 2009), 74 FR 12919 (March 25, 2009) (SR–NYSEArca–2009–05) (order approving proposed rule change to establish fees for NYSE Arca Trades); 65669 (November 2, 2011), 76 FR 69311 (November 8, 2011) (SR–NYSEArca–2011–78) (notice of filing and immediate effectiveness of proposed rule change offering the NYSE Arca Integrated Feed); 66128 (January 10, 2012), 77 FR 2331 (January 17, 2012) (SR–NYSEArca–2011–96) (notice of filing and immediate effectiveness of a proposed rule change establishing fees for NYSE Arca Integrated Feed); 83350 (May 31, 2018), 83 FR 26332 (June 6, 2018) (SR–NYSENAT–2018–09) (notice of filing and immediate effectiveness of proposed rule change establishing the NYSE National Integrated Feed data feed); and 87797 (December 18, 2019), 84 FR 71025 (December 26, 2019) (SR–NYSENAT–2019–31) (notice of filing and immediate effectiveness of proposed rule change to establish fees for the NYSE National Integrated Feed).

[15] When requesting authorization from the NYSE, NYSE Arca or NYSE National to provide a customer with Selected Market Data, the ICE Affiliate providing the Wireless Market Data Connection uses the same on-line tool as all data vendors.

[16] A cable connects the IDS and customer equipment in the Markham Third Party Data Center. If the customer is located in either the Carteret or Secaucus Third Party Data Center, the customer buys a cross connect from IDS.

[17] The other providers obtain Selected Market Data from IDS at the Mahwah data center and send it over their own networks, fiber or wireless, to the Third Party Data Centers.

[18] 15 U.S.C. 78c(a)(1).

[19] 17 CFR 240.3b–16(a).

Rather, they are one-way connections away from the Mahwah data center.

The relevant question, then, is whether the Wireless Market Data Connections are ''facilities'' of the Exchange.

The Definition of ''Facility''

The Act defines a ''facility'' [20] as follows:

> The term ''facility'' when used with respect to an exchange includes [1] its premises, [2] tangible or intangible property whether on the premises or not, [3] any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and [4] any right of the exchange to the use of any property or service.

In 2015 the Commission noted that whether something is a ''facility'' is not always black and white, as ''any determination as to whether a service or other product is a facility of an exchange requires an analysis of the particular facts and circumstances.'' [21] Accordingly, the Exchange understands that the specific facts and circumstances of the Wireless Market Data Connections must be assessed before a determination can be made regarding whether or not they are facilities of the Exchange.[22]

The first prong of the definition is that ''facility,'' when used with respect to an exchange, includes ''its premises.'' That prong is not applicable in this case, because the Wireless Market Data Connections are not premises of the Exchange. The term ''premises'' is generally defined as referring to an entity's building, land, and appurtenances.[23] The wireless network that runs from the Mahwah data center to the Third Party Data Centers, much of which is actually owned, operated and maintained by a non-ICE entity,[24] is not the premises of the Exchange. The portion of the Mahwah data center where the ''exchange'' functions are performed—*i.e.* the SRO Systems that bring together purchasers and sellers of securities and perform with respect to securities the functions commonly performed by a stock exchange—could be construed as the ''premises'' of the Exchange, but the same is not true for a wireless network that is almost completely outside of the Mahwah data center.

The second prong of the definition of ''facility'' provides that a facility includes the exchange's ''tangible or intangible property whether on the premises or not.'' The Wireless Market Data Connections are not the property of the Exchange: They are services. The underlying wireless network is owned by ICE Affiliates and a non-ICE entity. As noted, the Act does not automatically collapse affiliates into the definition of an ''exchange.'' A review of the facts set forth above shows that there is a real distinction between the Exchange and its ICE Affiliates with respect to the Wireless Market Data Connections, and so something owned by an ICE Affiliate is not owned by the Exchange.

The third prong of the definition of ''facility'' provides that a facility includes

> any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange).[25]

This prong does not capture the Wireless Market Data Connections because the Exchange does not have the right to use the Wireless Market Data Connections to effect or report a transaction on the Exchange. ICE Affiliates and a non-ICE entity own and maintain the wireless network underlying the Wireless Market Data Connections, and ICE Affiliates, not the Exchange, offer and provide the Wireless Market Data Connections to customers. The Exchange does not know whether or when a customer has entered into an agreement for a Wireless Market Data Connection and has no right to approve or disapprove of the provision of a Wireless Market Data Connection, any more than it would if the provider was a third party.[26] It does not put the Selected Market Data content onto the Wireless Market Data Connections or send it to customers. A market participant cannot use a Wireless Market Data Connection to connect to Exchange market data. When a customer terminates a Wireless Market Data Connection, the Exchange does not consent to the termination.

In fact, it is not possible to use a Wireless Market Data Connection to effect a transaction on the Exchange: They are one-way connections away from the Mahwah data center. Customers cannot use them to send trading orders or information of any sort to the SRO Systems, and the Exchange does not use them to send confirmations of trades. Instead, Wireless Market Data Connections solely carry Selected Market Data, which does not include Exchange market data.

The Exchange believes the example in the parenthetical in the third prong of the definition of ''facility'' cannot be read as an independent prong of the definition. Such a reading would ignore that the parentheses and the word ''including'' clearly indicate that ''any system of communication to or from an exchange . . . maintained by or with the consent of the exchange'' is explaining the preceding text. By its terms, the parenthetical is providing a non-exclusive example of the type of property or service to which the prong refers, and does not remove the requirement that there must be a right to use the premises, property or service to effect or report a transaction on an exchange. It is making sure the reader understands that ''facility'' includes a ticker system that an exchange has the right to use, not creating a new fifth prong to the definition. In fact, if the ''right to use'' requirement were ignored, every communication provider that connected to an exchange, including any broker-dealer system and telecommunication network, would become a facility of that exchange so long as the exchange consented to the connection, whether or not the connection was used to trade or report

[20] 15 U.S.C. 78c(a)(2).

[21] Securities Exchange Act Release No. 76127 (October 9, 2015), 80 FR 62584 (October 16, 2015) (SR–NYSE–2015–36), at note 9 (order approving proposed rule change amending Section 907.00 of the Listed Company Manual). *See also* 79 FR 23389, *supra* note 9, at note 4 (noting that that the definition of the term ''facility'' has not changed since it was originally adopted) and 23389 (stating that the SEC ''has not separately interpreted the definition of 'facility'").

[22] As with the definition of ''exchange,'' the ICE Affiliates do not automatically fall within the definition of a ''facility.'' The definition focuses on ownership and the right to use properties and services, not corporate relationships. Indeed, if the term ''exchange'' in the definition of a facility included ''an exchange and its affiliates,'' then the rest of the functional prongs of the facility definition would be meaningless. Fundamental rules of statutory construction dictate that statutes be interpreted to give effect to each of their provisions, so as not to render sections of the statute superfluous.

[23] *See, e.g.,* definition of ''premises'' in Miriam-Webster Dictionary, at *https://www.merriam-webster.com/dictionary/premises,* and Cambridge English Dictionary, at *https://dictionary.cambridge.org/us/dictionary/english/premises.*

[24] A non-ICE entity owns, operates and maintains the wireless network between the Mahwah data center and the Carteret and Secaucus Third Party Data Centers pursuant to a contract between the non-ICE entity and an ICE Affiliate.

[25] 15 U.S.C. 78c(a)(2).

[26] The relevant Affiliate SRO provides confirmation to IDS that a customer is authorized to receive the relevant Selected Market Data, as noted above, but does not know how or where that customer receives it. If the customer is already taking the relevant Selected Market Data through another medium or at a different site, IDS does not need to seek approval from the relevant Affiliate SRO.

a trade, and whether or not the exchange had any right at all to the use of the connection.

The fourth prong of the definition provides that a facility includes ''any right of the exchange to the use of any property or service.'' As described above, the Exchange does not have the right to use the Wireless Market Data Connections. Instead, the Wireless Market Data Connections are used by market participants who decide to use that service.

Accordingly, for all the reasons discussed above, the wireless connectivity to Selected Market Data provided by ICE Affiliates is not a facility of the Exchange.

The legal conclusion that the Wireless Market Data Connections are not facilities of the Exchange is strongly supported by the facts. The Wireless Market Data Connections are neither necessary for, nor integrally connected to, the operations of the Exchange. They are one-way connections away from the Mahwah data center. A market participant cannot use a Wireless Market Data Connection to send trading orders or information to the SRO Systems or to connect to Exchange market data. In this context, IDS simply acts as a vendor, selling connectivity to Selected Market Data just like the other vendors that offer wireless connections in the Carteret and Secaucus Third Party Data Centers and fiber connections to all the Third Party Data Centers. The fact that in this case it is ICE Affiliates that offer the Wireless Market Data Connections does not make the Wireless Market Data Connections facilities of the Exchange any more than are the connections offered by other parties.

Further, the Exchange believes that requiring it to file this proposed rule change is not necessary in order for the Commission to ensure that the Exchange is satisfying its requirements under the Act. Because, as described above, the Wireless Market Data Connections are not necessary for, nor connected to, the operations of the Exchange, and customers are not required to use the Wireless Market Data Connections, holding the Wireless Market Data Connections to the statutory standards in Section 6(b) serves no purpose.

Instead, the sole impact of the requirement that the Exchange file the Wireless Market Data Connections is to place an undue burden on competition on the ICE Affiliates that offer the market data connections, compared to their market competitors. This filing requirement, thus, itself is inconsistent with the requirement under Section 6(b)(8) of the Act that the rules of the exchange not ''impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [27] This burden on competition arises because IDS would be unable, for example, to offer a client or potential client a connection to a new data feed it requests, without the delay and uncertainty of a filing, but its competitors will. Similarly, if a competitor decides to undercut IDS' fees because IDS, unlike the competitor, has to make its fees public, IDS will not be able to respond quickly, if at all. Indeed, because its competitors are not required to make their services or fees public, and are not subject to a Commission determination of whether such services or fees are ''not unfairly discriminatory'' or equitably allocated, IDS is at a competitive disadvantage from the very start.

The Proposed Service and Fees

As noted above, the Exchange proposes to add to its rules the Wireless Market Data Connections to Selected Market Data, for an initial and monthly fee.

A market participant would be charged a $5,000 non-recurring initial charge for each Wireless Market Data Connection and a monthly recurring charge (''MRC'') per connection that would vary depending upon the feed and the location of the connection. The proposal would waive the first month's MRC, to allow customers to test a new Wireless Market Data Connection for a month before incurring any MRCs, and the Exchange proposes to add text to the Wireless Fee Schedule accordingly.

The Exchange proposes to add a section to the Wireless Fee Schedule under the heading ''B. Wireless Connectivity to Market Data'' to set forth the fees charged by IDS related to the Wireless Market Data Connections, as follows:

| Type of service | Amount of charge |
|---|---|
| NYSE Integrated Feed: Wireless Connection in Carteret access center | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE Arca Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE National Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $5,250. |
| NYSE Integrated Feed and NYSE Arca Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $18,500. |
| NYSE Integrated Feed, NYSE Arca Integrated Feed, and NYSE National Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $21,000. |
| NYSE Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE Arca Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE National Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $5,250. |
| NYSE Integrated Feed and NYSE Arca Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $18,500. |
| NYSE Integrated Feed, NYSE Arca Integrated Feed, and NYSE National Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $21,000. |
| NYSE BBO and Trades: Wireless Connection in Markham, Canada access center. | $5,000 per connection initial charge plus monthly charge per connection of $6,500. |
| NYSE Arca BBO and Trades: Wireless Connection in Markham, Canada access center. | $5,000 per connection initial charge plus monthly charge per connection of $6,500. |

[27] 15 U.S.C. 78f(b)(8).

There is limited bandwidth available on the wireless network to the Markham, Canada Third Party Data Center. Accordingly, such Wireless Market Data Connections do not transport information for all of the symbols included in the NYSE BBO and Trades and NYSE Arca BBO and Trades data feeds. Rather, IDS provides connectivity to a selection of such data feeds, including the data for which IDS believes there is demand. When a market participant requests a Wireless Market Data Connection to Markham, it receives connectivity to the portions of the NYSE BBO and Trades and NYSE Arca BBO and Trades data that IDS transmits wirelessly. The customer then determines the symbols for which it will receive data. The Exchange does not have visibility into which portion of the data feed a given customer receives.

Application and Impact of the Proposed Change

The proposed change would apply to all customers equally. The proposed change would not apply differently to distinct types or sizes of market participants. Customers that require other types or sizes of network connections between the Mahwah data center and the access centers could still request them. As is currently the case, the purchase of any connectivity service is completely voluntary and the Wireless Fee Schedule is applied uniformly to all customers.

Competitive Environment

Other providers offer connectivity to Selected Market Data in the Third Party Data Centers.[28] Based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

Wireless connections involve beaming signals through the air between antennas that are within sight of one another. Because the signals travel a straight, unimpeded line, and because light waves travel faster through air than through glass (fiber optics), wireless messages have lower latency than messages travelling through fiber optics.[29] At the same time, as a general rule wireless networks have less uptime than fiber networks. Wireless networks are directly and immediately affected by adverse weather conditions, which can cause message loss and outage periods. Wireless networks cannot be configured with redundancy in the same way that fiber networks can. As a result, an equipment or weather issue at any one location on the network will cause the entire network to have an outage. In addition, maintenance can take longer than it would with a fiber based network, as the relevant tower may be in a hard to reach location, or weather conditions may present safety issues, delaying technicians servicing equipment. Even under normal conditions, a wireless network will have a higher error rate than a fiber network of the same length.

The proposed Wireless Market Data Connections traverse through a series of towers equipped with wireless equipment, including, in the case of the Carteret and Secaucus connections, a pole on the grounds of the Mahwah data center. With the exception of the non-ICE entity that owns the wireless network used for the Wireless Connections to Secaucus and Carteret,[30] third parties do not have access to such pole. However, access to such pole is not required for third parties to establish wireless networks that can compete with the Wireless Market Data Connections to the Carteret and Secaucus Third Party Data Centers, as witnessed by the existing wireless connections offered by non-ICE entities competitors.

In addition, proximity to a data center is not the only determinant of a wireless network's latency. Rather, the latency of a wireless network depends on several factors. Variables include the wireless equipment utilized; the route of, and number of towers or buildings in, the network; and the fiber equipment used at either end of the connection. Moreover, latency is not the only consideration that a customer may have in selecting a wireless network to connect to Selected Market Data. Other considerations may include the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

2. Statutory Basis

Although the Exchange does not believe that the present proposed change is a change to the ''rules of an exchange'' [31] required to be filed with the Commission under the Act, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[32] in general, and furthers the objectives of Section 6(b)(5) of the Act,[33] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and does not unfairly discriminate between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[34] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

[28] Third party providers obtain Selected Market Data from IDS at the Mahwah data center and send it over their own networks, fiber or wireless, to the Third Party Data Centers.

[29] *See* Securities Exchange Act Release No. 76750 (December 23, 2015), 80 FR 81648 (December 30, 2015) (SR–NYSEMKT–2015–85) (order approving offering of a wireless connection to allow Users to receive market data feeds from third party markets and to reflect changes to the Exchange's price list and fee schedule related to these services).

[30] *See* note 24, *supra.*

[31] *See* 15 U.S.C. 78c(a)(27) (defining the term ''rules of an exchange'').

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78f(b)(4).

The Proposed Change Is Reasonable

The Exchange believes its proposal is reasonable.

Based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

Market participants' considerations in determining what connectivity to purchase may include latency; the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

The Exchange believes that the proposed pricing for the Wireless Market Data Connections is reasonable because it allows customers to select the connectivity option that best suits their needs. A market participant that opts for Wireless Market Data Connections would be able to select the specific Selected Market Data feed that it wants to receive in accordance with its needs, thereby helping it tailor its operations to the requirements of its business operations. The fees also reflect the benefit received by market participants in terms of lower latency over the fiber optics options.

There is limited bandwidth available on the wireless network to the Markham, Canada Third Party Data Center. Accordingly, the Exchange believes that it is reasonable not to transport information for all of the symbols included in the NYSE BBO and Trades and NYSE Arca BBO and Trades data feeds to Markham, but rather to transport a subset of that data. Limiting the feeds to the data regarding securities for which IDS believes there is demand allows customers in Canada to receive the relevant Selected Market Data over a wireless network. The customer then determines those symbols for which it will receive data.

Only market participants that voluntarily select to receive Wireless Market Data Connections are charged for them, and those services are available to all market participants with a presence in the relevant Third Party Data Center. Furthermore, the Exchange believes that the services and fees proposed herein are reasonable because, in addition to the services being completely voluntary, they are available to all market participants on an equal basis (*i.e.,* the same products and services are available to all market participants). All market participants that voluntarily select a Wireless Market Data Connection would be charged the same amount for the same service and would have their first month's MRC for the Wireless Market Data Connection waived.

Overall, the Exchange believes that the proposed change is reasonable because the Wireless Market Data Connections described herein are offered as a convenience to market participants, but offering them requires the provision, maintenance and operation of the Mahwah data center, wireless networks and access centers in the Third Party Data Centers, including the installation and monitoring, support and maintenance of the services.

The Exchange believes that the proposed waiver of the first month's MRC is reasonable as it would allow market participants to test a Wireless Market Data Connection for a month before incurring any monthly recurring fees and may act as an incentive to market participants to connect to a Wireless Market Data Connection.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees among its market participants.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all market participants equally. As is currently the case, the purchase of any connectivity service, including Wireless Market Data Connections, would be completely voluntary.

The Exchange believes that it is equitable to not to transport information for all of the symbols included in the NYSE BBO and Trades and NYSE Arca BBO and Trades data feeds to Markham, but rather to transport a subset of that data. There is limited bandwidth available on the wireless network to the Markham, Canada Third Party Data Center. Limiting the feeds to the data regarding securities for which IDS believes there is demand allows customers in Canada to receive the relevant Selected Market Data over a wireless network. The customer then determines those symbols for which it will receive data.

Without this proposed rule change, market participants with a presence in the Third Party Data Centers would have fewer options for connectivity to Selected Market Data. With it, market participants have more choices with respect to the form and price of connectivity to Selected Market Data they use, allowing a market participant that opts for a Wireless Market Data Connection to select the specific Selected Market Data feed that it wants to receive in accordance with what best suits its needs, thereby helping it tailor its operations to the requirements of its business operations.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all market participants equally. As is currently the case, the purchase of any connectivity service, including Wireless Market Data Connections, would be completely voluntary.

A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

Without this proposed rule change, market participants with a presence in the Third Party Data Centers would have fewer options for connectivity to Selected Market Data. With it, market participants have more choices with respect to the form and price of connectivity to Selected Market Data they use, allowing a market participant

that opts for a Wireless Market Data Connection to select the specific Selected Market Data feed that it wants to receive in accordance with what best suits its needs, thereby helping it tailor its operations to the requirements of its business operations.

The Wireless Market Data Connections provide customers in the Secaucus and Carteret access centers with one means of connectivity to Selected Market Data, but based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the only burden on competition of the proposed change is on IDS and other commercial connectivity providers. Solely because IDS is wholly owned by the same parent company as the Exchange, IDS will be at a competitive disadvantage to its commercial competitors, and its commercial competitors, without a filing requirement, will be at a relative competitive advantage to IDS.

By permitting IDS to continue to offer the Wireless Market Data Connectivity, approval of the proposed changes would contribute to competition by allowing IDS to compete with other connectivity providers, and thus provides market participants another connectivity option. For this reason, the proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[35]

Based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham. The Exchange does not control the Third Party Data Centers and could not preclude other parties from creating new wireless or fiber connections to Selected Market Data in any of the Third Party Data Centers.

The Wireless Market Data Connections provide customers in the Secaucus and Carteret Third Party Data Centers with one means of connectivity to Selected Market Data, but substitute products are available, as witnessed by the existing wireless connections offered by non-ICE entities. A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant in any of the Third Party Data Centers or the Mahwah data center may also create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

The Exchange notes that the proposed Wireless Market Data Connections compete not just with other wireless connections to Selected Market Data, but also with fiber network connections, which may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions. Market participants' considerations in determining what connectivity to purchase may include latency; the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

The proposed Wireless Market Data Connections traverse through a series of towers equipped with wireless equipment, including, in the case of the Carteret and Secaucus Wireless Market Data Connections, a pole on the grounds of the Mahwah data center. With the exception of the non-ICE entity that owns the wireless network used for the Wireless Connections to Secaucus and Carteret,[36] third parties do not have access to such pole, as the IDS wireless network has exclusive rights to operate wireless equipment on the Mahwah data center pole. IDS does not sell rights to third parties to operate wireless equipment on the pole, due to space limitations, security concerns, and the interference that would arise between equipment placed too closely together.

However, access to such pole is not required for other parties to establish wireless networks that can compete with the Wireless Market Data Connections, as witnessed by the existing wireless connections offered by non-ICE entities. Proximity to a data center is not the only determinant of a wireless network's latency. Rather, the latency of a wireless network depends on several factors. Variables include the wireless equipment utilized; the route of, and number of towers or buildings in, the network; and the fiber equipment used at either end of the connection. Moreover, latency is not the only consideration that a customer may have in selecting a wireless network to connect to Selected Market Data. Other considerations may include the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather between IDS and its commercial competitors.

For the reasons described above, the Exchange believes that the proposed rule changes reflect this competitive environment.

[35] 15 U.S.C. 78f(b)(8).

[36] *See* note 24, *supra.*

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–10 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–10, and should be submitted on or before March 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03647 Filed 2–24–20; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88235; File No. SR–CBOE–2020–012]**

## Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Financial Incentive Programs for Global Trading Hours (GTH) Lead Market-Makers (LMMs) in VIX Options

February 19, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its financial incentive programs for Global Trading Hours (''GTH'') Lead Market-Makers (''LMMs'') in VIX options. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its GTH VIX LMMs Incentive Program, effective February 10, 2020.

By way of background, pursuant to the Fees Schedule, an LMM in VIX will receive a rebate for that month in the amount of a pro-rata share of a compensation pool equal to $20,000 times the number of LMMs in that class (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month) if the LMM(s): provide continuous electronic quotes during GTH that meet or exceed the following heightened quoting standards in at least 99% of the VIX series 90% of the time in a given month:

| Premium level | Maximum allowable width |
|---|---|
| $0.00–$100.00 | $10.00 |
| $100.01–$200.00 | $16.00 |
| Greater than $200.000 | $24.00 |

[37] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Additionally, a GTH LMM in VIX is not currently obligated to satisfy the heightened quoting standards described in the table above. Rather, an LMM is eligible to receive the rebate if they satisfy the heightened quoting standards above, which the Exchange believes encourage LMMs to provide liquidity during GTH. The Exchange may also consider other exceptions to this quoting standard based on demonstrated legal or regulatory requirements or other mitigating circumstances.

The Exchange now proposes to amend the GTH VIX LMM Program to separate the quoting standard for VIX and VIX Weeklys (''VIXW''); adopt a separate rebate for VIXW, increasing the total available rebate; eliminate the current compensation pool structure; and update the period in which the heightened quoting standard will apply for the month of February 2020. First, the Exchange proposes to separate the quoting standard for VIX and VIXW and adopt a separate rebate for VIXW.[3] As proposed, if the LMM meets the heightened quoting standard described above for VIX, the LMM will continue to receive a rebate of $20,000 for VIX, and if the LMM separately meets the heightened quoting standard described above for VIXW, the LMM will receive an additional rebate of $5,000 for VIXW (for a total increased rebate of $25,000 per month for meeting the standard for both VIX and VIXW). The Exchange notes this is substantively identical to the format of the Exchange's current GTH SPX/SPXW LMM program and the manner in which a GTH SPX/SPXW LMM may meet the heightened quoting requirements today.[4] The Exchange also notes that like that of a SPX/SPXW LMM, an LMM appointed in VIX also holds an appointment in VIXW.

Next, the Exchange proposes to eliminate the current compensation pool structure and provide instead a straight rebate per product per LMM, which is also consistent with the manner in which the GTH SPX/SPXW LMM program is administered. More specifically, if a GTH VIX/VIXW LMM meets the heightened quoting standard, it will receive the applicable rebate per product, described above. The Exchange also proposes to eliminate the example of how the compensation pool works as it is no longer necessary given the elimination of the compensation pool structure. The Exchange believes the program as amended will continue to encourage the provision of liquidity in VIX and VIXW options during GTH, including during the open. Also, as is the case today, GTH VIX/VIXW LMM(s) will still not be obligated to satisfy the amended heightened quoting standard. Additionally, the Exchange notes that a VIX/VIXW GTH LMM may need to undertake expenses to be able to quote at a significantly heightened standard in VIX/VIXW, such as purchase more logical connectivity based on its increased capacity needs.

Finally, for the month of February 2020, the Exchange proposes to apply the heightened quoting standard from February 10 to February 29, in light of the mid-month proposal to modify the rebate quoting standard. The Exchange also notes the previous LMM term expired January 31, 2020, and the Exchange intends to appoint a new LMM effective February 10, 2020. Such LMM will be eligible for the full financial payment for the month February 2020, if the LMM meets the heightened quoting standard from February 10 to February 29. The Exchange also proposes to remove obsolete language regarding applicability of the program in November 2019.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that separating the quoting standard for VIX and VIXW, and adopting a separate rebate for VIXW of $5,000 is reasonable because it provides an additional rebate for GTH VIX LMM(s), who also hold appointments in VIXW, for meeting the heightened quoting standard and takes into consideration costs an LMM may incur. The Exchange also believes the proposed amount for meeting the requirements in VIXW series will continue to incentivize an appointed LMM to meet the GTH quoting standards for VIXW, and continue to meet the GTH quoting standard for VIX, thereby providing liquid and active markets, which facilitates tighter spreads and increased trading opportunities to the benefit of all market participants. The proposed change also provides harmonization between the GTH LMM programs (*i.e.,* conforms to the format of the GTH SPX/SPXW LMM Program[8]). The Exchange believes amending the GTH VIX/VIXW LMM Program by removing the compensation pool and providing for a straight rebate per product is reasonable as a GTH VIX/VIXW GTH LMM will continue to be eligible to receive the current financial payment for VIX and proposed payment for VIXW. The Exchange believes the straight rebate simplifies administration of the Program's rebates for market participant and the monthly payment will continue to be commensurate with the heightened quoting standard, while still acting as an incentive for a GTH VIX LMM to provide liquid and active markets in VIX and VIXW during GTH. The Exchange believes that it is reasonable to apply the quoting standard from February 10 to February 29 for the month of February 2020, in light of the mid-month proposal to modify the heighted quoting standard and in light of the fact that the previous LMM term expired January 31, 2020 and the Exchange intends to appoint a new LMM effective February 10, 2020 (*i.e.,* there was no GTH LMM appointed as of February 3, this timeframe will have no impact on rebates available to any market participants).

The Exchange believes it is equitable and not unfairly discriminatory to continue to only offer this financial incentive to GTH VIX (and VIXW, as proposed) LMM(s) because it benefits all market participants trading VIX/VIXW during GTH to encourage the LMM(s) to satisfy the heightened quoting standard, which ensures, and may even provide increased, liquidity, which thereby may

[3] The Exchange also proposes to update the title of the program accordingly to ''GTH VIX/VIXW LMM Program''.

[4] *See* Cboe Options Fees Schedule, ''GTH SPX/SPXW LMM Incentive Program''.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

[8] *See* supra note 4.

provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that the GTH VIX/VIXW LMM(s) serve a crucial role in providing quotes and the opportunity for market participants to trade VIX/VIXW, which can lead to increased volume, providing a robust market. The Exchange ultimately wishes to ensure a GTH LMM is adequately incentivized to provide liquid and active markets in VIX/VIXW during GTH to encourage liquidity. The Exchange believes that the program, even as amended, will continue to encourage increased quoting to add liquidity in VIX, thereby protecting investors and the public interest. The Exchange also notes that a VIX GTH LMM may have added costs each month that it needs to undertake in order to satisfy that heightened quoting standard (*e.g.,* having to purchase additional logical connectivity). The Exchange believes the proposed amendments are equitable and not unfairly discriminatory because they apply to any TPH that is appointed as a GTH VIX/VIXW LMM equally. Additionally, if a GTH VIX/VIXW LMM does not satisfy the heightened quoting standard for any given month, then it simply will not receive the offered payment for that month.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. First, the Exchange believes the proposed rule change does impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it applies uniformly to similarly situated GTH VIX/VIXW LMMs, which market participants play a crucial role in providing active and liquid markets in VIX/VIXW during GTH. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because VIX/VIXW options are a proprietary product that will only be traded on Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and paragraph (f) of Rule 19b–4 [10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2020–012 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–012 and should be submitted on or before March 17,2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03645 Filed 2–24–20; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88239; File No. SR–NYSEArca–2020–15]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend the Schedule of Wireless Connectivity Fees and Charges To Add Wireless Connectivity Services

February 19, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b-4 thereunder,[3] notice is hereby given that on February 11, 2020, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add wireless connectivity services that transport the market data of the Exchange and certain affiliates to the schedule of Wireless Connectivity Fees and Charges (the ''Wireless Fee Schedule''). The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to add wireless connectivity services that transport market data of the Exchange and its affiliates the New York Stock Exchange LLC (''NYSE'') and NYSE National, Inc. (''NYSE National'') to the Wireless Fee Schedule.[4]

The wireless connections can be purchased by market participants in three data centers that are owned and operated by third parties unaffiliated with the Exchange: (1) Carteret, New Jersey, (2) Secaucus, New Jersey, and (3) Markham, Canada (collectively, the ''Third Party Data Centers''). A market participant in a Third Party Data Center that purchases a wireless connection (''Wireless Market Data Connection'') receives connectivity to certain Exchange, NYSE and NYSE National market data feeds (collectively, the ''Selected Market Data'')[5] distributed from the Mahwah, New Jersey data center. Customers that purchase a wireless connection to Selected Market Data are charged an initial and monthly fee for the service of transporting the Selected Market Data.

The Exchange does not believe that the present proposed change is a change to the ''rules of an exchange''[6] required to be filed with the Commission under the Act. The definition of ''exchange'' under the Act includes ''the market facilities maintained by such exchange.''[7] Based on its review of the relevant facts and circumstances, and as discussed further below, the Exchange has concluded that the Wireless Market Data Connections are not facilities of the Exchange within the meaning of the Act, and therefore do not need to be included in its rules.

The Exchange is making the current proposal solely because the Staff of the Commission has advised the Exchange that it believes the Wireless Market Data Connections are facilities of the Exchange and so must be filed as part of its rules.[8] The Staff has not set forth the basis of its conclusion beyond verbally noting that the Wireless Market Data Connections are provided by an affiliate of the Exchange and a market participant could use a Wireless Market Data Connection to connect to market data feeds of the Exchange and its Affiliate SROs.[9]

The Exchange expects the proposed change to be operative 60 days after the present filing becomes effective.

The Exchange and the ICE Affiliates

To understand the Exchange's conclusion that the Wireless Market Data Connections are not facilities of the Exchange within the meaning of the Act, it is important to understand the very real distinction between the Exchange and its corporate affiliates (the ''ICE Affiliates''). The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Around the world, ICE operates seven regulated exchanges in addition to the Exchange and the Affiliate SROs, including futures markets, as well as six clearing houses. Among others, the ICE Affiliates are subject to the jurisdiction of regulators in the U.S., U.K., E.U., the Netherlands, Canada and Singapore.[10] In all, the ICE Affiliates include hundreds of ICE subsidiaries, including more than thirty that are significant legal entity subsidiaries as defined by Commission rule.[11]

Through its ICE Data Services (''IDS'') business,[12] ICE operates the ICE Global Network, a global connectivity network whose infrastructure provides access to over 150 global markets, including the Exchange and Affiliate SROs, and over 750 data sources. All the ICE Affiliates are ultimately controlled by ICE, as the indirect parent company, but generally they do not control each other. In the present case, it is IDS, not the Exchange, that provides the Wireless Market Data Connections to market participants. The Exchange does not control IDS.

The Wireless Market Data Connections

As noted above, if a market participant in one of the Third Party Data Centers wishes to connect to one

[4] The NYSE, NYSE National, NYSE American LLC and NYSE Chicago, Inc. are national securities exchanges that are affiliates of the Exchange (collectively, the ''Affiliate SROs''). The wireless connectivity services described in this filing do not transport the market data of NYSE American LLC and NYSE Chicago, Inc. The Exchange filed a proposed rule change that would establish the Wireless Fee Schedule. *See* SR–NYSEArca–2020–08 (January 30, 2020). Should such filing be approved before the present filing, the changes to the Wireless Fee Schedule proposed herein would appear at the end of the Wireless Fee Schedule, after the text proposed in the January, 2020 filing. In such case, the Exchange will amend the present filing if required.

[5] In the Carteret and Secaucus Third Party Data Centers, a market participant may use a Wireless Market Data Connection to connect to the NYSE Integrated Feed data feed, the NYSE Arca Integrated Feed data feed, and the NYSE National Integrated Feed data feed. In the Markham, Canada Third Party Data Center, a market participant may use a Wireless Market Data Connection to connect to the NYSE BBO and Trades data feeds and the NYSE Arca BBO and Trades data feeds.

[6] *See* 15 U.S.C. 78c(a)(27) (defining the term ''rules of an exchange'').

[7] 15 U.S.C. 78c(a)(1). *See* 15 U.S.C. 78c(a)(2) (defining the term ''facility'' as applied to an exchange).

[8] Telephone conversation between Commission staff and representatives of the Exchange, December 12, 2019.

[9] *Id.* The Commission has previously stated that services were facilities of an exchange subject to the rule filing requirements without fully explaining its reasoning. In 2010, the Commission stated that exchanges had to file proposed rule changes with respect to co-location because ''[t]he Commission views co-location services as being a material aspect of the operation of the facilities of an exchange.'' The Commission did not specify why it reached that conclusion. *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010), at note 76.

In addition, in 2014, the Commission instituted proceedings to determine whether to disapprove a proposed rule change by The NASDAQ Stock Market LLC (''Nasdaq'') on the basis that Nasdaq's ''provision of third-party market data feeds to co-located clients appears to be an integral feature of its co-location program, and co-location programs are subject to the rule filing process.'' Securities Exchange Act Release No. 72654 (July 22, 2014), 79 FR 43808 (July 28, 2014) (SR–NASDAQ–2014–034). In its order, the Commission did not explain why it believed that the provision of third party data was an integral feature of co-location, or if it believed that it was a facility of Nasdaq, although the Nasdaq filing analyzed each prong of the definition of facility in turn. *See* Securities Exchange Act Release No. 71990 (April 22, 2014), 79 FR 23389 (April 28, 2014) (SR–NASDAQ–2014–034).

[10] Intercontinental Exchange, Inc. Annual Report on Form 10–K for the year ended December 31, 2018, Exhibit 21.1 (filed February 7, 2019), at 15–16.

[11] *Id.* at Exhibit 21.1.

[12] The IDS business operates through several different ICE Affiliates, including NYSE Technologies Connectivity, Inc., an indirect subsidiary of the NYSE.

or more of the data feeds that make up the Selected Market Data,[13] it may opt to purchase a Wireless Market Data Connection to the data.

The Selected Market Data is generated at the Mahwah data center in the trading and execution systems of the Exchange, NYSE and NYSE National (collectively, the ''SRO Systems''). In each case, the Exchange, NYSE or NYSE National, as applicable, files with the Commission for the Selected Market Data it generates, and the related fees.[14] The filed market data fees apply to all Selected Market Data customers no matter what connectivity provider they use.

When a market participant wants to connect to Selected Market Data, it requests a connection from the provider of its choice. All providers, including ICE Affiliates, may only provide the market participant with connectivity once the provider receives confirmation from the Exchange, NYSE or NYSE National, as applicable, that the market participant is authorized to receive the requested Selected Market Data. Accordingly, when a market participant requests a Wireless Market Data Connection, IDS's first step is to obtain authorization.[15]

IDS's next step is to set up the Wireless Market Data Connection for the market participant. In the connection, IDS collects the Selected Market Data, then sends it over the Wireless Market Data Connection to the IDS access center located in the Third Party Data Center. The customer connects to the Selected Market Data at the Third Party Data Center.[16]

The customer is charged by IDS an initial and monthly fee for the Wireless Market Data Connection. By contrast, IDS will not bill the customer for the Selected Market Data: The Exchange, NYSE or NYSE National, as applicable, bill market data subscribers directly, irrespective of whether the market data subscribers receive the Selected Market Data over a Wireless Market Data Connection or from another connectivity provider.

Market participants in the Third Party Data Centers that want to connect to Selected Market Data have options, as other providers offer connectivity to Selected Market Data.[17] A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

The Wireless Market Data Connections Are Not Facilities of the Exchange

The Definition of ''Exchange''

The definition of ''exchange'' focuses on the exchange entity and what it does:[18]

> The term ''exchange'' means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

If the ''exchange'' definition included all of an exchange's affiliates, the ''Exchange'' would encompass a global network of futures markets, clearing houses, and data providers, and all of those entities worldwide would be subject to regulation by the Commission. That, however, is not what the definition in the Act provides.

The Exchange and the Affiliate SROs fall squarely within the Act's definition of an ''exchange'': They each provide a market place to bring together purchasers and sellers of securities and perform with respect to securities the functions commonly performed by a stock exchange.

That is not true for the non-exchange ICE Affiliates. Those ICE Affiliates do not provide such a marketplace or perform ''with respect to securities the functions commonly performed by a stock exchange,'' and therefore they are not an ''exchange'' or part of the ''Exchange'' for purposes of the Act. Accordingly, in conducting its analysis, the Exchange does not automatically collapse the ICE Affiliates into the Exchange. The Wireless Market Data Connections are also not part of the Exchange, as they are services, and as such cannot be part of an ''organization, association or group of persons'' with the Exchange.

In Rule 3b–16 the Commission further defined the term ''exchange'' under the Act, stating that:[19]

> (a) An organization, association, or group of persons shall be considered to constitute, maintain, or provide ''a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange,'' as those terms are used in section 3(a)(1) of the Act . . . if such organization, association, or group of persons:

[13] *See* note 5, *supra* for a list of the Selected Market Data available in each Third Party Data Center.

[14] *See* Securities Exchange Act Release Nos. 74128 (January 23, 2015), 80 FR 4951 (January 29, 2015) (SR–NYSE–2015–03) (notice of filing and immediate effectiveness of proposed rule change establishing the NYSE Integrated Feed data feed); 76485 (November 20, 2015), 80 FR 74158 (November 27, 2015) (SR–NYSE–2015–57) (notice of filing and immediate effectiveness of a proposed rule change establishing fees for the NYSE Integrated Feed); 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30) (order approving proposed rule change to establish the NYSE BBO service); 59290 (January 23, 2009), 74 FR 5707 (January 30, 2009) (SR–NYSE–2009–05) (notice of filing and immediate effectiveness of proposed rule change to introduce a pilot program for NYSE Trades); 59606 (March 19, 2009), 74 FR 13293 (March 26, 2009) (SR–NYSE–2009–04) (order approving proposed rule change to establish fees for NYSE Trades); 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR–NYSEArca–2010–23) (order approving proposed rule change to modify the fees for NYSE Arca Trades, to establish the NYSE Arca BBO service and related fees, and to provide an alternative unit-of-count methodology for those services); 59289 (January 23, 2009), 74 FR 5711 (January 30, 2009) (SR–NYSEArca–2009–06) (notice of filing and immediate effectiveness of proposed rule change to introduce a pilot program for NYSE Arca Trades); 59598 (March 18, 2009), 74 FR 12919 (March 25, 2009) (SR–NYSEArca–2009–05) (order approving proposed rule change to establish fees for NYSE Arca Trades); 65669 (November 2, 2011), 76 FR 69311 (November 8, 2011) (SR–NYSEArca–2011–78) (notice of filing and immediate effectiveness of proposed rule change offering the NYSE Arca Integrated Feed); 66128 (January 10, 2012), 77 FR 2331 (January 17, 2012) (SR–NYSEArca–2011–96) (notice of filing and immediate effectiveness of a proposed rule change establishing fees for NYSE Arca Integrated Feed); 83350 (May 31, 2018), 83 FR 26332 (June 6, 2018) (SR–NYSENAT–2018–09) (notice of filing and immediate effectiveness of proposed rule change establishing the NYSE National Integrated Feed data feed); and 87797 (December 18, 2019), 84 FR 71025 (December 26, 2019) (SR–NYSENAT–2019–31) (notice of filing and immediate effectiveness of proposed rule change to establish fees for the NYSE National Integrated Feed).

[15] When requesting authorization from the Exchange, NYSE or NYSE National to provide a customer with Selected Market Data, the ICE Affiliate providing the Wireless Market Data Connection uses the same on-line tool as all data vendors.

[16] A cable connects the IDS and customer equipment in the Markham Third Party Data Center. If the customer is located in either the Carteret or Secaucus Third Party Data Center, the customer buys a cross connect from IDS.

[17] The other providers obtain Selected Market Data from IDS at the Mahwah data center and send it over their own networks, fiber or wireless, to the Third Party Data Centers.

[18] 15 U.S.C. 78c(a)(1).

[19] 17 CFR 240.3b–16(a).

(1) Brings together the orders for securities of multiple buyers and sellers; and

(2) Uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade.

The non-exchange ICE Affiliates do not bring ''together orders for securities of multiple buyers and sellers,'' and so are not an ''exchange'' or part of the ''Exchange'' for purposes of Rule 3b–16. Indeed, it is not possible to use a Wireless Market Data Connection to effect a transaction on the Exchange. Rather, they are one-way connections away from the Mahwah data center.

The relevant question, then, is whether the Wireless Market Data Connections are ''facilities'' of the Exchange.

The Definition of ''Facility''

The Act defines a ''facility'' [20] as follows:

The term ''facility'' when used with respect to an exchange includes [1] its premises, [2] tangible or intangible property whether on the premises or not, [3] any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and [4] any right of the exchange to the use of any property or service.

In 2015 the Commission noted that whether something is a ''facility'' is not always black and white, as ''any determination as to whether a service or other product is a facility of an exchange requires an analysis of the particular facts and circumstances.'' [21] Accordingly, the Exchange understands that the specific facts and circumstances of the Wireless Market Data Connections must be assessed before a determination can be made regarding whether or not they are facilities of the Exchange.[22]

The first prong of the definition is that ''facility,'' when used with respect to an exchange, includes ''its premises.'' That prong is not applicable in this case, because the Wireless Market Data Connections are not premises of the Exchange. The term ''premises'' is generally defined as referring to an entity's building, land, and appurtenances.[23] The wireless network that runs from the Mahwah data center to the Third Party Data Centers, much of which is actually owned, operated and maintained by a non-ICE entity,[24] is not the premises of the Exchange. The portion of the Mahwah data center where the ''exchange'' functions are performed—*i.e.* the SRO Systems that bring together purchasers and sellers of securities and perform with respect to securities the functions commonly performed by a stock exchange—could be construed as the ''premises'' of the Exchange, but the same is not true for a wireless network that is almost completely outside of the Mahwah data center.

The second prong of the definition of ''facility'' provides that a facility includes the exchange's ''tangible or intangible property whether on the premises or not.'' The Wireless Market Data Connections are not the property of the Exchange: They are services. The underlying wireless network is owned by ICE Affiliates and a non-ICE entity. As noted, the Act does not automatically collapse affiliates into the definition of an ''exchange.'' A review of the facts set forth above shows that there is a real distinction between the Exchange and its ICE Affiliates with respect to the Wireless Market Data Connections, and so something owned by an ICE Affiliate is not owned by the Exchange.

The third prong of the definition of ''facility'' provides that a facility includes

any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange).[25]

This prong does not capture the Wireless Market Data Connections because the Exchange does not have the right to use the Wireless Market Data Connections to effect or report a transaction on the Exchange. ICE Affiliates and a non-ICE entity own and maintain the wireless network underlying the Wireless Market Data Connections, and ICE Affiliates, not the Exchange, offer and provide the Wireless Market Data Connections to customers. The Exchange does not know whether or when a customer has entered into an agreement for a Wireless Market Data Connection and has no right to approve or disapprove of the provision of a Wireless Market Data Connection, any more than it would if the provider was a third party.[26] It does not put the Selected Market Data content onto the Wireless Market Data Connections or send it to customers. When a customer terminates a Wireless Market Data Connection, the Exchange does not consent to the termination.

In fact, it is not possible to use a Wireless Market Data Connection to effect a transaction on the Exchange: they are one-way connections away from the Mahwah data center. Customers cannot use them to send trading orders or information of any sort to the SRO Systems, and the Exchange does not use them to send confirmations of trades. Instead, Wireless Market Data Connections solely carry Selected Market Data.

The Exchange believes the example in the parenthetical in the third prong of the definition of ''facility'' cannot be read as an independent prong of the definition. Such a reading would ignore that the parentheses and the word ''including'' clearly indicate that ''any system of communication to or from an exchange . . . maintained by or with the consent of the exchange'' is explaining the preceding text. By its terms, the parenthetical is providing a non-exclusive example of the type of property or service to which the prong refers, and does not remove the requirement that there must be a right to use the premises, property or service to effect or report a transaction on an exchange. It is making sure the reader understands that ''facility'' includes a

[20] 15 U.S.C. 78c(a)(2).

[21] Securities Exchange Act Release No. 76127 (October 9, 2015), 80 FR 62584 (October 16, 2015) (SR–NYSE–2015–36), at note 9 (order approving proposed rule change amending Section 907.00 of the Listed Company Manual). *See also* 79 FR 23389, *supra* note 9, at note 4 (noting that that the definition of the term ''facility'' has not changed since it was originally adopted) and 23389 (stating that the SEC ''has not separately interpreted the definition of 'facility' '').

[22] As with the definition of ''exchange,'' the ICE Affiliates do not automatically fall within the definition of a ''facility.'' The definition focuses on ownership and the right to use properties and services, not corporate relationships. Indeed, if the term ''exchange'' in the definition of a facility included ''an exchange and its affiliates,'' then the rest of the functional prongs of the facility definition would be meaningless. Fundamental rules of statutory construction dictate that statutes be interpreted to give effect to each of their provisions, so as not to render sections of the statute superfluous.

[23] *See, e.g.,* definition of ''premises'' in Miriam-Webster Dictionary, at *https://www.merriam-webster.com/dictionary/premises,* and Cambridge English Dictionary, at *https://dictionary.cambridge.org/us/dictionary/english/premises.*

[24] A non-ICE entity owns, operates and maintains the wireless network between the Mahwah data center and the Carteret and Secaucus Third Party Data Centers pursuant to a contract between the non-ICE entity and an ICE Affiliate.

[25] 15 U.S.C. 78c(a)(2).

[26] The Exchange provides confirmation to IDS that a customer is authorized to receive the relevant Selected Market Data, as noted above, but does not know how or where that customer receives it. If the customer is already taking the relevant Selected Market Data through another medium or at a different site, IDS does not need to seek Exchange approval.

ticker system that an exchange has the right to use, not creating a new fifth prong to the definition. In fact, if the ''right to use'' requirement were ignored, every communication provider that connected to an exchange, including any broker-dealer system and telecommunication network, would become a facility of that exchange so long as the exchange consented to the connection, whether or not the connection was used to trade or report a trade, and whether or not the exchange had any right at all to the use of the connection.

The fourth prong of the definition provides that a facility includes ''any right of the exchange to the use of any property or service.'' As described above, the Exchange does not have the right to use the Wireless Market Data Connections. Instead, the Wireless Market Data Connections are used by market participants who decide to use that service.

Accordingly, for all the reasons discussed above, the wireless connectivity to Selected Market Data provided by ICE Affiliates is not a facility of the Exchange.

The legal conclusion that the Wireless Market Data Connections are not facilities of the Exchange is strongly supported by the facts. The Wireless Market Data Connections are neither necessary for, nor integrally connected to, the operations of the Exchange. They are one-way connections away from the Mahwah data center. In this context, IDS simply acts as a vendor, selling connectivity to Selected Market Data just like the other vendors that offer wireless connections in the Carteret and Secaucus Third Party Data Centers and fiber connections to all the Third Party Data Centers. The fact that in this case it is ICE Affiliates that offer the Wireless Market Data Connections does not make the Wireless Market Data Connections facilities of the Exchange any more than are the connections offered by other parties.

Further, the Exchange believes that requiring it to file this proposed rule change is not necessary in order for the Commission to ensure that the Exchange is satisfying its requirements under the Act. Because, as described above, the Wireless Market Data Connections are not necessary for, nor connected to, the operations of the Exchange, and customers are not required to use the Wireless Market Data Connections, holding the Wireless Market Data Connections to the statutory standards in Section 6(b) serves no purpose.

Instead, the sole impact of the requirement that the Exchange file the Wireless Market Data Connections is to place an undue burden on competition on the ICE Affiliates that offer the market data connections, compared to their market competitors. This filing requirement, thus, itself is inconsistent with the requirement under Section 6(b)(8) of the Act that the rules of the exchange not ''impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [27] This burden on competition arises because IDS would be unable, for example, to offer a client or potential client a connection to a new data feed it requests, without the delay and uncertainty of a filing, but its competitors will. Similarly, if a competitor decides to undercut IDS' fees because IDS, unlike the competitor, has to make its fees public, IDS will not be able to respond quickly, if at all. Indeed, because its competitors are not required to make their services or fees public, and are not subject to a Commission determination of whether such services or fees are ''not unfairly discriminatory'' or equitably allocated, IDS is at a competitive disadvantage from the very start.

The Proposed Service and Fees

As noted above, the Exchange proposes to add to its rules the Wireless Market Data Connections to Selected Market Data, for an initial and monthly fee.

A market participant would be charged a $5,000 non-recurring initial charge for each Wireless Market Data Connection and a monthly recurring charge (''MRC'') per connection that would vary depending upon the feed and the location of the connection. The proposal would waive the first month's MRC, to allow customers to test a new Wireless Market Data Connection for a month before incurring any MRCs, and the Exchange proposes to add text to the Wireless Fee Schedule accordingly.

The Exchange proposes to add a section to the Wireless Fee Schedule under the heading ''B. Wireless Connectivity to Market Data'' to set forth the fees charged by IDS related to the Wireless Market Data Connections, as follows:

| Type of service | Amount of charge |
|---|---|
| NYSE Integrated Feed: Wireless Connection in Carteret access center | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE Arca Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE National Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $5,250. |
| NYSE Integrated Feed and NYSE Arca Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $18,500. |
| NYSE Integrated Feed, NYSE Arca Integrated Feed, and NYSE National Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $21,000. |
| NYSE Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE Arca Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE National Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $5,250. |
| NYSE Integrated Feed and NYSE Arca Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $18,500. |
| NYSE Integrated Feed, NYSE Arca Integrated Feed, and NYSE National Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $21,000. |
| NYSE BBO and Trades: Wireless Connection in Markham, Canada access center. | $5,000 per connection initial charge plus monthly charge per connection of $6,500. |

[27] 15 U.S.C. 78f(b)(8).

| Type of service | Amount of charge |
|---|---|
| NYSE Arca BBO and Trades: Wireless Connection in Markham, Canada access center. | $5,000 per connection initial charge plus monthly charge per connection of $6,500. |

There is limited bandwidth available on the wireless network to the Markham, Canada Third Party Data Center. Accordingly, such Wireless Market Data Connections do not transport information for all of the symbols included in the NYSE BBO and Trades and NYSE Arca BBO and Trades data feeds. Rather, IDS provides connectivity to a selection of such data feeds, including the data for which IDS believes there is demand. When a market participant requests a Wireless Market Data Connection to Markham, it receives connectivity to the portions of the NYSE BBO and Trades and NYSE Arca BBO and Trades data that IDS transmits wirelessly. The customer then determines the symbols for which it will receive data. The Exchange does not have visibility into which portion of the data feed a given customer receives.

Application and Impact of the Proposed Change

The proposed change would apply to all customers equally. The proposed change would not apply differently to distinct types or sizes of market participants. Customers that require other types or sizes of network connections between the Mahwah data center and the access centers could still request them. As is currently the case, the purchase of any connectivity service is completely voluntary and the Wireless Fee Schedule is applied uniformly to all customers.

Competitive Environment

Other providers offer connectivity to Selected Market Data in the Third Party Data Centers.[28] Based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

Wireless connections involve beaming signals through the air between antennas that are within sight of one another. Because the signals travel a straight, unimpeded line, and because light waves travel faster through air than through glass (fiber optics), wireless messages have lower latency than messages travelling through fiber optics.[29] At the same time, as a general rule wireless networks have less uptime than fiber networks. Wireless networks are directly and immediately affected by adverse weather conditions, which can cause message loss and outage periods. Wireless networks cannot be configured with redundancy in the same way that fiber networks can. As a result, an equipment or weather issue at any one location on the network will cause the entire network to have an outage. In addition, maintenance can take longer than it would with a fiber based network, as the relevant tower may be in a hard to reach location, or weather conditions may present safety issues, delaying technicians servicing equipment. Even under normal conditions, a wireless network will have a higher error rate than a fiber network of the same length.

The proposed Wireless Market Data Connections traverse through a series of towers equipped with wireless equipment, including, in the case of the Carteret and Secaucus connections, a pole on the grounds of the Mahwah data center. With the exception of the non-ICE entity that owns the wireless network used for the Wireless Connections to Secaucus and Carteret,[30] third parties do not have access to such pole. However, access to such pole is not required for third parties to establish wireless networks that can compete with the Wireless Market Data Connections to the Carteret and Secaucus Third Party Data Centers, as witnessed by the existing wireless connections offered by non-ICE entities competitors.

In addition, proximity to a data center is not the only determinant of a wireless network's latency. Rather, the latency of a wireless network depends on several factors. Variables include the wireless equipment utilized; the route of, and number of towers or buildings in, the network; and the fiber equipment used at either end of the connection. Moreover, latency is not the only consideration that a customer may have in selecting a wireless network to connect to Selected Market Data. Other considerations may include the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

2. Statutory Basis

Although the Exchange does not believe that the present proposed change is a change to the ''rules of an exchange'' [31] required to be filed with the Commission under the Act, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[32] in general, and furthers the objectives of Section 6(b)(5) of the Act,[33] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the

[28] Third party providers obtain Selected Market Data from IDS at the Mahwah data center and send it over their own networks, fiber or wireless, to the Third Party Data Centers.

[29] *See* Securities Exchange Act Release No. 76749 (December 23, 2015), 80 FR 81640 (December 30, 2015) (SR–NYSEArca–2015–99) (order approving offering of a wireless connection to allow Users to receive market data feeds from third party markets and to reflect changes to the Exchange's fee schedules related to these services).

[30] *See* note 24, *supra.*

[31] *See* 15 U.S.C. 78c(a)(27) (defining the term ''rules of an exchange'').

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(5).

public interest and does not unfairly discriminate between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[34] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

The Exchange believes its proposal is reasonable.

Based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

Market participants' considerations in determining what connectivity to purchase may include latency; the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

The Exchange believes that the proposed pricing for the Wireless Market Data Connections is reasonable because it allows customers to select the connectivity option that best suits their needs. A market participant that opts for Wireless Market Data Connections would be able to select the specific Selected Market Data feed that it wants to receive in accordance with its needs, thereby helping it tailor its operations to the requirements of its business operations. The fees also reflect the benefit received by market participants in terms of lower latency over the fiber optics options.

There is limited bandwidth available on the wireless network to the Markham, Canada Third Party Data Center. Accordingly, the Exchange believes that it is reasonable not to transport information for all of the symbols included in the NYSE BBO and Trades and NYSE Arca BBO and Trades data feeds to Markham, but rather to transport a subset of that data. Limiting the feeds to the data regarding securities for which IDS believes there is demand allows customers in Canada to receive the relevant Selected Market Data over a wireless network. The customer then determines those symbols for which it will receive data.

Only market participants that voluntarily select to receive Wireless Market Data Connections are charged for them, and those services are available to all market participants with a presence in the relevant Third Party Data Center. Furthermore, the Exchange believes that the services and fees proposed herein are reasonable because, in addition to the services being completely voluntary, they are available to all market participants on an equal basis (*i.e.,* the same products and services are available to all market participants). All market participants that voluntarily select a Wireless Market Data Connection would be charged the same amount for the same service and would have their first month's MRC for the Wireless Market Data Connection waived.

Overall, the Exchange believes that the proposed change is reasonable because the Wireless Market Data Connections described herein are offered as a convenience to market participants, but offering them requires the provision, maintenance and operation of the Mahwah data center, wireless networks and access centers in the Third Party Data Centers, including the installation and monitoring, support and maintenance of the services.

The Exchange believes that the proposed waiver of the first month's MRC is reasonable as it would allow market participants to test a Wireless Market Data Connection for a month before incurring any monthly recurring fees and may act as an incentive to market participants to connect to a Wireless Market Data Connection.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees among its market participants.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all market participants equally. As is currently the case, the purchase of any connectivity service, including Wireless Market Data Connections, would be completely voluntary.

The Exchange believes that it is equitable to not to transport information for all of the symbols included in the NYSE BBO and Trades and NYSE Arca BBO and Trades data feeds to Markham, but rather to transport a subset of that data. There is limited bandwidth available on the wireless network to the Markham, Canada Third Party Data Center. Limiting the feeds to the data regarding securities for which IDS believes there is demand allows customers in Canada to receive the relevant Selected Market Data over a wireless network. The customer then determines those symbols for which it will receive data.

Without this proposed rule change, market participants with a presence in the Third Party Data Centers would have fewer options for connectivity to Selected Market Data. With it, market participants have more choices with respect to the form and price of connectivity to Selected Market Data they use, allowing a market participant that opts for a Wireless Market Data Connection to select the specific Selected Market Data feed that it wants to receive in accordance with what best suits its needs, thereby helping it tailor its operations to the requirements of its business operations.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all market participants equally. As is currently the case, the purchase of any connectivity service, including Wireless Market Data Connections, would be completely voluntary.

A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant in any of the Third

[34] 15 U.S.C. 78f(b)(4).

Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

Without this proposed rule change, market participants with a presence in the Third Party Data Centers would have fewer options for connectivity to Selected Market Data. With it, market participants have more choices with respect to the form and price of connectivity to Selected Market Data they use, allowing a market participant that opts for a Wireless Market Data Connection to select the specific Selected Market Data feed that it wants to receive in accordance with what best suits its needs, thereby helping it tailor its operations to the requirements of its business operations.

The Wireless Market Data Connections provide customers in the Secaucus and Carteret access centers with one means of connectivity to Selected Market Data, but based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the only burden on competition of the proposed change is on IDS and other commercial connectivity providers. Solely because IDS is wholly owned by the same parent company as the Exchange, IDS will be at a competitive disadvantage to its commercial competitors, and its commercial competitors, without a filing requirement, will be at a relative competitive advantage to IDS.

By permitting IDS to continue to offer the Wireless Market Data Connectivity, approval of the proposed changes would contribute to competition by allowing IDS to compete with other connectivity providers, and thus provides market participants another connectivity option. For this reason, the proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[35]

Based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham. The Exchange does not control the Third Party Data Centers and could not preclude other parties from creating new wireless or fiber connections to Selected Market Data in any of the Third Party Data Centers.

The Wireless Market Data Connections provide customers in the Secaucus and Carteret Third Party Data Centers with one means of connectivity to Selected Market Data, but substitute products are available, as witnessed by the existing wireless connections offered by non-ICE entities. A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant in any of the Third Party Data Centers or the Mahwah data center may also create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

The Exchange notes that the proposed Wireless Market Data Connections compete not just with other wireless connections to Selected Market Data, but also with fiber network connections, which may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions. Market participants' considerations in determining what connectivity to purchase may include latency; the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

The proposed Wireless Market Data Connections traverse through a series of towers equipped with wireless equipment, including, in the case of the Carteret and Secaucus Wireless Market Data Connections, a pole on the grounds of the Mahwah data center. With the exception of the non-ICE entity that owns the wireless network used for the Wireless Connections to Secaucus and Carteret,[36] third parties do not have access to such pole, as the IDS wireless network has exclusive rights to operate wireless equipment on the Mahwah data center pole. IDS does not sell rights to third parties to operate wireless equipment on the pole, due to space limitations, security concerns, and the interference that would arise between equipment placed too closely together.

However, access to such pole is not required for other parties to establish wireless networks that can compete with the Wireless Market Data Connections, as witnessed by the existing wireless connections offered by non-ICE entities. Proximity to a data center is not the only determinant of a wireless network's latency. Rather, the latency of a wireless network depends on several factors. Variables include the wireless equipment utilized; the route of, and number of towers or buildings in, the network; and the fiber equipment used at either end of the connection. Moreover, latency is not the only consideration that a customer may have in selecting a wireless network to connect to Selected Market Data. Other considerations may include the amount of network uptime; the equipment that

[35] 15 U.S.C. 78f(b)(8).

[36] *See* note 24, *supra.*

the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather between IDS and its commercial competitors.

For the reasons described above, the Exchange believes that the proposed rule changes reflect this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2020–15 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2020–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–15, and should be submitted on or before March 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03643 Filed 2–24–20; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 33799; File No. 812–15088]**

## ETF Managers Trust and ETF Managers Group LLC

February 19, 2020.

**AGENCY:** Securities and Exchange Commission (the ''Commission'').

**ACTION:** Notice.

Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act. The requested order would permit certain registered open-end investment companies to acquire shares of certain registered open-end investment companies, registered closed-end investment companies, and business development companies (''BDCs''), as defined in section 2(a)(48) of the Act, and registered unit investment trusts (''UITs'') (collectively, the ''Underlying Funds'') that are within and outside the same group of investment companies as the acquiring investment companies, in excess of the limits in section 12(d)(1) of the Act.

*Applicants:* ETF Managers Trust (the ''Trust'') is organized as a Delaware statutory trust and registered with the Commission under the Act as an open-end management investment company with multiple series, each of which has its own investment objectives and principal investment strategies. ETF Managers Group LLC (''the Adviser''), the adviser to the Trust, is organized as a limited liability company established under the laws of the state of Delaware and is registered as an investment adviser under section 203 of the Investment Advisers Act of 1940.

*Filing Date:* The application was filed on January 6, 2020.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 16, 2020, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: 30 Maple Street, 2nd Floor, Summit, NJ 07901.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's

[37] 17 CFR 200.30–3(a)(12).

website by searching for the file number, or for an applicant using the Company name box, at *https://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

**Summary of the Application**

1. Applicants request an order to permit (a) each Fund [1] (and each a ''Fund of Funds'') to acquire shares of Underlying Funds [2] in excess of the limits in sections 12(d)(1)(A) and (C) of the Act, and (b) each Underlying Fund that is a registered open-end management investment company or series thereof, their principal underwriters, and any broker or dealer registered under the 1934 Act to sell shares of the Underlying Funds to the Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.[3] Applicants also request that the Commission issue an order under sections 6(c) and 17(b) of the Act from the prohibition on certain affiliated transactions in section 17(a) of the Act to the extent necessary to permit the Underlying Funds to sell their shares to, and redeem their shares from, the Funds of Funds.[4] Applicants state that such transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act and will be based on the net asset values of the Underlying Funds.

2. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over an Underlying Fund that is not in the same ''group of investment companies'' as the Fund of Funds through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A), (B), and (C) of the Act.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any persons, securities, or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03638 Filed 2–24–20; 8:45 am]

**BILLING CODE 8011–01–P**

[1] Applicants request that the order apply not only to the existing series of the Trust (the ''Existing Funds''), but that the order also extend to any future series of the Trust and any other existing or future registered open-end management investment companies and any series thereof that are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Trust are, or may in the future be, advised by the Adviser or any other investment adviser controlling, controlled by, or under common control with the Adviser (together with the Existing Funds, each series a ''Fund,'' and collectively, the ''Funds''). For purposes of the request for relief, the term ''group of investment companies'' means any two or more registered investment companies, including closed-end investment companies and BDCs, that hold themselves out to investors as related companies for purposes of investment and investor services.

[2] Certain of the Underlying Funds registered under the Act as either UITs or open-end management investment companies may have requested and obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices and, accordingly, to operate as exchange-traded funds (collectively, ''ETFs'' and each an ''ETF'').

[3] Applicants are not requesting relief for a Fund of Funds to invest in BDCs and registered closed-end investment companies that are not listed and traded on a national securities exchange.

[4] A Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF or closed-end fund through secondary market transactions rather than through principal transactions with the Underlying Fund. Applicants nevertheless request relief from sections 17(a)(1) and (2) to permit each ETF or closed-end fund that is an affiliated person, or an affiliated person of an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund of Funds, to sell shares to or redeem shares from the Fund of Funds. This includes, in the case of sales and redemptions of shares of ETFs, the in-kind transactions that accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an ETF, BDC, or closed-end fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because an investment adviser to the ETF, BDC, or closed-end fund, or an entity controlling, controlled by, or under common control with the investment adviser to the ETF, BDC, or closed-end fund, is also an investment adviser to the Fund of Funds.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88240; File No. SR–NYSECHX–2020–05]**

## Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing of Proposed Rule Change To Amend the Schedule of Wireless Connectivity Fees and Charges To Add Wireless Connectivity Services

February 19, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 11, 2020, the NYSE Chicago, Inc. (''NYSE Chicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to add wireless connectivity services that transport the market data of certain affiliates of the Exchange to the schedule of Wireless Connectivity Fees and Charges (the ''Wireless Fee Schedule''). The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to add wireless connectivity services that transport market data of three Exchange affiliates, New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca'') and NYSE National, Inc. (''NYSE National'') to the Wireless Fee Schedule.[4] A market participant is not able to use the wireless connectivity services to connect to Exchange market data.

The wireless connections can be purchased by market participants in three data centers that are owned and operated by third parties unaffiliated with the Exchange: (1) Carteret, New Jersey, (2) Secaucus, New Jersey, and (3) Markham, Canada (collectively, the ''Third Party Data Centers''). A market participant in a Third Party Data Center that purchases a wireless connection (''Wireless Market Data Connection'') receives connectivity to certain NYSE, NYSE Arca and NYSE National market data feeds (collectively, the ''Selected Market Data'')[5] distributed from the Mahwah, New Jersey data center. Customers that purchase a wireless connection to Selected Market Data are charged an initial and monthly fee for the service of transporting the Selected Market Data.

The Exchange does not believe that the present proposed change is a change to the ''rules of an exchange''[6] required to be filed with the Commission under the Act. The definition of ''exchange'' under the Act includes ''the market facilities maintained by such exchange.''[7] Based on its review of the relevant facts and circumstances, and as discussed further below, the Exchange has concluded that the Wireless Market Data Connections are not facilities of the Exchange within the meaning of the Act, and therefore do not need to be included in its rules.

The Exchange is making the current proposal solely because the Staff of the Commission has advised the Exchange that it believes the Wireless Market Data Connections are facilities of the Exchange and so must be filed as part of its rules.[8] The Staff has not set forth the basis of its conclusion beyond verbally noting that the Wireless Market Data Connections are provided by an affiliate of the Exchange and a market participant could use a Wireless Market Data Connection to connect to market data feeds of Affiliate SROs.[9]

The Exchange expects the proposed change to be operative 60 days after the present filing becomes effective.

The Exchange and the ICE Affiliates

To understand the Exchange's conclusion that the Wireless Market Data Connections are not facilities of the Exchange within the meaning of the Act, it is important to understand the very real distinction between the Exchange and its corporate affiliates (the ''ICE Affiliates''). The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Around the world, ICE operates seven regulated exchanges in addition to the Exchange and the Affiliate SROs, including futures markets, as well as six clearing houses. Among others, the ICE Affiliates are subject to the jurisdiction of regulators in the U.S., U.K., E.U., the Netherlands, Canada and Singapore.[10] In all, the ICE Affiliates include hundreds of ICE subsidiaries, including more than thirty that are significant legal entity subsidiaries as defined by Commission rule.[11]

Through its ICE Data Services (''IDS'') business,[12] ICE operates the ICE Global Network, a global connectivity network whose infrastructure provides access to over 150 global markets, including the Exchange and Affiliate SROs, and over 750 data sources. All the ICE Affiliates are ultimately controlled by ICE, as the indirect parent company, but generally they do not control each other. In the present case, it is IDS, not the Exchange, that provides the Wireless Market Data Connections to market participants. The Exchange does not control IDS.

The Wireless Market Data Connections

As noted above, if a market participant in one of the Third Party Data Centers wishes to connect to one or more of the data feeds of the Affiliate SROs that make up the Selected Market Data,[13] it may opt to purchase a Wireless Market Data Connection to the data.

The Selected Market Data is generated at the Mahwah data center in the trading and execution systems of the NYSE, NYSE Arca and NYSE National (collectively, the ''SRO Systems''). In each case, the NYSE, NYSE Arca or NYSE National, as applicable, files with the Commission for the Selected Market Data it generates, and the related fees.[14]

[4] The NYSE, NYSE American LLC, NYSE Arca, and NYSE National are national securities exchanges that are affiliates of the Exchange (collectively, the ''Affiliate SROs''). The wireless connectivity services described in this filing do not transport the market data of the Exchange or NYSE American LLC. The Exchange filed a proposed rule change that would establish the Wireless Fee Schedule. *See* SR–NYSECHX–2020–02 (January 30, 2020). Should such filing be approved before the present filing, the changes to the Wireless Fee Schedule proposed herein would appear at the end of the Wireless Fee Schedule, after the text proposed in the January, 2020 filing. In such case, the Exchange will amend the present filing if required.

[5] In the Carteret and Secaucus Third Party Data Centers, a market participant may use a Wireless Market Data Connection to connect to the NYSE Integrated Feed data feed, the NYSE Arca Integrated Feed data feed, and the NYSE National Integrated Feed data feed. In the Markham, Canada Third Party Data Center, a market participant may use a Wireless Market Data Connection to connect to the NYSE BBO and Trades data feeds and the NYSE Arca BBO and Trades data feeds.

[6] *See* 15 U.S.C. 78c(a)(27) (defining the term ''rules of an exchange'').

[7] 15 U.S.C. 78c(a)(1). See 15 U.S.C. 78c(a)(2) (defining the term ''facility'' as applied to an exchange).

[8] Telephone conversation between Commission staff and representatives of the Exchange, December 12, 2019.

[9] *Id.* The Commission has previously stated that services were facilities of an exchange subject to the rule filing requirements without fully explaining its reasoning. In 2010, the Commission stated that exchanges had to file proposed rule changes with respect to co-location because ''[t]he Commission views co-location services as being a material aspect of the operation of the facilities of an exchange.'' The Commission did not specify why it reached that conclusion. *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010), at note 76.

In addition, in 2014, the Commission instituted proceedings to determine whether to disapprove a proposed rule change by The NASDAQ Stock Market LLC (''Nasdaq'') on the basis that Nasdaq's ''provision of third-party market data feeds to co-located clients appears to be an integral feature of its co-location program, and co-location programs are subject to the rule filing process.'' Securities Exchange Act Release No. 72654 (July 22, 2014), 79 FR 43808 (July 28, 2014) (SR–NASDAQ–2014–034). In its order, the Commission did not explain why it believed that the provision of third party data was an integral feature of co-location, or if it believed that it was a facility of Nasdaq, although the Nasdaq filing analyzed each prong of the definition of facility in turn. *See* Securities Exchange Act Release No. 71990 (April 22, 2014), 79 FR 23389 (April 28, 2014) (SR–NASDAQ–2014–034).

[10] Intercontinental Exchange, Inc. Annual Report on Form 10–K for the year ended December 31, 2018, Exhibit 21.1 (filed February 7, 2019), at 15–16.

[11] *Id.* at Exhibit 21.1.

[12] The IDS business operates through several different ICE Affiliates, including NYSE Technologies Connectivity, Inc., an indirect subsidiary of the NYSE.

[13] *See* note 5, *supra* for a list of the Selected Market Data available in each Third Party Data Center.

[14] *See* Securities Exchange Act Release Nos. 74128 (January 23, 2015), 80 FR 4951 (January 29, 2015) (SR–NYSE–2015–03) (notice of filing and immediate effectiveness of proposed rule change establishing the NYSE Integrated Feed data feed); 76485 (November 20, 2015), 80 FR 74158 (November 27, 2015) (SR–NYSE–2015–57) (notice of filing and immediate effectiveness of a proposed rule change establishing fees for the NYSE Integrated Feed); 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30) (order approving proposed rule change to establish the NYSE BBO service); 59290 (January 23, 2009), 74 FR 5707 (January 30, 2009) (SR–NYSE–2009–05) (notice of filing and immediate effectiveness of proposed rule change to introduce a pilot program for NYSE Trades); 59606 (March 19, 2009), 74 FR

The filed market data fees apply to all Selected Market Data customers no matter what connectivity provider they use.

When a market participant wants to connect to Selected Market Data, it requests a connection from the provider of its choice. All providers, including ICE Affiliates, may only provide the market participant with connectivity once the provider receives confirmation from the NYSE, NYSE Arca or NYSE National, as applicable, that the market participant is authorized to receive the requested Selected Market Data. Accordingly, when a market participant requests a Wireless Market Data Connection, IDS's first step is to obtain authorization.[15]

IDS's next step is to set up the Wireless Market Data Connection for the market participant. In the connection, IDS collects the Selected Market Data, then sends it over the Wireless Market Data Connection to the IDS access center located in the Third Party Data Center. The customer connects to the Selected Market Data at the Third Party Data Center.[16]

The customer is charged by IDS an initial and monthly fee for the Wireless Market Data Connection. By contrast, IDS will not bill the customer for the Selected Market Data: The NYSE, NYSE Arca or NYSE National, as applicable, bill market data subscribers directly, irrespective of whether the market data subscribers receive the Selected Market Data over a Wireless Market Data Connection or from another connectivity provider.

Market participants in the Third Party Data Centers that want to connect to Selected Market Data have options, as other providers offer connectivity to Selected Market Data.[17] A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

The Wireless Market Data Connections Are Not Facilities of the Exchange

The Definition of ''Exchange''

The definition of ''exchange'' focuses on the exchange entity and what it does: [18]

> The term ''exchange'' means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

If the ''exchange'' definition included all of an exchange's affiliates, the ''Exchange'' would encompass a global network of futures markets, clearing houses, and data providers, and all of those entities worldwide would be subject to regulation by the Commission. That, however, is not what the definition in the Act provides.

The Exchange and the Affiliate SROs fall squarely within the Act's definition of an ''exchange'': They each provide a market place to bring together purchasers and sellers of securities and perform with respect to securities the functions commonly performed by a stock exchange.

That is not true for the non-exchange ICE Affiliates. Those ICE Affiliates do not provide such a marketplace or perform ''with respect to securities the functions commonly performed by a stock exchange,'' and therefore they are not an ''exchange'' or part of the ''Exchange'' for purposes of the Act. Accordingly, in conducting its analysis, the Exchange does not automatically collapse the ICE Affiliates into the Exchange. The Wireless Market Data Connections are also not part of the Exchange, as they are services, and as such cannot be part of an ''organization, association or group of persons'' with the Exchange.

In Rule 3b–16 the Commission further defined the term ''exchange'' under the Act, stating that: [19]

> (a) An organization, association, or group of persons shall be considered to constitute, maintain, or provide ''a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange,'' as those terms are used in section 3(a)(1) of the Act . . . if such organization, association, or group of persons:
>
> (1) Brings together the orders for securities of multiple buyers and sellers; and
>
> (2) Uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade.

The non-exchange ICE Affiliates do not bring ''together orders for securities of multiple buyers and sellers,'' and so are not an ''exchange'' or part of the ''Exchange'' for purposes of Rule 3b–16. Indeed, it is not possible to use a Wireless Market Data Connection to effect a transaction on the Exchange. Rather, they are one-way connections away from the Mahwah data center.

The relevant question, then, is whether the Wireless Market Data Connections are ''facilities'' of the Exchange.

The Definition of ''Facility''

The Act defines a ''facility'' [20] as follows:

> The term ''facility'' when used with respect to an exchange includes [1] its premises, [2] tangible or intangible property whether on the premises or not, [3] any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by

13293 (March 26, 2009) (SR–NYSE–2009–04) (order approving proposed rule change to establish fees for NYSE Trades); 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR–NYSEArca–2010–23) (order approving proposed rule change to modify the fees for NYSE Arca Trades, to establish the NYSE Arca BBO service and related fees, and to provide an alternative unit-of-count methodology for those services); 59289 (January 23, 2009), 74 FR 5711 (January 30, 2009) (SR–NYSEArca–2009–06) (notice of filing and immediate effectiveness of proposed rule change to introduce a pilot program for NYSE Arca Trades); 59598 (March 18, 2009), 74 FR 12919 (March 25, 2009) (SR–NYSEArca–2009–05) (order approving proposed rule change to establish fees for NYSE Arca Trades); 65669 (November 2, 2011), 76 FR 69311 (November 8, 2011) (SR–NYSEArca–2011–78) (notice of filing and immediate effectiveness of proposed rule change offering the NYSE Arca Integrated Feed); 66128 (January 10, 2012), 77 FR 2331 (January 17, 2012) (SR–NYSEArca–2011–96) (notice of filing and immediate effectiveness of a proposed rule change establishing fees for NYSE Arca Integrated Feed); 83350 (May 31, 2018), 83 FR 26332 (June 6, 2018) (SR–NYSENAT–2018–09) (notice of filing and immediate effectiveness of proposed rule change establishing the NYSE National Integrated Feed data feed); and 87797 (December 18, 2019), 84 FR 71025 (December 26, 2019) (SR–NYSENAT–2019–31) (notice of filing and immediate effectiveness of proposed rule change to establish fees for the NYSE National Integrated Feed).

[15] When requesting authorization from the NYSE, NYSE Arca or NYSE National to provide a customer with Selected Market Data, the ICE Affiliate providing the Wireless Market Data Connection uses the same on-line tool as all data vendors.

[16] A cable connects the IDS and customer equipment in the Markham Third Party Data Center. If the customer is located in either the Carteret or Secaucus Third Party Data Center, the customer buys a cross connect from IDS.

[17] The other providers obtain Selected Market Data from IDS at the Mahwah data center and send it over their own networks, fiber or wireless, to the Third Party Data Centers.

[18] 15 U.S.C. 78c(a)(1).

[19] 17 CFR 240.3b–16(a).

[20] 15 U.S.C. 78c(a)(2).

ticker or otherwise, maintained by or with the consent of the exchange), and [4] any right of the exchange to the use of any property or service.

In 2015 the Commission noted that whether something is a ''facility'' is not always black and white, as ''any determination as to whether a service or other product is a facility of an exchange requires an analysis of the particular facts and circumstances.'' [21] Accordingly, the Exchange understands that the specific facts and circumstances of the Wireless Market Data Connections must be assessed before a determination can be made regarding whether or not they are facilities of the Exchange.[22]

The first prong of the definition is that ''facility,'' when used with respect to an exchange, includes ''its premises.'' That prong is not applicable in this case, because the Wireless Market Data Connections are not premises of the Exchange. The term ''premises'' is generally defined as referring to an entity's building, land, and appurtenances.[23] The wireless network that runs from the Mahwah data center to the Third Party Data Centers, much of which is actually owned, operated and maintained by a non-ICE entity,[24] is not the premises of the Exchange. The portion of the Mahwah data center where the ''exchange'' functions are performed—*i.e.* the SRO Systems that bring together purchasers and sellers of securities and perform with respect to securities the functions commonly performed by a stock exchange—could be construed as the ''premises'' of the Exchange, but the same is not true for a wireless network that is almost completely outside of the Mahwah data center.

The second prong of the definition of ''facility'' provides that a facility includes the exchange's ''tangible or intangible property whether on the premises or not.'' The Wireless Market Data Connections are not the property of the Exchange: They are services. The underlying wireless network is owned by ICE Affiliates and a non-ICE entity. As noted, the Act does not automatically collapse affiliates into the definition of an ''exchange.'' A review of the facts set forth above shows that there is a real distinction between the Exchange and its ICE Affiliates with respect to the Wireless Market Data Connections, and so something owned by an ICE Affiliate is not owned by the Exchange.

The third prong of the definition of ''facility'' provides that a facility includes

> any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange).[25]

This prong does not capture the Wireless Market Data Connections because the Exchange does not have the right to use the Wireless Market Data Connections to effect or report a transaction on the Exchange. ICE Affiliates and a non-ICE entity own and maintain the wireless network underlying the Wireless Market Data Connections, and ICE Affiliates, not the Exchange, offer and provide the Wireless Market Data Connections to customers. The Exchange does not know whether or when a customer has entered into an agreement for a Wireless Market Data Connection and has no right to approve or disapprove of the provision of a Wireless Market Data Connection, any more than it would if the provider was a third party.[26] It does not put the Selected Market Data content onto the Wireless Market Data Connections or send it to customers. A market participant cannot use a Wireless Market Data Connection to connect to Exchange market data. When a customer terminates a Wireless Market Data Connection, the Exchange does not consent to the termination.

In fact, it is not possible to use a Wireless Market Data Connection to effect a transaction on the Exchange: They are one-way connections away from the Mahwah data center. Customers cannot use them to send trading orders or information of any sort to the SRO Systems, and the Exchange does not use them to send confirmations of trades. Instead, Wireless Market Data Connections solely carry Selected Market Data, which does not include Exchange market data.

The Exchange believes the example in the parenthetical in the third prong of the definition of ''facility'' cannot be read as an independent prong of the definition. Such a reading would ignore that the parentheses and the word ''including'' clearly indicate that ''any system of communication to or from an exchange . . . maintained by or with the consent of the exchange'' is explaining the preceding text. By its terms, the parenthetical is providing a non-exclusive example of the type of property or service to which the prong refers, and does not remove the requirement that there must be a right to use the premises, property or service to effect or report a transaction on an exchange. It is making sure the reader understands that ''facility'' includes a ticker system that an exchange has the right to use, not creating a new fifth prong to the definition. In fact, if the ''right to use'' requirement were ignored, every communication provider that connected to an exchange, including any broker-dealer system and telecommunication network, would become a facility of that exchange so long as the exchange consented to the connection, whether or not the connection was used to trade or report a trade, and whether or not the exchange had any right at all to the use of the connection.

The fourth prong of the definition provides that a facility includes ''any right of the exchange to the use of any property or service.'' As described above, the Exchange does not have the right to use the Wireless Market Data Connections. Instead, the Wireless Market Data Connections are used by market participants who decide to use that service.

Accordingly, for all the reasons discussed above, the wireless connectivity to Selected Market Data provided by ICE Affiliates is not a facility of the Exchange.

The legal conclusion that the Wireless Market Data Connections are not

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[21] Securities Exchange Act Release No. 76127 (October 9, 2015), 80 FR 62584 (October 16, 2015) (SR–NYSE–2015–36), at note 9 (order approving proposed rule change amending Section 907.00 of the Listed Company Manual). *See also* 79 FR 23389, *supra* note 9, at note 4 (noting that that the definition of the term ''facility'' has not changed since it was originally adopted) and 23389 (stating that the SEC ''has not separately interpreted the definition of 'facility'").

[22] As with the definition of ''exchange,'' the ICE Affiliates do not automatically fall within the definition of a ''facility.'' The definition focuses on ownership and the right to use properties and services, not corporate relationships. Indeed, if the term ''exchange'' in the definition of a facility included ''an exchange and its affiliates,'' then the rest of the functional prongs of the facility definition would be meaningless. Fundamental rules of statutory construction dictate that statutes be interpreted to give effect to each of their provisions, so as not to render sections of the statute superfluous.

[23] *See, e.g.,* definition of ''premises'' in Miriam-Webster Dictionary, at *https://www.merriam-webster.com/dictionary/premises,* and Cambridge English Dictionary, at *https://dictionary.cambridge.org/us/dictionary/english/premises.*

[24] A non-ICE entity owns, operates and maintains the wireless network between the Mahwah data center and the Carteret and Secaucus Third Party Data Centers pursuant to a contract between the non-ICE entity and an ICE Affiliate.

[25] 15 U.S.C. 78c(a)(2).

[26] The relevant Affiliate SRO provides confirmation to IDS that a customer is authorized to receive the relevant Selected Market Data, as noted above, but does not know how or where that customer receives it. If the customer is already taking the relevant Selected Market Data through another medium or at a different site, IDS does not need to seek approval from the relevant Affiliate SRO.

facilities of the Exchange is strongly supported by the facts. The Wireless Market Data Connections are neither necessary for, nor integrally connected to, the operations of the Exchange. They are one-way connections away from the Mahwah data center. A market participant cannot use a Wireless Market Data Connection to send trading orders or information to the SRO Systems or to connect to Exchange market data. In this context, IDS simply acts as a vendor, selling connectivity to Selected Market Data just like the other vendors that offer wireless connections in the Carteret and Secaucus Third Party Data Centers and fiber connections to all the Third Party Data Centers. The fact that in this case it is ICE Affiliates that offer the Wireless Market Data Connections does not make the Wireless Market Data Connections facilities of the Exchange any more than are the connections offered by other parties.

Further, the Exchange believes that requiring it to file this proposed rule change is not necessary in order for the Commission to ensure that the Exchange is satisfying its requirements under the Act. Because, as described above, the Wireless Market Data Connections are not necessary for, nor connected to, the operations of the Exchange, and customers are not required to use the Wireless Market Data Connections, holding the Wireless Market Data Connections to the statutory standards in Section 6(b) serves no purpose.

Instead, the sole impact of the requirement that the Exchange file the Wireless Market Data Connections is to place an undue burden on competition on the ICE Affiliates that offer the market data connections, compared to their market competitors. This filing requirement, thus, itself is inconsistent with the requirement under Section 6(b)(8) of the Act that the rules of the exchange not ''impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [27] This burden on competition arises because IDS would be unable, for example, to offer a client or potential client a connection to a new data feed it requests, without the delay and uncertainty of a filing, but its competitors will. Similarly, if a competitor decides to undercut IDS' fees because IDS, unlike the competitor, has to make its fees public, IDS will not be able to respond quickly, if at all. Indeed, because its competitors are not required to make their services or fees public, and are not subject to a Commission determination of whether such services or fees are ''not unfairly discriminatory'' or equitably allocated, IDS is at a competitive disadvantage from the very start.

The Proposed Service and Fees

As noted above, the Exchange proposes to add to its rules the Wireless Market Data Connections to Selected Market Data, for an initial and monthly fee.

A market participant would be charged a $5,000 non-recurring initial charge for each Wireless Market Data Connection and a monthly recurring charge (''MRC'') per connection that would vary depending upon the feed and the location of the connection. The proposal would waive the first month's MRC, to allow customers to test a new Wireless Market Data Connection for a month before incurring any MRCs, and the Exchange proposes to add text to the Wireless Fee Schedule accordingly.

The Exchange proposes to add a section to the Wireless Fee Schedule under the heading ''B. Wireless Connectivity to Market Data'' to set forth the fees charged by IDS related to the Wireless Market Data Connections, as follows:

| Type of service | Amount of charge |
|---|---|
| NYSE Integrated Feed: Wireless Connection in Carteret access center | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE Arca Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE National Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $5,250. |
| NYSE Integrated Feed and NYSE Arca Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $18,500. |
| NYSE Integrated Feed, NYSE Arca Integrated Feed, and NYSE National Integrated Feed: Wireless Connection in Carteret access center. | $5,000 per connection initial charge plus monthly charge per connection of $21,000. |
| NYSE Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE Arca Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $10,500. |
| NYSE National Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $5,250. |
| NYSE Integrated Feed and NYSE Arca Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $18,500. |
| NYSE Integrated Feed, NYSE Arca Integrated Feed, and NYSE National Integrated Feed: Wireless Connection in Secaucus access center. | $5,000 per connection initial charge plus monthly charge per connection of $21,000. |
| NYSE BBO and Trades: Wireless Connection in Markham, Canada access center. | $5,000 per connection initial charge plus monthly charge per connection of $6,500. |
| NYSE Arca BBO and Trades: Wireless Connection in Markham, Canada access center. | $5,000 per connection initial charge plus monthly charge per connection of $6,500. |

There is limited bandwidth available on the wireless network to the Markham, Canada Third Party Data Center. Accordingly, such Wireless Market Data Connections do not transport information for all of the symbols included in the NYSE BBO and Trades and NYSE Arca BBO and Trades data feeds. Rather, IDS provides connectivity to a selection of such data feeds, including the data for which IDS believes there is demand. When a market participant requests a Wireless Market Data Connection to Markham, it receives connectivity to the portions of

[27] 15 U.S.C. 78f(b)(8).

the NYSE BBO and Trades and NYSE Arca BBO and Trades data that IDS transmits wirelessly. The customer then determines the symbols for which it will receive data. The Exchange does not have visibility into which portion of the data feed a given customer receives.

Application and Impact of the Proposed Change

The proposed change would apply to all customers equally. The proposed change would not apply differently to distinct types or sizes of market participants. Customers that require other types or sizes of network connections between the Mahwah data center and the access centers could still request them. As is currently the case, the purchase of any connectivity service is completely voluntary and the Wireless Fee Schedule is applied uniformly to all customers.

Competitive Environment

Other providers offer connectivity to Selected Market Data in the Third Party Data Centers.[28] Based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

Wireless connections involve beaming signals through the air between antennas that are within sight of one another. Because the signals travel a straight, unimpeded line, and because light waves travel faster through air than through glass (fiber optics), wireless messages have lower latency than messages travelling through fiber optics.[29] At the same time, as a general rule wireless networks have less uptime than fiber networks. Wireless networks are directly and immediately affected by adverse weather conditions, which can cause message loss and outage periods. Wireless networks cannot be configured with redundancy in the same way that fiber networks can. As a result, an equipment or weather issue at any one location on the network will cause the entire network to have an outage. In addition, maintenance can take longer than it would with a fiber based network, as the relevant tower may be in a hard to reach location, or weather conditions may present safety issues, delaying technicians servicing equipment. Even under normal conditions, a wireless network will have a higher error rate than a fiber network of the same length.

The proposed Wireless Market Data Connections traverse through a series of towers equipped with wireless equipment, including, in the case of the Carteret and Secaucus connections, a pole on the grounds of the Mahwah data center. With the exception of the non-ICE entity that owns the wireless network used for the Wireless Connections to Secaucus and Carteret,[30] third parties do not have access to such pole. However, access to such pole is not required for third parties to establish wireless networks that can compete with the Wireless Market Data Connections to the Carteret and Secaucus Third Party Data Centers, as witnessed by the existing wireless connections offered by non-ICE entities competitors.

In addition, proximity to a data center is not the only determinant of a wireless network's latency. Rather, the latency of a wireless network depends on several factors. Variables include the wireless equipment utilized; the route of, and number of towers or buildings in, the network; and the fiber equipment used at either end of the connection. Moreover, latency is not the only consideration that a customer may have in selecting a wireless network to connect to Selected Market Data. Other considerations may include the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

2. Statutory Basis

Although the Exchange does not believe that the present proposed change is a change to the ''rules of an exchange'' [31] required to be filed with the Commission under the Act, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[32] in general, and furthers the objectives of Section 6(b)(5) of the Act,[33] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and does not unfairly discriminate between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[34] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

The Exchange believes its proposal is reasonable.

Based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center

[28] Third party providers obtain Selected Market Data from IDS at the Mahwah data center and send it over their own networks, fiber or wireless, to the Third Party Data Centers.

[29] *See* Securities Exchange Act Release No. 76748 (December 23, 2015), 80 FR 81609 (December 30, 2015) (SR–NYSE–2015–52) (order approving offering of a wireless connection to allow Users to receive market data feeds from third party markets and to reflect changes to the Exchange's price list related to these services).

[30] *See* note 24, *supra.*

[31] *See* 15 U.S.C. 78c(a)(27) (defining the term ''rules of an exchange'').

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78f(b)(4).

are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

Market participants' considerations in determining what connectivity to purchase may include latency; the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

The Exchange believes that the proposed pricing for the Wireless Market Data Connections is reasonable because it allows customers to select the connectivity option that best suits their needs. A market participant that opts for Wireless Market Data Connections would be able to select the specific Selected Market Data feed that it wants to receive in accordance with its needs, thereby helping it tailor its operations to the requirements of its business operations. The fees also reflect the benefit received by market participants in terms of lower latency over the fiber optics options.

There is limited bandwidth available on the wireless network to the Markham, Canada Third Party Data Center. Accordingly, the Exchange believes that it is reasonable not to transport information for all of the symbols included in the NYSE BBO and Trades and NYSE Arca BBO and Trades data feeds to Markham, but rather to transport a subset of that data. Limiting the feeds to the data regarding securities for which IDS believes there is demand allows customers in Canada to receive the relevant Selected Market Data over a wireless network. The customer then determines those symbols for which it will receive data.

Only market participants that voluntarily select to receive Wireless Market Data Connections are charged for them, and those services are available to all market participants with a presence in the relevant Third Party Data Center. Furthermore, the Exchange believes that the services and fees proposed herein are reasonable because, in addition to the services being completely voluntary, they are available to all market participants on an equal basis (*i.e.,* the same products and services are available to all market participants). All market participants that voluntarily select a Wireless Market Data Connection would be charged the same amount for the same service and would have their first month's MRC for the Wireless Market Data Connection waived.

Overall, the Exchange believes that the proposed change is reasonable because the Wireless Market Data Connections described herein are offered as a convenience to market participants, but offering them requires the provision, maintenance and operation of the Mahwah data center, wireless networks and access centers in the Third Party Data Centers, including the installation and monitoring, support and maintenance of the services.

The Exchange believes that the proposed waiver of the first month's MRC is reasonable as it would allow market participants to test a Wireless Market Data Connection for a month before incurring any monthly recurring fees and may act as an incentive to market participants to connect to a Wireless Market Data Connection.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees among its market participants.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all market participants equally. As is currently the case, the purchase of any connectivity service, including Wireless Market Data Connections, would be completely voluntary.

The Exchange believes that it is equitable to not to transport information for all of the symbols included in the NYSE BBO and Trades and NYSE Arca BBO and Trades data feeds to Markham, but rather to transport a subset of that data. There is limited bandwidth available on the wireless network to the Markham, Canada Third Party Data Center. Limiting the feeds to the data regarding securities for which IDS believes there is demand allows customers in Canada to receive the relevant Selected Market Data over a wireless network. The customer then determines those symbols for which it will receive data.

Without this proposed rule change, market participants with a presence in the Third Party Data Centers would have fewer options for connectivity to Selected Market Data. With it, market participants have more choices with respect to the form and price of connectivity to Selected Market Data they use, allowing a market participant that opts for a Wireless Market Data Connection to select the specific Selected Market Data feed that it wants to receive in accordance with what best suits its needs, thereby helping it tailor its operations to the requirements of its business operations.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all market participants equally. As is currently the case, the purchase of any connectivity service, including Wireless Market Data Connections, would be completely voluntary.

A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

Without this proposed rule change, market participants with a presence in the Third Party Data Centers would have fewer options for connectivity to Selected Market Data. With it, market participants have more choices with respect to the form and price of connectivity to Selected Market Data they use, allowing a market participant that opts for a Wireless Market Data Connection to select the specific Selected Market Data feed that it wants to receive in accordance with what best suits its needs, thereby helping it tailor its operations to the requirements of its business operations.

The Wireless Market Data Connections provide customers in the Secaucus and Carteret access centers with one means of connectivity to Selected Market Data, but based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by

non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the only burden on competition of the proposed change is on IDS and other commercial connectivity providers. Solely because IDS is wholly owned by the same parent company as the Exchange, IDS will be at a competitive disadvantage to its commercial competitors, and its commercial competitors, without a filing requirement, will be at a relative competitive advantage to IDS.

By permitting IDS to continue to offer the Wireless Market Data Connectivity, approval of the proposed changes would contribute to competition by allowing IDS to compete with other connectivity providers, and thus provides market participants another connectivity option. For this reason, the proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[35]

Based on the information available to it, the Exchange believes that a market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. The Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Market Data Connections, and at the same or similar cost. The Exchange believes the Wireless Market Data Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections for Selected Market Data between the two points, creating a new connectivity option for customers in Markham. The Exchange does not control the Third Party Data Centers and could not preclude other parties from creating new wireless or fiber connections to Selected Market Data in any of the Third Party Data Centers.

The Wireless Market Data Connections provide customers in the Secaucus and Carteret Third Party Data Centers with one means of connectivity to Selected Market Data, but substitute products are available, as witnessed by the existing wireless connections offered by non-ICE entities. A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant in any of the Third Party Data Centers or the Mahwah data center may also create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

The Exchange notes that the proposed Wireless Market Data Connections compete not just with other wireless connections to Selected Market Data, but also with fiber network connections, which may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions. Market participants' considerations in determining what connectivity to purchase may include latency; the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. A market participant in the Carteret or Secaucus Third Party Data Center may purchase a wireless connection to the NYSE and NYSE Arca Integrated Feed data feeds from at least two other providers of wireless connectivity. A market participant also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

The proposed Wireless Market Data Connections traverse through a series of towers equipped with wireless equipment, including, in the case of the Carteret and Secaucus Wireless Market Data Connections, a pole on the grounds of the Mahwah data center. With the exception of the non-ICE entity that owns the wireless network used for the Wireless Connections to Secaucus and Carteret,[36] third parties do not have access to such pole, as the IDS wireless network has exclusive rights to operate wireless equipment on the Mahwah data center pole. IDS does not sell rights to third parties to operate wireless equipment on the pole, due to space limitations, security concerns, and the interference that would arise between equipment placed too closely together.

However, access to such pole is not required for other parties to establish wireless networks that can compete with the Wireless Market Data Connections, as witnessed by the existing wireless connections offered by non-ICE entities. Proximity to a data center is not the only determinant of a wireless network's latency. Rather, the latency of a wireless network depends on several factors. Variables include the wireless equipment utilized; the route of, and number of towers or buildings in, the network; and the fiber equipment used at either end of the connection. Moreover, latency is not the only consideration that a customer may have in selecting a wireless network to connect to Selected Market Data. Other considerations may include the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather between IDS and its commercial competitors.

For the reasons described above, the Exchange believes that the proposed rule changes reflect this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

[35] 15 U.S.C. 78f(b)(8).

[36] *See* note 24, *supra.*

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2020–05 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2020–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2020–05, and should be submitted on or before March 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03641 Filed 2–24–20; 8:45 am]

**BILLING CODE 8011–01–P**

[37] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### SBA Guidance Documents

**AGENCY:** U.S. Small Business Administration.

**SUMMARY:** In accordance with Executive Order 13891, Promoting the Rule of Law Through Improved Agency Guidance Documents, the U.S. Small Business Administration (''SBA'') is publishing this notice to advise the public of the availability of SBA Guidance Documents on its website and inform them that by February 28, 2020, all guidance documents may be found there.

**DATES:** SBA's Guidance Document web page will be available beginning February 28, 2020.

**ADDRESSES:** The guidance documents of the SBA are available at *www.sba.gov/guidance.*

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the Guidance Document web page should be directed to Jeffrey Davis, Information Specialist, Office of Communications and Public Liaison; phone: (202) 401–8214; email: *Jeffrey.Davis@sba.gov.*

**SUPPLEMENTARY INFORMATION:** As set forth in Executive Order 13891, Promoting the Rule of Law Through Improved Agency Guidance Documents, 84 FR 55235 (October 15, 2019) (''Executive Order 13891''), Americans deserve an open and fair regulatory process that imposes new obligations on the public only when consistent with applicable law and after an agency follows appropriate procedures. Therefore, it is the policy of the executive branch, to the extent consistent with applicable law, to increase transparency by taking public input into account when appropriate in formulating guidance documents, and making guidance documents readily available to the public. Unless otherwise provided in statute, regulation, or contract/agreement, guidance documents lack the force and effect of law.

The term ''guidance documents'' is defined as any statement of agency policy or interpretation concerning a statute, regulation, or technical matter within the jurisdiction of the agency that is intended to have general applicability and future effect, but which is not intended to have the force or effect of law in its own. For SBA, ''guidance documents'' includes externally facing Standard Operating Procedures, Policy Notices, Procedural Notices, and some miscellaneous documents, such as certain Program Guides, and other general guidance.

This Notice is published in accordance with Executive Order 13891 and OMB Memorandum #M–20–02, Guidance Implementing Executive Order 13891, Titled ''Promoting the Rule of Law Through Improved Agency Guidance Documents'' (October 31, 2019), available at *https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-02-Guidance-Memo.pdf* (''OMB Memorandum''). The purpose of Executive Order 13891 is to provide greater transparency to the public of an agency's policies and procedures and provide one convenient site where all of the agency's guidance documents may easily be found. To accomplish this, Executive Order 13891 requires all Agencies and Departments to establish or maintain on their website a single, searchable, indexed database that contains or links to all guidance documents in effect from such agency or component.

For each guidance document published on SBA's guidance web page, we will include the following information:

- A concise name for the guidance document;
- The guidance document's effective date;
- An agency unique identifier;
- A hyperlink to the guidance document;
- The general topic addressed by the guidance document; and
- One or two sentences summarizing the guidance document's content.

At the same time as publication in the **Federal Register**, SBA is also making the this notice available on the new guidance web page and making it available to its stakeholders through its normal means of distributing important announcements.

Dated: February 19, 2020.

**Sean Crean,**

*Director, Office of Executive Management, Installations, and Support Services.*

[FR Doc. 2020–03679 Filed 2–24–20; 8:45 am]

**BILLING CODE 8026–03–P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No: SSA–2020–0006]**

### Agency Information Collection Activities: Proposed Request and Comment 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 revisions of OMB-approved information collections, and 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–2020–0006].

I. The information collections below are pending at SSA. SSA will submit them 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 April 27, 2020. Individuals can obtain copies of the collection instruments by writing to the above email address.

*1. Agreement to Sell Property—20 CFR 416.1240–1245—0960–0127.* Individuals or couples who are otherwise eligible for Supplemental Security Income (SSI) payments, but whose resources exceed the allowable limit, may receive conditional payments if they agree to dispose of the excess non-liquid resources and make repayments. SSA uses Form SSA–8060–U3 to document this agreement, and to ensure the individuals understand their obligations. Respondents are applicants for, and recipients of, SSI payments who will be disposing of excess non-liquid resources.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | 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) ** |
|---|---|---|---|---|---|---|
| SSA–8060–U3 | 20,000 | 1 | 10 | 3,333 | *10.22 | **34,063 |

*We based this figure on average DI payments, as reported in SSA's disability insurance 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.*

*2. Supported Employment Demonstration (SED)—0960–0806.* Sponsored by SSA, the SED builds on the success of the intervention designed for the Mental Health Treatment Study (MHTS) previously funded by SSA. The MHTS provides integrated mental health and vocational services to disability beneficiaries with mental illness. The SED offers the same services to individuals with mental illness who SSA denied Social Security disability benefits. SSA seeks to determine whether offering this evidence-based package of integrated vocational and mental health services to denied disability applicants fosters employment that leads to self-sufficiency, improved mental health and quality of life, and reduced demand for disability benefits. The SED uses a randomized controlled trial to compare the outcomes of two treatment groups, and a control group. Study participation spans 36 months beginning on the day following the date of randomization to one of the three study groups. The SED study population consists of individuals aged 18 to 50 who apply for disability benefits alleging a mental illness and the initial decision is a denial of benefits in the past 60 days. The SED will enroll up to 1,000 participants in each of the three study arms for a total of 3,000 participants: 40 participants in each of three study arms for the 20 urban sites equaling an *n* of 2,400 urban site participants; and 20 participants in each of three arms for the 10 rural sites equaling an *n* of 600 rural site participants. We randomly select and assign each enrolled participant to one of three study arms:

- *Full-Service Treatment (n = 1,000).* The multi-component service model from the MHTS comprises the Full-Service Treatment. At its core are an Individual Placement and Support (IPS) supported employment specialist and behavioral health specialist providing IPS supported employment services integrated with behavioral health care. Participants in the full-service treatment group will also receive the services of a Nurse Care Coordinator who coordinates Systematic Medication Management services, as well assistance with: Out-of-pocket expenses associated with prescription behavioral health medications; work-related expenses; and services and treatment not covered by the participant's health insurance.
- *Basic-Service Treatment (n = 1,000).* The Basic-Service Treatment model leaves intact IPS supported employment integrated with behavioral health services as the centerpiece of the intervention arm. The Basic-Service Treatment is essentially the Full-Service model without the services of the Nurse Care Coordinator, Systematic Medication Management, and the funds associated with out-of-pocket expenses for prescription behavioral health medications.
- *Usual Services (n = 1,000).* This study arm represents a control group against which the two treatment groups we can compare. Participants assigned to this group seek services as they normally would (or would not) in their community. However, at the time of randomization, each Usual Service participant will receive a comprehensive manual describing mental health and vocational services in their locale, along with state and national resources.

This study will test the two treatment conditions against each other and against the control group on multiple outcomes of policy interest to SSA. The key outcomes of interest include: (1) Employment; (2) earnings; (3) income;

(4) mental status; (5) quality of life; (6) health services utilization; and (7) SSA disability benefit receipt and amount. SSA is also interested in the study take up rate (participation), knowing who enrolls (and who does not), and fidelity to evidence-based treatments, among other aspects of implementation. Data collection for the evaluation of the SED will consist of the following activities: Baseline in-person participant interviews; quarterly participant telephone interviews; receipt of SSA administrative record data; and collection of site-level program data. Evaluation team members will also conduct site visits involving: (1) Pre-visit environmental scans in order to understand the local context in which SED services are embedded; (2) independent fidelity assessments in conjunction with those carried out by state Mental Health/Vocational Rehabilitation staff; (3) key informant interviews with the IPS specialist, the nurse care coordinator, the case manager, and facility director; (4) focus groups with participants in the Full-Service and Basic-Service Treatment groups; and (5) ethnographic data collection consisting of observations in the natural environment and person-centered interviews with participants and non-participants. The respondents are study participants and non-participants, family members, IPS specialists, nurse care coordinators, case managers, and facility directors.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Number of responses | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Total annual opportunity cost (dollars) ** |
|---|---|---|---|---|---|---|---|
| Competency and CIDI Screener | 1,878 | 1 | 1,878 | 75 | 2,348 | *7.50 | **17,610 |
| Baseline Interview | 3,000 | 1 | 3,000 | 45 | 2,250 | *7.50 | **16,875 |
| Quarterly Interview (Quarters 1, 2, 3, 5, 6, 7, 9, 10, and 11) | 3,000 | 9 | 27,000 | 20 | 9,000 | *7.50 | **67,500 |
| Annual Interview (Quarters 4, 8, and 11) | 3,000 | 3 | 9,000 | 30 | 4,500 | *7.50 | **33,750 |
| Fidelity Assessment Participant Interview | 180 | 4 | 720 | 60 | 720 | *7.50 | **5,400 |
| Key Informant Interview | 120 | 4 | 480 | 60 | 480 | *17.22 | **8,266 |
| Participant Focus Groups | 600 | 2 | 1,200 | 60 | 1,200 | *7.50 | **9,000 |
| Person-Centered Interview | 180 | 4 | 720 | 60 | 720 | *7.50 | **5,400 |
| Totals | 11,958 | | 43,998 | | 21,218 | | **163,801 |

*We based this figure on average hourly wage for disabled and social and human service workers, as reported by Bureau of Labor Statistics 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.*

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than March 26, 2020. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

*1. Statement Regarding the Inferred Death of an Individual by Reason of Continued and Unexplained Absence—20 CFR 404.720 & 404.721—0960–NEW.* Section 202(d)–(i) of the Social Security Act (Act) provides for the payment of various monthly survivor benefits, and a lump sum death payment, to certain survivors upon the death of an individual who dies while fully or currently insured. In cases where insured wage earners have been absent from their homes for at least seven years, and there is no evidence these individuals are alive, SSA may presume they are deceased and pay their survivors the appropriate benefits. SSA uses the information from Form SSA–723 to determine if we may presume a missing wage earner is deceased, and, if so, establish a date of presumed death. The respondents are relatives, friends, neighbors, or acquaintances of the presumed deceased wage earner, or the person who is filing for survivors benefits.

*Type of Request:* Request for a new information collection.

| Modality of completion | 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) ** |
|---|---|---|---|---|---|---|
| SSA–723 | 3,000 | 1 | 30 | 1,500 | *22.50 | **33,750 |

*We based this figure on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics 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.*

*2. Supplemental Security Income (SSI)—Quality Review Case Analysis—0960–0133.* To assess the SSI program and ensure the accuracy of its payments, SSA conducts legally mandated periodic SSI case analysis quality reviews. SSA uses Form SSA–8508–BK, and the electronic Excel application version, e8505, to conduct these reviews, collecting information on operating efficiency; the quality of underlying policies; and the effect of incorrect payments. SSA also uses the data to determine SSI program payment accuracy rate, which is a performance measure for the agency's service delivery goals. Respondents are the recipients of SSI payments which SSA randomly selects for quality reviews.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | 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) ** |
|---|---|---|---|---|---|---|
| SSA–8508–BK (paper interview) | 230 | 1 | 60 | 230 | * 10.22 | ** 2,351 |
| e8508 (electronic interview) | 4,370 | 1 | 60 | 4,370 | * 10.22 | ** 44,661 |
| Totals | 4,600 | | | 4,600 | | ** 47,012 |

* We based this figure on average DI payments, as reported in SSA's disability insurance 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.*

Dated: February 19, 2020.

**Naomi Sipple,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 2020–03669 Filed 2–24–20; 8:45 am]

**BILLING CODE 4191–02–P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA–2017–0046]**

### Rescission of Social Security Acquiescence Ruling 86–3(5)

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Rescission of Social Security Acquiescence Ruling 86–3(5)—*Martinez* v. *Heckler,* 735 F.2d 795 (5th Cir. 1984) —Disability Program—Individuals Who Are Illiterate and Unable To Communicate in English—Titles II and XVI of the Social Security Act.

**SUMMARY:** In accordance with 20 CFR 402.35(b)(2), 404.985(e)(4) and 416.1485(e)(4), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling (AR) 86–3(5).

**DATES:** We will apply this rescission notice on April 27, 2020.

**FOR FURTHER INFORMATION CONTACT:** Dan O'Brien, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 597–1632. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:** We use ARs in accordance with 20 CFR 402.35(b)(2), 404.985(a), (b), and 416.1485(a), (b) to explain how we apply a holding in a United States Court of Appeals decision that we determine conflicts with our interpretation of a provision of the Social Security Act (Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review. As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), we may rescind an AR as obsolete and apply our interpretation of the Act or regulations if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of a circuit court holding that we determined conflicts with our interpretation of the Social Security Act or regulations.

In 1984, in *Martinez* v. *Heckler,* the Court of Appeals for the Fifth Circuit considered the issue of whether the vocational rules [1] applicable to those individuals who were illiterate *or* unable to communicate in English were applicable to individuals who were illiterate *and* unable to communicate in English.

The court concluded that because Mr. Martinez was both illiterate *and* unable to communicate in English, he did not fall within the criteria set forth in Rule 201.23 (sedentary, younger individual aged 18–44, illiterate or unable to communicate in English, unskilled or no work). The implication of the decision was that the rule did not apply to individuals who were both illiterate *and* unable to communicate in English.

In response to the decision, we issued AR 86–3(5).[2] In the ruling, we explained that we must make a finding on illiteracy *and* inability to communicate in English when both are alleged or appear to be in question for an individual residing in Texas, Mississippi, or Louisiana and seeking disability benefits or continuation of disability benefits under Title II or Title XVI. We clarified that if an individual aged 18 to 44 is limited to sedentary work with unskilled or no work history is found to be both illiterate *and* unable to communicate in English, we cannot apply the Rule 201.23 under the holding of the *Martinez* decision. We instructed adjudicators to use the vocational rules only as guidance for decisionmaking in such cases. We also issued the same guidance for Rule 202.16 (light, younger individual aged 18–44, illiterate or unable to communicate in English, unskilled or no work) in the ruling.

We are revising our rules to remove the education category inability to communicate in English on February 25, 2020. The revision will become effective on April 27, 2020. Because we are eliminating the education category ''inability to communicate in English,'' the instructions contained in AR 86–3(5) will be obsolete as of that date. Consequently, we are rescinding AR 86–3(5) effective on April 27, 2020.

(Catalog of Federal Domestic Assistance, Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006—Supplemental Security Income.)

Dated: January 30, 2020.

**Andrew Saul,**

*Commissioner of Social Security.*

[FR Doc. 2020–03201 Filed 2–24–20; 8:45 am]

**BILLING CODE 4191–02–P**

[1] See 20 CFR part 404 Subpart P Appendix 2.

[2] AR 86–3(5) applied only to cases in which the individual resided in Texas, Mississippi or Louisiana at the time of the determination or decision at any level of administrative review.

## DEPARTMENT OF STATE

**[Public Notice 11033]**

### 30-Day Notice of Proposed Information Collection: Request for Determination of Possible Loss of United States Citizenship

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

**DATES:** Submit comments directly to the Office of Management and Budget (OMB) up to March 26, 2020.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Clifton Oliphant at SA–17, 10th Floor, Washington, DC 20522–1710, who may be reached on 202–485–6020 or at *OliphantCE@state.gov.*

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Request for Determination of Possible Loss of United States Citizenship.
- *OMB Control Number:* 1405–0178.
- *Type of Request:* Revision of a currently approved collection.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS–4079.
- *Respondents:* United States citizens.
- *Estimated Number of Respondents:* 3,250.
- *Estimated Number of Responses:* 3,250.
- *Average Time Per Response:* 15 minutes.
- *Total Estimated Burden Time:* 812 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary, but if not completed, may not obtain or retain benefits.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

**Abstract of Proposed Collection**

The purpose of the DS–4079 questionnaire is to determine current citizenship status and the possibility of loss of United States citizenship. The information provided assists consular officers and the Department of State in determining if the U.S. citizen has lost his or her nationality by voluntarily performing an expatriating act with the intention of relinquishing United States nationality. 8 U.S.C. 1104, 1481 and 1501 are sources of authority pertaining to this collection of information.

**Methodology**

The Bureau of Consular Affairs will post this form on Department of State websites to give respondents the opportunity to complete the form online or print the form and fill it out manually and submit the form in person or by fax or mail.

**Scott Renner,**

*Managing Director.*

[FR Doc. 2020–03661 Filed 2–24–20; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF STATE

**[Public Notice 11051]**

### Notice of Shipping Coordinating Committee Meeting in Preparation for International Maritime Organization Meeting

The Department of State will conduct a meeting of the Shipping Coordinating Committee at 12 p.m. on March 23, 2020, in room 6i10–01-c of the Douglas A. Munro Coast Guard Headquarters Building at St. Elizabeth's, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593.The primary purpose of the meeting is to prepare for the 75th session of the International Maritime Organization's (IMO) Marine Environment Protection Committee to be held at IMO Headquarters, United Kingdom, March 30 to April 3, 2020.

The agenda items to be considered include:

—Adoption of the agenda
—Decisions of other bodies
—Consideration and adoption of amendments to mandatory instruments
—Harmful aquatic organisms in ballast water
—Air pollution prevention
—Energy efficiency of ships
—Reduction of GHG emissions from ships
—Follow-up work emanating from the Action Plan to address marine plastic litter from ships
—Identification and protection of Special Areas, ECAs and PSSAs
—Pollution prevention and response
—Reports of other sub-committees
—Technical cooperation activities for the protection of the marine environment
—Capacity-building for the implementation of new measures
—Work programme of the Committee and subsidiary bodies
—Application of the Committees' Method of Work
—Any other business
—Consideration of the report of the Committee

Members of the public may attend this meeting up to the seating capacity of the room. Upon request to the meeting coordinator, members of the public may also participate via teleconference. To facilitate the building security process, receive the teleconference number, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, LCDR Staci Weist, by email at *Eustacia.Y.Weist@uscg.mil,* by phone at (202) 372–1376, or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington DC 20593–7509 not later than March 17, 2020, 5 days prior to the meeting. Requests made after March 17, 2020 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Douglas A. Munro Coast Guard Headquarters Building. The Douglas A. Munro Coast Guard Headquarters Building is accessible by taxi, public transportation, and privately owned conveyance (upon request).

In the case of inclement weather where the U.S. Government is closed or delayed, a public meeting may be conducted virtually. The meeting coordinator will confirm whether the virtual public meeting will be utilized. Members of the public can find out whether the U.S. Government is delayed

or closed by visiting *www.opm.gov/status/.*

**Jeremy M. Greenwood,**

*Executive Secretary, Shipping Coordinating Committee, Office of Ocean and Polar Affairs, Department of State.*

[FR Doc. 2020–03682 Filed 2–24–20; 8:45 am]

**BILLING CODE 4710–09–P**

## DEPARTMENT OF STATE

**[Public Notice 11025]**

### Commercial Participation in Domestic and International Events on Safety, Sustainability, and Emerging Markets in Outer Space

**ACTION:** Notice of meeting.

**SUMMARY:** Following up on the success of the Space Enterprise Summit in June 2019, the U.S. Department of State seeks commercial space industry participation in a series of domestic and international events promoting space commerce as well as best practices for safety, sustainability, and emerging markets in outer space. These events and industry participation are in line with the President's Space Policy Directive-2 regarding Streamlining Regulations on Commercial Use of Space and Space Policy Directive-3 concerning National Space Traffic Management Policy.

**DATES:** Participants will be invited to one or more workshops, meetings, symposia, and other such events related to safety, sustainability, and emerging markets in outer space between February 25, 2020 and December 31, 2020.

**ADDRESSES:** Attendance information, including addresses, will be posted on *https://www.state.gov/events-office-of-space-and-advanced-technology/.*

**FOR FURTHER INFORMATION CONTACT:** Ryan Guglietta, Foreign Affairs Officer, Office for Space and Advanced Technology, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20522, phone 202–663–3968, or email *gugliettart@state.gov.*

**SUPPLEMENTARY INFORMATION:** Events will vary in location and may be stand alone or on the margins of related events, and may include (but are not limited to) the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS) Legal Subcommittee in Vienna in March 2019, the COPUOS plenary in Vienna in June 2019, and the 36th Space Symposium in Colorado in March/April 2019.

Participants should focus on the following:

*Safety:* Identify key safety issues for crewed and/or uncrewed outer space operations. Discuss current attempts to address these issues and suggest new concerns that may develop as the space sector advances.

*Sustainability:* Explore efforts to improve responsible behavior in space. Examine best practices and guidelines in Long-Term Sustainability for preserving the outer space environment for future civil and commercial space investment and use.

*Emerging Markets:* Discuss the challenges to an economically viable space industry and how these challenges relate to the domestic and international regulatory environment. Share recent advances within the commercial space sector and how they may develop in the future.

**Johnathan A. Margolis,**

*Deputy Assistant Secretary.*

[FR Doc. 2020–03684 Filed 2–24–20; 8:45 am]

**BILLING CODE 4710–09–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Product Exclusion: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of Product Exclusion and Amendment.

**SUMMARY:** Effective August 23, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $16 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative's determination included a decision to establish a product exclusion process. The U.S. Trade Representative initiated the exclusion process in September 2018, and stakeholders have submitted requests for the exclusion of specific products. The U.S. Trade Representative is issuing determinations to grant exclusion requests on a rolling basis. This notice announces the U.S. Trade Representative's determination to grant the additional exclusion specified in the Annex to this notice, and to make a technical amendment to a previously granted exclusion.

**DATES:** The product exclusion will apply as of the August 23, 2018 effective date of the $16 billion action, and will extend through October 1, 2020. The technical amendment announced in this notice applies to the time period established for the original exclusion, that is, retroactive to the original date of October 2, 2019, and ending on October 1, 2020 at 11:59 p.m. EDT. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

**FOR FURTHER INFORMATION CONTACT:** For general questions about this notice, contact Assistant General Counsel Philip Butler or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### A. Background

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, including 82 FR 40213 (August 23, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47236 (September 18, 2018), 83 FR 47974 (September 21, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), 84 FR 29576 (June 24, 2019), 84 FR 37381 (July 31, 2019), 84 FR 49600 (September 20, 2019), 84 FR 52553 (October 2, 2019), and 84 FR 69011 (December 17, 2019).

Effective August 23, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 279 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $16 billion. *See* 83 FR 40823. The U.S. Trade Representative's determination included a decision to establish a process by which U.S. stakeholders may request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the $16 billion action from the additional duties. The U.S. Trade Representative issued a notice setting out the process for the product exclusions, and opened a public docket. *See* 83 FR 47236 (the September 18 notice).

Under the September 18 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit subheading covered by the $16 billion

action. Requestors also had to provide the 10-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The September 18 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The September 18 notice required submission of requests for exclusion from the $16 billion action no later than December 18, 2018, and noted that the U.S. Trade Representative periodically would announce decisions. In July 2019, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 84 FR 37381. The U.S. Trade Representative granted additional exclusions in September and October 2019. *See* 84 FR 49600 and 84 FR 52553.

### B. Determination To Grant Exclusion

Based on the evaluation of the factors set out in the September 18 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to grant the product exclusion set out in the Annex to this notice. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion request.

As set out in the Annex, the exclusion is reflected in a specially prepared product description, found in Paragraph A.

In accordance with the September 18 notice, an exclusion is available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of the exclusion is governed by the scope of the 10-digit HTSUS subheading and product description in the Annex to this notice, and not by the product description set out in any particular request for exclusion.

### C. Technical Amendment to an Exclusion

Subparagraph B of the Annex makes a technical amendment to U.S. note 20(y)(2) to subchapter III of chapter 99 of the HTSUS, as set out in the annex of the notice published at 84 FR 52553 (October 2, 2019). In particular, the amendment in Subparagraph B converts an exclusion of a specially prepared product description to an exclusion of a 10-digit HTSUS subheading.

The U.S. Trade Representative will continue to issue determinations on a periodic basis as needed.

**Joseph Barloon,**

*General Counsel, Office of the U.S. Trade Representative.*

### Annex

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 23, 2018 and before October 2, 2020, U.S. note 20(y) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified by inserting the following exclusion in numerical order after exclusion (111):

112. Skateboards with electric power for propulsion, of a power not exceeding 250 W (described in statistical reporting number 8711.60.0050).

B. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 23, 2018:

U.S. note 20(y)(2) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''silicone presented in 210 liter (55 gallon) drums or 1,040 liter (275 gallon) intermediate bulk containers (IBCs) (described in statistical reporting number 3910.00.0000)'' and inserting ''3910.00.0000'' in lieu thereof.

[FR Doc. 2020–03680 Filed 2–24–20; 8:45 am]

BILLING CODE 3290–F0–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2006–25854; FMCSA–2013–0108; FMCSA–2014–0382; FMCSA–2015–0115; FMCSA–2015–0116; FMCSA–2015–0119; FMCSA–2017–0252]**

### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 11 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

**DATES:** Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### I. Public Participation

*A. Viewing Documents and Comments*

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2006–25854; FMCSA–2013–0108; FMCSA–2014–0382; FMCSA–2015–0115; FMCSA–2015–0116; FMCSA–2015–0119; FMCSA–2017–0252, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you

may view the docket online by visiting Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

*B. Privacy Act*

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

**II. Background**

On December 30, 2019, FMCSA published a notice announcing its decision to renew exemptions for 11 individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (84 FR 72112). The public comment period ended on January 29, 2020, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

**III. Discussion of Comments**

FMCSA received one comment in this proceeding. This comment supported granting these exemptions.

**IV. Conclusion**

Based on its evaluation of the 11 renewal exemption applications and comment received, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of December and are discussed below.

As of December 16, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (84 FR 72112):

William Brown (NC)
Robert J. Forney (WI)
Curtis Alan Hartman (MD)
Wendell F. Headley (MO)
Marion Legg (MD)

The drivers were included in docket numbers FMCSA–2015–0115, FMCSA–2015–0116, and FMCSA–2015–0119. Their exemptions are applicable as of December 16, 2019, and will expire on December 16, 2021.

As of December 23, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (84 FR 72112):

Gary Freeman (WI)
Aaron Gillette (SD)
David Kestner (VA)
Chad Smith (MA)
Trever Williams (MN)

The drivers were included in docket number FMCSA–2006–25854, FMCSA–2013–0108, and FMCSA–2014–0382. Their exemptions are applicable as of December 23, 2019, and will expire on December 23, 2021.

As of December 28, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV driver (84 FR 72112): David Pamperin (WI).

This driver was included in docket number FMCSA–2017–0252. His exemption is applicable as of December 28, 2019, and will expire on December 28, 2021.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: February 12, 2020.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2020–03707 Filed 2–24–20; 8:45 am]

**BILLING CODE 4910–EX–P**

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2020–0069]**

### Commercial Driver's License: United Parcel Service, Inc. (UPS); Application for Exemptions

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

**ACTION:** Notice of application for exemptions; request for comments.

**SUMMARY:** FMCSA announces that UPS has requested a limited exemption from certain commercial driver's license (CDL) regulations. Specifically, UPS is requesting that its driver-trainees holding commercial learners permits (CLPs) be permitted to operate twin 28-foot trailers on a public road to obtain behind-the-wheel (BTW) skills training under the direct supervision of a driving instructor. Federal CDL regulations do not allow an employer to permit a driver to operate a commercial motor vehicle (CMV) during any period in which the driver does not have a CLP or CDL with the proper class or endorsements; the regulations do not permit a double/triple trailers endorsement on a CLP. FMCSA requests public comment on UPS's application for exemption. A copy of UPS' application for exemption is available for review in the docket for this notice.

**DATES:** Comments must be received on or before March 26, 2020.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2020–0069 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

• *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

*Docket:* For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Pearlie Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA, at 202–366–4325 or by email at *MCPSD@dot.gov*. If you have questions on viewing or submitting material to the docket, contact Docket Services at (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

*Submitting Comments*

If you submit a comment, please include the docket number for this notice (FMCSA–2020–0069), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2020–0069'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2020–0069'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

## II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Issued on: February 12, 2020.

**Larry W. Minor,**

*Associate Administrator of Policy.*

[FR Doc. 2020–03710 Filed 2–24–20; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary of Transportation

### Notice of Funding Opportunity for the Department of Transportation's National Infrastructure Investments Under the Consolidated Appropriations Act, 2020

**AGENCY:** Office of the Secretary of Transportation, DOT.

**ACTION:** Notice of funding opportunity.

**SUMMARY:** The Further Consolidated Appropriations Act, December 20, 2019) (''FY 2020 Appropriations Act'') appropriated $1 billion to be awarded by the Department of Transportation (''DOT'') for National Infrastructure Investments. This appropriation stems from the program funded and implemented pursuant to the American Recovery and Reinvestment Act of 2009 (the ''Recovery Act'') and is known as the Better Utilizing Investments to Leverage Development, or ''BUILD Transportation Grants,'' program. Funds for the FY 2020 BUILD Transportation grants program are to be awarded on a competitive basis for surface transportation infrastructure projects that will have a significant local or regional impact. The purpose of this notice is to solicit applications for BUILD Transportation grants.

**DATES:** Applications must be submitted by 5 p.m. E.D.T. on May 18, 2020.

**ADDRESSES:** Applications must be submitted through *Grants.gov*.

**FOR FURTHER INFORMATION CONTACT:** For further information concerning this notice, please contact the BUILD Transportation grants program staff via email at *BUILDgrants@dot.gov,* or call Howard Hill at 202–366–0301. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, DOT will regularly post answers to questions and requests for clarifications as well as information about webinars for further guidance on DOT's website at *www.transportation.gov/BUILDgrants.*

**SUPPLEMENTARY INFORMATION:** Each section of this notice contains information and instructions relevant to

the application process for these BUILD Transportation grants, and all applicants should read this notice in its entirety so that they have the information they need to submit eligible and competitive applications. The definitions of urban and rural areas are consistent with the FY 2019 BUILD Transportation grant definitions, which differed from previous rounds. Additionally, not more than 50 percent of funds will be awarded to projects located in urban and rural areas, respectively. In addition to capital awards, DOT will award at least $15 million for eligible planning and preconstruction activities that do not result in construction of a capital project.

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## A. Program Description

The Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94, December 20, 2019) (''FY 2020 Appropriations Act'') appropriated $1 billion to be awarded by the Department of Transportation (''DOT'') for National Infrastructure Investments. Since this program was created, $8 billion has been awarded for capital investments in surface transportation infrastructure over eleven rounds of competitive grants. Throughout the program, these discretionary grant awards have supported projects that have a significant local or regional impact.

Like the FY 2017 TIGER program, the FY 2020 BUILD program will also give special consideration to projects which emphasize improved access to reliable, safe, and affordable transportation for communities in rural areas, such as projects that improve infrastructure condition, address public health and safety, promote regional connectivity or facilitate economic growth or competitiveness. Consistent with DOT's R.O.U.T.E.S. initiative, DOT seeks rural projects that address deteriorating conditions and disproportionately high fatality rates on rural transportation infrastructure. Such projects may concurrently invest in broadband to better facilitate productivity and help rural citizens access opportunities, or promote energy independence to help deliver significant local or regional economic benefit.

## B. Federal Award Information

### *1. Amount Available*

The FY 2020 Appropriations Act appropriated $1 billion to be awarded by DOT for the BUILD Transportation grants program. The FY 2020 BUILD Transportation grants are for capital investments in surface transportation infrastructure and are to be awarded on a competitive basis for projects that will have a significant local or regional impact. Additionally, DOT will award no less than $15 million (of the $1 billion) for the planning, preparation or design of eligible projects. DOT refers to such awards as BUILD Transportation planning grants. The FY 2020 Appropriations Act also allows DOT to retain up to $25 million of the $1 billion for award, oversight and administration of grants and credit assistance made under the program. In addition to the FY 2020 BUILD funds, unobligated TIGER FY 2017 and FY 2018 BUILD funds may be made available and awarded under this solicitation to projects that can be obligated before the September 30, 2020 obligation deadline associated with those prior years' funds. If this solicitation does not result in the award and obligation of all available funds, DOT may publish additional solicitations.

The FY 2020 Appropriations Act allows up to 20 percent of available funds (or $200 million) to be used by DOT to pay the subsidy and administrative costs of a project receiving credit assistance under the Transportation Infrastructure Finance and Innovation Act of 1998 (''TIFIA'') or Railroad Rehabilitation and Improvement Financing (RRIF) programs, if that use of the FY 2020 BUILD funds would further the purposes of the BUILD Transportation grants program.

### *2. Award Size*

The FY 2020 Appropriations Act specifies that BUILD Transportation grants may not be less than $5 million and not greater than $25 million, except that for projects located in rural areas (as defined in Section C.4.(a)) the minimum award size is $1 million. There is no minimum award size, regardless of location, for BUILD Transportation planning grants. Applicants are strongly encouraged to submit applications only for eligible award amounts.

### *3. Restrictions on Funding*

Pursuant to the FY 2020 Appropriations Act, no more than 10 percent of the funds made available for BUILD Transportation grants (or $100 million) may be awarded to projects in a single State. The Act also directs that not more than 50 percent of the funds provided for BUILD Transportation grants (or $500 million) shall be awarded to projects located in rural areas (as defined in section C.4.(a)) and directs that not more than 50 percent of the funds provided for BUILD Transportation grants (or $500 million) shall be awarded to projects located in urbanized areas (as defined in section C.4.(a)). Further, DOT must take measures to ensure an equitable geographic distribution of grant funds, an appropriate balance in addressing the needs of urban and rural areas, and investment in a variety of transportation modes.

### *4. Availability of Funds*

The FY 2020 Appropriations Act requires that FY 2020 BUILD Transportation grants funds are available for obligation only through September 30, 2022. Obligation occurs when a selected applicant and DOT enter into a written grant agreement after the applicant has satisfied applicable administrative requirements, including transportation planning and environmental review requirements. Unless authorized by DOT in writing after DOT's announcement of FY 2020 BUILD awards, any costs incurred prior to DOT's obligation of funds for a project are ineligible for reimbursement.[1] All FY 2020 BUILD funds must be expended (the grant obligation must be liquidated or actually paid out to the grantee) by September 30, 2027. After this date, unliquidated funds are no longer available to the project. As part of the review and selection process described in Section E.2., DOT will consider a project's likelihood of being ready to proceed with an obligation of BUILD Transportation grant funds and complete liquidation of these obligations, within the statutory timelines. No waiver is possible for these deadlines.

### *5. Previous BUILD/TIGER Awards*

Recipients of BUILD/TIGER grants may apply for funding to support

[1] Pre-award costs are only costs incurred directly pursuant to the negotiation and anticipation of the BUILD award where such costs are necessary for efficient and timely performance of the scope of work, as determined by DOT. Costs incurred under an advance construction (23 U.S.C. 115) authorization before the DOT announces that a project is selected for a FY 2020 BUILD award cannot be charged to FY 2020 BUILD funds.

Likewise, costs incurred under an FTA Letter of No Prejudice under Chapter 53 of title 49 U.S.C. before the DOT announces that a project is selected for a FY 2020 BUILD award cannot be charged to FY 2020 BUILD funds.

additional phases of a project previously awarded funds in the BUILD/TIGER program. However, to be competitive, the applicant should demonstrate the extent to which the previously funded project phase has met estimated project schedules and budget, as well as the ability to realize the benefits expected for the project.

**C. Eligibility Information**

To be selected for a BUILD Transportation grant, an applicant must be an Eligible Applicant and the project must be an Eligible Project.

*1. Eligible Applicants*

Eligible Applicants for BUILD Transportation grants are State, local and tribal governments, including U.S. territories, transit agencies, port authorities, metropolitan planning organizations (MPOs), and other political subdivisions of State or local governments.

Multiple States or jurisdictions may submit a joint application and must identify a lead applicant as the primary point of contact and also identify the primary recipient of the award. Each applicant in a joint application must be an Eligible Applicant. Joint applications must include a description of the roles and responsibilities of each applicant and must be signed by each applicant.

DOT expects that the eligible applicant that submits the application will administer and deliver the project. If the applicant seeks a transfer of the award to another agency, a letter of support from the designated entity must be included in the application.

*2. Cost Sharing or Matching*

Per the FY 2020 Appropriations Act, the Federal share of project costs for which an expenditure is made under the BUILD Transportation grant program may not exceed 80 percent for a project located in an urban area.[2] The Secretary may increase the Federal share of costs above 80 percent for a project located in a rural area. Urban area and rural area are defined in Section C.4.(a) of this notice. DOT shall give priority to projects that require a contribution of Federal funds in order to complete an overall financing package.

Non-Federal sources include State funds originating from programs funded by State revenue, local funds originating from State or local revenue-funded programs, or private funds. Toll credits under 23 U.S.C. 120(i) are considered a Federal source under the BUILD program and, therefore, cannot be used to satisfy the statutory cost sharing requirement of a BUILD award. Unless otherwise authorized by statute, non-Federal cost-share may not be counted as the non-Federal share for both the BUILD Transportation grant and another Federal grant program. DOT will not consider previously incurred costs or previously expended or encumbered funds towards the matching requirement for any project. Matching funds are subject to the same Federal requirements described in Section F.2. as awarded funds. If repaid from non-Federal sources, Federal credit assistance is considered non-Federal share.

For each project that receives a BUILD Transportation grant award, the terms of the award will require the recipient to complete the project using at least the level of non-Federal funding that was specified in the application. If the actual costs of the project are greater than the costs estimated in the application, the recipient will be responsible for increasing the non-Federal contribution. If the actual costs of the project are less than the costs estimated in the application, DOT will generally reduce the Federal contribution.

*3. Other*

i. Eligible Projects

(a) Capital Projects

Eligible projects for BUILD Transportation grants are surface transportation capital projects that include, but are not limited to: (1) Highway, bridge, or other road projects eligible under title 23, United States Code; (2) public transportation projects eligible under chapter 53 of title 49, United States Code; (3) passenger and freight rail transportation projects; (4) port infrastructure investments (including inland port infrastructure and land ports of entry); (5) intermodal projects; and (6) projects investing in surface transportation facilities that are located on tribal land and for which title or maintenance responsibility is vested in the Federal Government.[3]

Other than projects described in this section, improvements to Federally owned facilities are ineligible under the FY 2020 BUILD program. Research, demonstration, or pilot projects are eligible only if they will result in long-term, permanent surface transportation infrastructure that has independent utility as defined in Section C.4.(b).

(b) Planning Projects

Activities eligible for funding under BUILD Transportation planning grants are related to the planning, preparation, or design—including environmental analysis, feasibility studies, and other pre-construction activities—of eligible surface transportation capital projects described in Section C.3.(a).

In addition, eligible activities related to multidisciplinary projects or regional planning may include: (1) Development of master plans, comprehensive plans, or corridor plans; (2) Planning activities related to the development of a multimodal freight corridor, including those that seek to reduce conflicts with residential areas and with passenger and non-motorized traffic; (3) Development of port and regional port planning grants, including State-wide or multi-port planning within a single jurisdiction or region; (4) Risk assessments and planning to identify vulnerabilities and address the transportation system's ability to withstand probable occurrence or recurrence of an emergency or major disaster.

ii. Rural/Urban Definition

For purposes of this notice, a project is designated as urban if it is located within (or on the boundary of) a Census-designated urbanized area[4] that had a population greater than 200,000 in the 2010 Census.[5] If a project is located outside a Census-designated urbanized area with a population greater than 200,000, it is designated as a rural project. Rural and urban definitions differ in some other DOT programs, including TIFIA.

A project located in both an urban and a rural area will be designated as *urban* if the majority of the project's costs will be spent in urban areas. Conversely, a project located in both an urban area and a rural area will be designated as *rural* if the majority of the project's costs will be spent in rural areas. For BUILD Transportation planning grants, the location of the project being planned, prepared, or designed will be used for the urban or rural designation.

This definition affects four aspects of the program: (1) Not more than $500 million of the funds provided for BUILD Transportation grants are to be used for

[2] To meet match requirements, the minimum total project cost for a project located in an urban area must be $6.25 million.

[3] Please note that DOT may award a BUILD Transportation grant to pay for the surface transportation components of a broader project that has non-surface transportation components, and applicants are encouraged to apply for BUILD Transportation grants to pay for the surface transportation components of these projects.

[4] Updated lists of UAs as defined by the Census Bureau are available on the Census Bureau website at *https://www.census.gov/geographies/reference-maps/2010/geo/2010-census-urban-areas.html.*

[5] See *www.transportation.gov/BUILDgrants* for a list of UAs.

projects in rural areas; (2) not more than $500 million of the funds provided for BUILD Transportation grants are to be used for projects in urban areas; (3) for a project in a rural area the minimum award is $1 million; and (4) the Secretary may increase the Federal share above 80 percent to pay for the costs of a project in a rural area.

iii. Project Components

An application may describe a project that contains more than one component, and may describe components that may be carried out by parties other than the applicant. DOT expects, and will impose requirements on fund recipients to ensure, that all components included in an application will be delivered as part of the BUILD project, regardless of whether a component includes Federal funding. DOT may award funds for a component, instead of the larger project, if that component (1) independently meets minimum award amounts described in Section B and all eligibility requirements described in Section C; (2) independently aligns well with the selection criteria specified in Section E.1; and (3) meets National Environmental Policy Act (NEPA) requirements with respect to independent utility. Independent utility means that the component will represent a transportation improvement that is usable and represents a reasonable expenditure of DOT funds even if no other improvements are made in the area, and will be ready for intended use upon completion of that component's construction. All project components that are presented together in a single application must demonstrate a relationship or connection between them. (See Section D.2. for Required Approvals).

Applicants should be aware that, depending upon the relationship between project components and applicable Federal law, DOT funding of only some project components may make other project components subject to Federal requirements as described in Section F.2.

DOT strongly encourages applicants to identify in their applications the project components that have independent utility and separately detail costs and requested BUILD Transportation grant funding for those components. If the application identifies one or more independent project components, the application should clearly identify how each independent component addresses selection criteria and produces benefits on its own, in addition to describing how the full proposal of which the independent component is a part addresses selection criteria.

iv. Application Limit

Each lead applicant may submit no more than three applications. Unrelated project components should not be bundled in a single application for the purpose of adhering to the limit. If a lead applicant submits more than three applications as the lead applicant, only the first three received will be considered.

**D. Application and Submission Information**

*1. Address*

Applications must be submitted to *Grants.gov.* Instructions for submitting applications can be found at *www.transportation.gov/BUILDgrants* along with specific instructions for the forms and attachments required for submission.

*2. Content and Form of Application Submission*

The application must include the Standard Form 424 (Application for Federal Assistance), cover page, and the Project Narrative. Applicants are encouraged to also complete SF–424C and attach to their application the ''BUILD 2020 Project Information'' form available at *www.transportation.gov/BUILDgrants.*

DOT recommends that the project narrative follow the basic outline below to address the program requirements and assist evaluators in locating relevant information.

| | |
|---|---|
| I. Project Description | See D.2.i. |
| II. Project Location .... | See D.2.ii. |
| III. Grant Funds, Sources and Uses of all Project Funding. | See D.2.iii. |
| IV. Selection Criteria | See D.2.iv. and E.1. |
| V. Environmental Risk Review. | See D.2.v. and E.1.ii. |
| VI. Benefit Cost Analysis. | See D.2.vi. and E.1.iii. |

The project narrative should include the information necessary for DOT to determine that the project satisfies project requirements described in Sections B and C and to assess the selection criteria specified in Section E.1. To the extent practicable, applicants should provide supporting data and documentation in a form that is directly verifiable by DOT. DOT may ask any applicant to supplement data in its application but expects applications to be complete upon submission.

In addition to a detailed statement of work, detailed project schedule, and detailed project budget, the project narrative should include a table of contents, maps and graphics, as appropriate, to make the information easier to review. DOT recommends that the project narrative be prepared with standard formatting preferences (a single-spaced document, using a standard 12-point font such as Times New Roman, with 1-inch margins). The project narrative may not exceed 30 pages in length, excluding cover pages and table of contents. The only substantive portions that may exceed the 30-page limit are documents supporting assertions or conclusions made in the 30-page project narrative. If possible, website links to supporting documentation should be provided rather than copies of these supporting materials. If supporting documents are submitted, applicants should clearly identify within the project narrative the relevant portion of the project narrative that each supporting document supports. DOT recommends using appropriately descriptive file names (*e.g.,* ''Project Narrative,'' ''Maps,'' ''Memoranda of Understanding and Letters of Support,'' etc.) for all attachments. DOT recommends applications include the following sections:

i. Project Description

The first section of the application should provide a description of the project, the transportation challenges that it is intended to address, and how it will address those challenges. This section should discuss the project's history, including a description of any previously completed components. The applicant may use this section to place the project into a broader context of other transportation infrastructure investments being pursued by the project sponsor, and, if applicable, how it will benefit communities in rural areas. Applicants may also include a detailed statement of work that focuses on the technical and engineering aspects of the project and describes in detail the project to be constructed.

ii. Project Location

This section of the application should describe the project location, including a detailed geographical description of the proposed project, a map of the project's location and connections to existing transportation infrastructure, and geospatial data describing the project location. The application should also identify whether the project is located in an Opportunity Zone.[6] The

[6] See *https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx* for more information on Opportunity Zones.

Department intends to collect Opportunity Zone information to advance other Department activities related to Opportunity Zones, but the Department does not consider projects located in an Opportunity Zone to be more competitive for a BUILD 2020 award than projects located outside an Opportunity Zone.[7] If the project is located within the boundary of a Census-designated urbanized area, the application should identify that urbanized area.

iii. Grant Funds, Sources and Uses of Project Funds

This section of the application should describe the budget for the BUILD project (*i.e.*, the project scope that includes BUILD funding). This budget should *not* include any previously incurred expenses. At a minimum, it should include:

(a) Costs for the BUILD 2020 project;

(b) For all funds to be used for eligible project costs, the source and amount of those funds;

(c) For non-Federal funds to be used for eligible project costs, documentation of funding commitments. Documentation should also be included as an appendix to the application. If matching contributions from a State DOT are included as non-Federal match, a supporting letter from the State indicating the source of the funds;

(d) For Federal funds to be used for eligible project costs, the amount, nature, and source of any required non-Federal match for those funds; and

(e) A budget showing how each source of funds will be spent. The budget should show how each funding source will share in each major construction activity, and present that data in dollars and percentages. Funding sources should be grouped into three categories: Non-Federal, BUILD, and other Federal. If the project contains individual components, the budget should separate the costs of each project component. If the project will be completed in phases, the budget should separate the costs of each phase. The budget detail should sufficiently demonstrate that the project satisfies the statutory cost-sharing requirements described in Section C.2.

In addition to the information enumerated above, this section should provide complete information on how all project funds may be used. For example, if a particular source of funds is available only after a condition is satisfied, the application should identify that condition and describe the applicant's control over whether it is satisfied. Similarly, if a particular source of funds is available for expenditure only during a fixed time period, the application should describe that restriction. Complete information about project funds will ensure that DOT's expectations for award execution align with any funding restrictions unrelated to DOT, even if an award differs from the applicant's request.

iv. Selection Criteria

This section of the application should demonstrate how the project aligns with the criteria described in Section E.1 of this notice. DOT encourages applicants to either address each criterion or expressly state that the project does not address the criterion. Applicants are not required to follow a specific format, but the outline suggested addresses each criterion separately and promotes a clear discussion that assists project evaluators. To minimize redundant information in the application, DOT encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application. The guidance in this section is about how the applicant should organize their application. Guidance describing how DOT will evaluate projects against the Selection Criteria is in Section E.1 of this notice. Applicants also should review that section before considering how to organize their application.

(1) Primary Selection Criteria

(a) Safety

This section of the application should describe the anticipated outcomes of the project that support the Safety criterion (described in Section E.1.i.(a) of this notice). The applicant should include information on, and to the extent possible, quantify, how the project would improve safety outcomes within the project area or wider transportation network, to include how the project will reduce the number, rate, and consequences of transportation-related accidents, serious injuries, and fatalities. If applicable, the applicant should also include information on how the project will eliminate unsafe grade crossings or contribute to preventing unintended releases of hazardous materials.

(b) State of Good Repair

This section of the application should describe how the project will contribute to a state of good repair by improving the condition or resilience of existing transportation facilities and systems (described in Section E.1.i.(b) of this notice), including the project's current condition and how the proposed project will improve it, and any estimates of impacts on long-term cost structures or overall life-cycle costs. If the project will contribute to a state of good repair of transportation infrastructure that supports border security, the applicant should describe how.

(c) Economic Competitiveness

This section of the application should describe how the project will support the Economic Competitiveness criterion (described in Section E.1.i.(c) of this notice). The applicant should include information about expected impacts of the project on the movement of goods and people, including how the project increases the efficiency of movement and thereby reduces costs of doing business, improves local and regional freight connectivity to the national and global economy, reduces burdens of commuting, and improves overall well-being. The applicant should describe the extent to which the project contributes to the functioning and growth of the economy, including the extent to which the project addresses congestion or freight connectivity, bridges service gaps in rural areas, or promotes the expansion of private economic development.

(d) Environmental Sustainability

This section of the application should describe how the project addresses the environmental sustainability criterion (described in Section E.1.i.(d) of this notice). Applicants are encouraged to provide quantitative information, including baseline information that demonstrates how the project will reduce energy consumption, reduce stormwater runoff, or achieve other benefits for the environment such as brownfield redevelopment.

(e) Quality of Life

This section should describe how the project increases transportation choices for individuals, expands access to essential services for people in communities across the United States, improves connectivity for citizens to jobs, health care, and other critical destinations, particularly for rural communities, or otherwise addresses the quality of life criterion (described in Section E.1.i.(e) of this notice). If construction of the transportation project will allow concurrent installation of fiber or other broadband deployment as an essential service, the applicant should describe those activities and how they support quality of life. Unless the concurrent activities

[7] See *https://www.transportation.gov/opportunity-zones* for more information about the Department's activities related to Opportunity Zones.

support transportation, they will not be eligible for reimbursement.

(2) Secondary Selection Criteria

(a) Innovation

This section of the application should describe innovative strategies used and the anticipated benefits of using those strategies, including those corresponding to three categories (described in Section E.1.i.(f) of this notice): (i) Innovative Technologies, (ii) Innovative Project Delivery, or (iii) Innovative Financing.

(i) Innovative Technologies

If an applicant is proposing to adopt innovative safety approaches or technology, the application should demonstrate the applicant's capacity to implement those innovations, the applicant's understanding of applicable Federal requirements and whether the innovations may require extraordinary permitting, approvals, exemptions, waivers, or other procedural actions, and the effects of those innovations on the project delivery timeline.

If an applicant is proposing to deploy innovative traveler information systems or technologies as part of the surface transportation capital project, including work zone data exchanges or related data exchanges, the application should demonstrate the applicant's capacity to implement these innovations, the applicant's understanding of applicable data standards, and whether the proposed innovations will advance safety or other benefits during and after project completion.

If an applicant is proposing to deploy autonomous vehicles or other innovative motor vehicle technology, the application should demonstrate that all vehicles will comply with applicable safety requirements, including those administered by the National Highway Traffic Safety Administration (NHTSA) and Federal Motor Carrier Safety Administration (FMCSA). Specifically, the application should show that vehicles acquired for the proposed project will comply with applicable Federal Motor Vehicle Safety Standards (FMVSS) and Federal Motor Carrier Safety Regulations (FMCSR). If the vehicles may not comply, the application should either (1) show that the vehicles and their proposed operations are within the scope of an exemption or waiver that has already been granted by NHTSA, FMCSA, or both agencies or (2) directly address whether the project will require exemptions or waivers from the FMVSS, FMCSR, or any other regulation and, if the project will require exemptions or waivers, present a plan for obtaining them.

(ii) Innovative Project Delivery

If an applicant plans to use innovative approaches to project delivery or is located in a State with NEPA delegation authority, applicants should describe those project delivery methods and how they are expected to improve the efficiency of the project development or expedite project delivery.

If an applicant is proposing to use SEP–14 or SEP–15 (as described in section E.1.i.(f) of this notice) the applicant should describe that proposal. The applicant should also provide sufficient information for evaluators to confirm that the applicant's proposal would meet the requirements of the specific experimental authority program.[8]

(iii) Innovative Financing

If an applicant plans to incorporate innovative funding or financing, the applicant should describe the funding or financing approach, including a description of all activities undertaken to pursue private funding or financing for the project and the outcomes of those activities.

(b) Partnership

This section of the application should include information to assess the partnership criterion (described in Section E.1.i.(g) of this notice) including a list of all project parties and details about the proposed grant recipient and other public and private parties who are involved in delivering the project. This section should also describe efforts to collaborate among stakeholders, including with the private sector.

Applications for projects involving other Federal agencies, or requiring action from other Federal agencies, should demonstrate commitment and involvement of those agencies. For example, projects involving border infrastructure should demonstrate evidence of concurrent investment from U.S. Customs and Border Patrol, U.S. Department of State, and other relevant Federal agencies; relevant port projects should demonstrate alignment with U.S. Army Corps of Engineers investment strategies.

v. Environmental Risk

This section of the application should include sufficient information for DOT to evaluate whether the project is reasonably expected to begin construction in a timely manner. To assist DOT's project environmental risk review, the applicant should provide the information requested on project schedule, required approvals and permits, NEPA, risk and mitigation strategies, each of which is described in greater detail in the following sections. Applicants are not required to follow the specific format described here, but this organization, which addresses each relevant aspect of environmental risk, promotes a clear discussion that assists project evaluators. To minimize redundant information in the application, DOT encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application.

The guidance here is about what information applicants should provide and how the applicant should organize their application. Guidance describing how DOT will evaluate environmental risk is described in Section E.1.ii of this notice. Applicants should review that section when considering how to organize their application.

(a) Project Schedule

The applicant should include a detailed project schedule that identifies all major project milestones. Examples of such milestones include State and local planning approvals (*e.g.,* programming on the Statewide Transportation Improvement Program); start and completion of NEPA and other Federal environmental reviews and approvals including permitting; design completion; right of way acquisition; approval of plans, specifications and estimates; procurement; State and local approvals; project partnership and implementation agreements, including agreements with railroads; and construction. The project schedule should be sufficiently detailed to demonstrate that:

(1.) All necessary activities will be complete to allow BUILD Transportation grant funds to be obligated sufficiently in advance of the statutory deadline (September 30, 2022 for FY 2020 funds), and that any unexpected delays will not put the funds at risk of expiring before they are obligated;

(2.) the project can begin construction quickly upon obligation of grant funds and that those funds will be spent expeditiously once construction starts, with all funds expended by September 30, 2027; and

(3.) all real property and right-of-way acquisition will be completed in a timely manner in accordance with 49

[8] SEP–14 information is available at *https://www.fhwa.dot.gov/programadmin/contracts/sep_a.cfm.* SEP–15 information is available at *https://www.fhwa.dot.gov/ipd/p3/toolkit/usdot/sep15/implementation_procedure/.*

CFR part 24, 23 CFR part 710, and other applicable legal requirements or a statement that no acquisition is necessary.

(b) Required Approvals

1. Environmental Permits and Reviews. The application should demonstrate receipt (or reasonably anticipated receipt) of all environmental approvals and permits necessary for the project to proceed to construction on the timeline specified in the project schedule and necessary to meet the statutory obligation deadline, including satisfaction of all Federal, State and local requirements and completion of the NEPA process. Specifically, the application should include:

i. Information about the NEPA status of the project. If the NEPA process is complete, an applicant should indicate the date of completion, and provide a website link or other reference to the final Categorical Exclusion, Finding of No Significant Impact, Record of Decision, and any other NEPA documents prepared. If the NEPA process is underway, but not complete, the application should detail the type of NEPA review underway, where the project is in the process, and indicate the anticipated date of completion of all milestones and of the final NEPA determination. If the last agency action with respect to NEPA documents occurred more than three years before the application date, the applicant should describe why the project has been delayed and include a proposed approach for verifying and, if necessary, updating this material in accordance with applicable NEPA requirements.

ii. Information on reviews, approvals, and permits by other agencies. An application should indicate whether the proposed project requires reviews or approval actions by other agencies,[9] indicate the status of such actions, and provide detailed information about the status of those reviews or approvals and should demonstrate compliance with any other applicable Federal, State or local requirements, and when such approvals are expected. Applicants should provide a website link or other reference to copies of any reviews, approvals, and permits prepared.

iii. Environmental studies or other documents, preferably through a website link, that describe in detail known project impacts, and possible mitigation for those impacts.

iv. A description of discussions with the appropriate DOT operating administration field or headquarters office regarding the project's compliance with NEPA and other applicable Federal environmental reviews and approvals.

v. A description of public engagement about the project that has occurred, including details on the degree to which public comments and commitments have been integrated into project development and design.

2. State and Local Approvals. The applicant should demonstrate receipt of State and local approvals on which the project depends, such as State and local environmental and planning approvals and Statewide Transportation Improvement Program (STIP) or (Transportation Improvement Program) TIP funding. For projects acquiring State DOT-owned right of way, applicants should demonstrate they have coordinated the project with the State DOT or transportation facility owner. Additional support from relevant State and local officials is not required; however, an applicant should demonstrate that the project has broad public support.

3. Federal Transportation Requirements Affecting State and Local Planning. The planning requirements applicable to the relevant operating administration apply to all BUILD Transportation grant projects,[10] including intermodal projects located at airport facilities.[11] Applicants should demonstrate that a project that is required to be included in the relevant State, metropolitan, and local planning documents has been or will be included in such documents. If the project is not included in a relevant planning document at the time the application is submitted, the applicant should submit a statement from the appropriate planning agency that actions are underway to include the project in the relevant planning document. To the extent possible, freight projects should be included in a State Freight Plan and supported by a State Freight Advisory Committee (49 U.S.C. 70201, 70202), if these exist. Applicants should provide links or other documentation supporting this consideration. Because projects have different schedules, the construction start date for each BUILD Transportation grant must be specified in the project-specific agreements signed by relevant operating administration and the grant recipients, based on critical path items that applicants identify in the application and will be consistent with relevant State and local plans.

(c) Assessment of Project Risks and Mitigation Strategies

Project risks, such as procurement delays, environmental uncertainties, increases in real estate acquisition costs, uncommitted local match, unavailability of vehicles that either comply with Federal Motor Vehicle Safety Standards or are exempt from Federal Motor Vehicle Safety Standards in a manner that allows for their legal acquisition and deployment, unavailability of domestically manufactured equipment, or lack of legislative approval, affect the likelihood of successful project start and completion. The applicant should identify all material risks to the project and the strategies that the lead applicant and any project partners have undertaken or will undertake in order to mitigate those risks. The applicant should assess the greatest risks to the project and identify how the project parties will mitigate those risks.

[9] Projects that may impact protected resources such as wetlands, species habitat, cultural or historic resources require review and approval by Federal and State agencies with jurisdiction over those resources.

[10] Under 23 U.S.C. 134 and 135, all projects requiring an action by FHWA must be in the applicable plan and programming documents (*e.g.,* metropolitan transportation plan, transportation improvement program (TIP) and statewide transportation improvement program (STIP)). Further, in air quality non-attainment and maintenance areas, all regionally significant projects, regardless of the funding source, must be included in the conforming metropolitan transportation plan and TIP. Inclusion in the STIP is required under certain circumstances. To the extent a project is required to be on a metropolitan transportation plan, TIP, and/or STIP, it will not receive a BUILD Transportation grant until it is included in such plans. Plans that do not currently include the awarded BUILD project can be amended by the State and MPO. Projects that are not required to be in long range transportation plans, STIPs, and TIPs will not need to be included in such plans in order to receive a BUILD Transportation grant. Port, freight rail, and intermodal projects are not required to be on the State Rail Plans called for in the Passenger Rail Investment and Improvement Act of 2008, or in a State Freight Plan as described in the FAST Act. However, applicants seeking funding for freight projects are encouraged to demonstrate that they have done sufficient planning to ensure that projects fit into a prioritized list of capital needs and are consistent with long-range goals. Means of demonstrating this consistency would include whether the project is in a TIP or a State Freight Plan that conforms to the requirements 49 U.S.C. 70202 prior to the start of construction. Port planning guidelines are available at StrongPorts.gov.

[11] Projects at grant obligated airports must be compatible with the FAA-approved Airport Layout Plan, as well as aeronautical surfaces associated with the landing and takeoff of aircraft at the airport. Additionally, projects at an airport: must comply with established Sponsor Grant Assurances, including (but not limited to) requirements for non-exclusive use facilities, consultation with users, consistency with local plans including development of the area surrounding the airport, and consideration of the interest of nearby communities, among others; and must not adversely affect the continued and unhindered access of passengers to the terminal.

If an applicant anticipates pursuing a waiver for relevant domestic preference laws, the applicant should describe steps that have been or will be taken to maximize the use of domestic goods, products, and materials in constructing its project.

To the extent the applicant is unfamiliar with the Federal program, the applicant should contact the appropriate DOT operating administration field or headquarters offices, as found in contact information at *www.transportation.gov/BUILDgrants,* for information on the pre-requisite steps to obligate Federal funds in order to ensure that their project schedule is reasonable and that there are no risks of delays in satisfying Federal requirements.

BUILD Transportation planning grant applicants should describe their capacity to successfully implement the proposed activities in a timely manner.

vi. Benefit Cost Analysis

This section describes the recommended approach for the completion and submission of a benefit-cost analysis (BCA) as an appendix to the Project Narrative. The results of the analysis should be summarized in the Project Narrative directly, as described in Section D.2.

The appendix should provide present value estimates of a project's benefits and costs relative to a no-build baseline. To calculate present values, applicants should apply a real discount rate (*i.e.,* the discount rate net of the inflation rate) of 7 percent per year to the project's streams of benefits and costs. The purpose of the BCA is to enable DOT to evaluate the project's cost-effectiveness by estimating a benefit-cost ratio and calculating the magnitude of net benefits for the project.

The primary economic benefits from projects eligible for BUILD Transportation grants are likely to include savings in travel time costs, vehicle or terminal operating costs, and safety costs for both existing users of the improved facility and new users who may be attracted to it as a result of the project. Reduced damages from vehicle emissions and savings in maintenance costs to public agencies may also be quantified. Applicants may describe other categories of benefits in the BCA that are more difficult to quantify and value in economic terms, such as improving the reliability of travel times or improvements to the existing human and natural environments (such as increased connectivity, improved public health, storm water runoff mitigation, and noise reduction), while also providing numerical estimates of the magnitude and timing of each of these additional impacts wherever possible. Any benefits claimed for the project, both quantified and unquantified, should be clearly tied to the expected outcomes of the project.

The BCA should include the full costs of developing, constructing, operating, and maintaining the proposed project, as well as the expected timing or schedule for costs in each of these categories. The BCA may also consider the present discounted value of any remaining service life of the asset at the end of the analysis period. The costs and benefits that are compared in the BCA should also cover the same project scope.

The BCA should carefully document the assumptions and methodology used to produce the analysis, including a description of the baseline, the sources of data used to project the outcomes of the project, and the values of key input parameters. Applicants should provide all relevant files used for their BCA, including any spreadsheet files and technical memos describing the analysis (whether created in-house or by a contractor). The spreadsheets and technical memos should present the calculations in sufficient detail and transparency to allow the analysis to be reproduced by DOT evaluators. Detailed guidance for estimating some types of quantitative benefits and costs, together with recommended economic values for converting them to dollar terms and discounting to their present values, are available in DOT's guidance for conducting BCAs for projects seeking funding under the BUILD Transportation grant program (see *www.transportation.gov/BUILDgrants/additional-guidance*).

*3. Unique Entity Identifier and System for Award Management (SAM)*

Each applicant must: (1) Be registered in SAM before submitting its application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. DOT may not make a BUILD Transportation grant to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time DOT is ready to make a BUILD Transportation grant, DOT may determine that the applicant is not qualified to receive a BUILD Transportation grant and use that determination as a basis for making a BUILD Transportation grant to another applicant.

*4. Submission Dates and Times*

Applications must be submitted to *Grants.gov*. Instructions for submitting applications can be found at *www.transportation.gov/BUILDgrants* along with specific instructions for the forms and attachments required for submission.

(a) Deadline

Applications must be submitted by 5:00 p.m. E.D.T. on May 18, 2020. To submit an application through *Grants.gov*, applicants must:

(1) Obtain a Data Universal Numbering System (DUNS) number;

(2) Register with the System for Award Management (SAM) at *www.SAM.gov*;

(3) Create a *Grants.gov* username and password; and

(4) The E-Business Point of Contact (POC) at the applicant's organization must respond to the registration email from *Grants.gov* and login at *Grants.gov* to authorize the applicant as the Authorized Organization Representative (AOR). Please note that there can be more than one AOR for an organization.

Please note that the *Grants.gov* registration process usually takes 2–4 weeks to complete and that DOT will not consider late applications that are the result of failure to register or comply with *Grants.gov* applicant requirements in a timely manner. For information and instruction on each of these processes, please see instructions at *http://www.grants.gov/web/grants/applicants/applicant-faqs.html.* If applicants experience difficulties at any point during the registration or application process, please call the *Grants.gov* Customer Service Support Hotline at 1(800) 518–4726, Monday–Friday from 7:00 a.m. to 9:00 p.m. EST.

(b) Consideration of Applications

Only applicants who comply with all submission deadlines described in this notice and electronically submit valid applications through *Grants.gov* will be eligible for award. Applicants are strongly encouraged to make submissions in advance of the deadline.

(c) Late Applications

Applicants experiencing technical issues with *Grants.gov* that are beyond the applicant's control must contact *BUILDgrants@dot.gov* prior to the application deadline with the user name of the registrant and details of the technical issue experienced. The applicant must provide:

(1) Details of the technical issue experienced;

(2) Screen capture(s) of the technical issues experienced along with corresponding *Grants.gov* ''Grant tracking number;''

(3) The ''Legal Business Name'' for the applicant that was provided in the SF–424;

(4) The AOR name submitted in the SF–424;

(5) The DUNS number associated with the application; and

(6) The *Grants.gov* Help Desk Tracking Number.

To ensure a fair competition of limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline; (2) failure to follow *Grants.gov* instructions on how to register and apply as posted on its website; (3) failure to follow all instructions in this notice of funding opportunity; and (4) technical issues experienced with the applicant's computer or information technology environment. After DOT reviews all information submitted and contact the *Grants.gov* Help Desk to validate reported technical issues, DOT staff will contact late applicants to approve or deny a request to submit a late application through *Grants.gov*. If the reported technical issues cannot be validated, late applications will be rejected as untimely.

**E. Application Review Information**

*1. Criteria*

(a) Capital Projects

This section specifies the criteria that DOT will use to evaluate and award applications for BUILD Transportation grants. The criteria incorporate the statutory eligibility requirements for this program, which are specified in this notice as relevant. For each proposed project, DOT will review the potential long-term benefits for the primary and secondary merit criteria described in this section. DOT does not consider any primary merit criterion more important than the others. Applications that do not demonstrate a potential for moderate long-term benefits based on these criteria will not proceed in the evaluation process. In evaluating the primary and secondary merit criteria, DOT will review the project's local or regional impact as well the content and credibility of information used to explain project benefits.

i. Primary Merit Criteria

a. Safety

DOT will assess the project's ability to foster a safe transportation system for the movement of goods and people. DOT will consider the projected impacts on the number, rate, and consequences of crashes, fatalities and injuries among transportation users; the project's contribution to the elimination of highway/rail grade crossings; or the project's contribution to preventing unintended releases of hazardous materials.

b. State of Good Repair

DOT will assess whether and to what extent: (1) The project is consistent with relevant plans to maintain transportation facilities or systems in a state of good repair and address current and projected vulnerabilities; (2) if left unimproved, the poor condition of the asset will threaten future transportation network efficiency, mobility of goods or accessibility and mobility of people, or economic growth; (3) the project is appropriately capitalized up front and uses asset management approaches that optimize its long-term cost structure; (4) a sustainable source of revenue is available for operations and maintenance of the project and the project will reduce overall life-cycle costs; (5) the project will maintain or improve transportation infrastructure that supports border security functions; and (6) the project includes a plan to maintain the transportation infrastructure in a state of good repair. DOT will prioritize projects that ensure the good condition of transportation infrastructure, including rural transportation infrastructure, that support commerce and economic growth.

c. Economic Competitiveness

DOT will assess whether the project will (1) decrease transportation costs and improve access, through reliable and timely access to employment centers and job opportunities; (2) improve long-term efficiency, reliability or costs in the movement of workers or goods; (3) increase the economic productivity of land, capital, or labor; (4) result in long-term job creation and other economic opportunities; or (5) help the United States compete in a global economy by facilitating efficient and reliable freight movement.

Projects that address congestion in major urban areas, particularly those that do so through the use of congestion pricing or the deployment of advanced technology, projects that bridge gaps in service in rural areas, and projects that attract private economic development, all support local or regional economic competitiveness.

d. Environmental Sustainability

DOT will consider the extent to which the project improves energy efficiency, reduces dependence on oil, reduces congestion-related emissions, improves water quality, avoids and mitigates environmental impacts and otherwise benefits the environment, including through alternative right of way uses demonstrating innovative ways to improve or streamline environmental reviews while maintaining the same outcomes. DOT will assess the project's ability to: (i) Reduce energy use and air or water pollution through congestion mitigation strategies; (ii) avoid adverse environmental impacts to air or water quality, wetlands, and endangered species; or (iii) provide environmental benefits, such as brownfield redevelopment, ground water recharge in areas of water scarcity, wetlands creation or improved habitat connectivity, and stormwater mitigation.

e. Quality of Life

DOT will consider the extent to which the project: (i) Increases transportation choices for individuals to provide more freedom on transportation decisions; (ii) expands access to essential services for communities across the United States, particularly for rural communities; or (iii) improves connectivity for citizens to jobs, health care, and other critical destinations, particularly for rural communities. Americans living in rural areas and on Tribal lands continue to disproportionately lack access and connectivity, and DOT will consider whether and the extent to which the construction of the transportation project will allow concurrent installation of fiber or other broadband deployment as an essential service.

ii. Secondary Merit Criteria

a. Innovation

DOT will assess the extent to which the applicant uses innovative strategies, including: (1) Innovative technologies, (2) innovative project delivery, or (3) innovative financing.

1. Innovative Technologies

DOT will assess innovative approaches to transportation safety, particularly in relation to automated vehicles and the detection, mitigation, and documentation of safety risks. When making BUILD Transportation grant award decisions, DOT will consider any innovative safety approaches proposed by the applicant,

particularly projects which incorporate innovative design solutions, enhance the environment for automated vehicles, or use technology to improve the detection, mitigation, and documentation of safety risks. Innovative safety approaches may include, but are not limited to:

- Conflict detection and mitigation technologies (*e.g.,* intersection alerts and signal prioritization);
- Dynamic signaling, smart traffic signals, or pricing systems to reduce congestion;
- Traveler information systems, to include work zone data exchanges;
- Signage and design features that facilitate autonomous or semi-autonomous vehicle technologies;
- Applications to automatically capture and report safety-related issues (*e.g.,* identifying and documenting near-miss incidents); and
- Cybersecurity elements to protect safety-critical systems.

For innovative safety proposals, DOT will evaluate safety benefits that those approaches could produce and the broader applicability of the potential results. DOT will also assess the extent to which the project uses innovative technology that supports surface transportation to significantly enhance the operational performance of the transportation system.

Innovative technologies include: Broadband deployment and the installation of high-speed networks concurrent with the project construction; connecting Intelligent Transportation System (ITS) infrastructure; and providing direct fiber connections that support surface transportation to public and private entities, which can provide a platform and catalyst for growth of rural communities. DOT will consider whether and the extent to which the construction of the transportation project will allow concurrent broadband deployment and the installation of high-speed networks.

2. Innovative Project Delivery

DOT will consider the extent to which the project utilizes innovative practices in contracting (such as public-private partnerships), congestion management, asset management, or long-term operations and maintenance.

DOT also seeks projects that employ innovative approaches to improve the efficiency and effectiveness of the environmental permitting and review to accelerate project delivery and achieve improved outcomes for communities and the environment. DOT's objective is to achieve timely and consistent environmental review and permit decisions. Accordingly, projects from States with NEPA assignment authority under 23 U.S.C. 327 are considered to use an innovative approach to project delivery. Participation in innovative project delivery approaches will not remove any statutory requirements affecting project delivery.

While BUILD Transportation grant award recipients are not required to employ innovative approaches, DOT encourages BUILD Transportation grant applicants to describe innovative project delivery methods for proposed projects.

Additionally, DOT is interested in projects that apply innovative strategies to improve the efficiency of project development or expedite project delivery by using FHWA's Special Experimental Project No. 14 (SEP–14) and Special Experimental Project No. 15 (SEP–15). Under SEP–14 and SEP–15, FHWA may waive statutory and regulatory requirements under title 23 on a project-by-project basis to explore innovative processes that could be adopted through legislation. This experimental authority is available to test changes that would improve the efficiency of project delivery in a manner that is consistent with the purposes underlying existing requirements; it is not available to frustrate the purposes of existing requirements.

When making BUILD Transportation grant award decisions, DOT will consider the applicant's proposals to use SEP–14 or SEP–15, whether the proposals are consistent with the objectives and requirements of those programs, the potential benefits that experimental authorities or waivers might provide to the project, and the broader applicability of potential results. DOT is not replacing the application processes for SEP–14 or SEP–15 with this notice or the BUILD Transportation grant program application. Instead, it seeks detailed expressions of interest in those programs. If selected for an BUILD Transportation grant award, the applicant would need to satisfy the relevant programs' requirements and complete the appropriate application processes. Selection for a BUILD Transportation grant award does not mean a project's SEP–14 or SEP–15 proposal has been approved. DOT will make a separate determination in accordance with those programs' processes on the appropriateness of a waiver.

3. Innovative Financing

DOT will assess the extent to which the project incorporates innovations in transportation funding and finance through both traditional and innovative means, including by using private sector funding or financing and recycled revenue from the competitive sale or lease of publicly owned or operated assets.

b. Partnership

DOT will consider the extent to which projects demonstrate strong collaboration among a broad range of stakeholders. Projects with strong partnership typically involve multiple partners in project development and funding, such as State and local governments, other public entities, and private or nonprofit entities. DOT will consider applicants that partner with State, local, or private entities for the completion and operation of transportation infrastructure to have strong partnership. DOT will also assess the extent to which the project application demonstrates collaboration among neighboring or regional jurisdictions to achieve local or regional benefits. In the context of public-private partnerships, DOT will assess the extent to which partners are encouraged to ensure long-term asset performance, such as through pay-for-success approaches.

DOT will also consider the extent to which projects include partnerships that bring together diverse transportation agencies or are supported, financially or otherwise, by other stakeholders that are pursuing similar objectives. For example, DOT will consider the extent to which transportation projects are coordinated with economic development, housing, water and waste infrastructure, power and electric infrastructure, broadband and land use plans and policies or other public service efforts.

iii. Demonstrated Project Readiness

During application evaluation, DOT may consider project readiness to assess the likelihood of a successful project. In that analysis, DOT will consider three evaluation ratings: Environmental Risk, Technical Capacity, and Financial Capacity. Environmental Risk assessment analyzes the project's environmental approvals and likelihood of the necessary approval affecting project obligation. The Technical Capacity will be reviewed for all eligible applications and will assess the applicant's capacity to successfully deliver the project in compliance with applicable Federal requirements based on factors including the recipient's experience working with Federal agencies, previous experience with BUILD or INFRA awards, and the technical experience and resources

dedicated to the project. The Financial Capacity assessment reviews the availability of matching funds and whether the applicant presented a complete funding package. Risks do not disqualify projects from award, but competitive applications clearly and directly describe achievable risk mitigation strategies. A project with mitigated risks or with a risk mitigation plan is more competitive than a comparable project with unaddressed risks.

iv. Project Costs and Benefits

DOT may consider the costs and benefits of projects seeking BUILD Transportation grant funding. To the extent possible, DOT will rely on quantitative, data-supported analysis to assess how well a project addresses this criterion, including an assessment of the project's estimated benefit-cost ratio (BCR) and net quantifiable benefits based on the applicant-supplied BCA described in Section D.2.vi.

To evaluate the costs and benefits of a proposed project, DOT will assign the project into ranges based on its estimated BCR and net present value (NPV), and DOT will assign a level of confidence associated with the estimated BCR and NPV ranges. DOT will use these ranges for BCR: Less than 1; 1–1.5; 1.5–3; and greater than 3. DOT will use these ranges for NPV: Less than $0; $0– $50,000,000; $50,000,000–$250,000,000; and greater than $250,000,000. The confidence levels are high, medium, and low.

(b) Planning Grants

Planning grant applications will be evaluated against the same criteria as capital grants. For project-level planning, this means considering how the project resulting from the plan will ultimately further the primary and secondary merit criteria. For regional transportation planning efforts, applications should demonstrate how the regional plan will help lead to these outcomes. BUILD Transportation planning grant applicants will be evaluated for their capacity to successfully implement the proposed planning activities in a timely manner. DOT will not evaluate the benefits and costs (as expressed in a benefit-cost analysis) or environmental risks of projects that do not include construction.

(c) Additional Considerations

The FY 2020 Appropriations Act requires DOT to consider contributions to geographic diversity among recipients, including the need for a balance between the needs of rural and urban communities when selecting BUILD Transportation grant awards.

*2. Review and Selection Process*

DOT reviews all eligible applications received by the deadline. The BUILD Transportation grants review and selection process consists of at least Technical Review and Senior Review. In the Technical Review, teams comprising staff from the Office of the Secretary (OST) and operating administrations review all eligible applications and rate projects as Highly Recommended, Recommended, Acceptable, or Unacceptable. To receive a Highly Recommended rating, (1) the project must demonstrate that, more likely than not, it will generate long-term benefits in one or more primary merit criteria and the project does not appear to negatively affect any of the other merit criteria; (2) the project must have a clear, direct, significant, and positive local or regional impact (*i.e.* the project will, more likely than not, reduce the problem or use the opportunity that project proposes to address); and (3) the application contains sufficient information to assess project benefits and the benefits claimed by the applicant appear reasonable and justifiable. If the project has not substantively changed from prior submissions to BUILD or other Department programs, staff may rely on previous analysis. The Senior Review Team, which includes senior leadership from OST and the operating administrations, determines which projects to advance to the Secretary as Highly Rated. The FY 2020 Appropriations Act mandated BUILD Transportation grant awards by September 15, 2020. The Secretary selects from the Highly Rated projects for final awards.

*3. Additional Information*

Prior to award, each selected applicant will be subject to a risk assessment as required by 2 CFR 200.205. DOT must review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS). An applicant may review information in FAPIIS and comment on any information about itself. DOT will consider comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants.

**F. Federal Award Administration Information**

*1. Federal Award Notice*

Following the evaluation outlined in Section E, the Secretary will announce awarded projects by posting a list of selected projects at *www.transportation.gov/BUILDgrants.* Notice of selection is not authorization to begin performance or to incur costs for the proposed project. Following that announcement, the relevant operating administration will contact the point of contact listed in the SF 424 to initiate negotiation of the grant agreement for authorization.

Recipients of BUILD Transportation Grant awards will not receive lump-sum cash disbursements at the time of award announcement or obligation of funds. Instead, BUILD funds will reimburse recipients only after a grant agreement has been executed, allowable expenses are incurred, and valid requests for reimbursement are submitted. Unless authorized in writing by DOT, an expense incurred before a grant agreement is executed will not be reimbursed.

*2. Administrative and National Policy Requirements*

Please visit *https://www.transportation.gov/policy-initiatives/build/grant-agreements* for the General Terms and Conditions for BUILD 2019 awards. The BUILD 2020 Terms and Conditions will be similar to the BUILD 2019 Terms and Conditions, but may include relevant updates.

All awards will be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR part 200, as adopted by DOT at 2 CFR part 1201. Federal wage rate requirements included in subchapter IV of chapter 31 of title 40, U.S.C., apply to all projects receiving funds under this program, and apply to all parts of the project, whether funded with BUILD Transportation Grant funds, other Federal funds, or non-Federal funds.

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, recipients of funds must comply with all applicable requirements of Federal law, including, without limitation, the Constitution of the United States; the conditions of performance, non-discrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of the Department of Transportation; and applicable Federal financial assistance and contracting

principles promulgated by the Office of Management and Budget. In complying with these requirements, recipients, in particular, must ensure that no concession agreements are denied or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If DOT determines that a recipient has failed to comply with applicable Federal requirements, DOT may terminate the award of funds and disallow previously incurred costs, requiring the recipient to reimburse any expended award funds.

Additionally, applicable Federal laws, rules and regulations of the relevant operating administration administering the project will apply to the projects that receive BUILD Transportation grant awards, including planning requirements, Service Outcome Agreements, Stakeholder Agreements, Buy America compliance, and other requirements under DOT's other highway, transit, rail, and port grant programs. In particular, Executive Order 13858 directs the Executive Branch Departments and agencies to maximize the use of goods, products, and materials produced in the United States through the terms and conditions of Federal financial assistance awards. If selected for an award, grantees must be prepared to demonstrate how they will maximize the use of domestic goods, products, and materials in constructing their project. BUILD Transportation grant projects involving vehicle acquisition must involve only vehicles that comply with applicable Federal Motor Vehicle Safety Standards and Federal Motor Carriers Safety Regulations, or vehicles that are exempt from Federal Motor Vehicle Safety Standards or Federal Motor Carrier Safety Regulations in a manner that allows for the legal acquisition and deployment of the vehicle or vehicles.

For projects administered by FHWA, applicable Federal laws, rules, and regulations set forth in Title 23 U.S.C. and Title 23 CFR apply, including the 23 U.S.C. 129 restrictions on the use of toll revenues, and Section 4(f) preservation of parklands and historic properties requirements under 23 U.S.C. 138. For an illustrative list of the other applicable laws, rules, regulations, executive orders, polices, guidelines, and requirements as they relate to a BUILD Transportation grant project administered by the FHWA, please see *https://ops.fhwa.dot.gov/Freight/infrastructure/tiger/#build18.*

For BUILD Transportation projects administered by the Federal Transit Administration and partially funded with Federal transit assistance, all relevant requirements under chapter 53 of title 49 U.S.C. apply. For transit projects funded exclusively with BUILD Transportation grant funds, some requirements of chapter 53 of title 49 U.S.C. and chapter VI of title 49 CFR apply.

For projects administered by the Federal Railroad Administration, FRA requirements described in 49 U.S.C. Subtitle V, Part C apply.

*3. Reporting*

(a) Progress Reporting on Grant Activities

Each applicant selected for BUILD Transportation grant funding must submit quarterly progress reports and Federal Financial Reports (SF–425) to monitor project progress and ensure accountability and financial transparency in the BUILD Transportation grant program.

(b) System Performance Reporting

Each applicant selected for BUILD Transportation grant funding must collect and report to the DOT information on the project's performance. The specific performance information and reporting time period will be determined on a project-by-project basis. Performance indicators will not include formal goals or targets, but will include observed measures under baseline (pre-project) as well as post-implementation outcomes, and will be used to evaluate and compare projects and monitor the results that grant funds achieve to the intended long-term outcomes of the BUILD Transportation grant program are achieved. To the extent possible, performance indicators used in the reporting should align with the measures included in the application and should relate to at least one of the selection criteria defined in Section E.1. Performance reporting continues for several years after project construction is completed, and DOT does not provide BUILD Transportation grant funding specifically for performance reporting.

(c) Reporting of Matters Related to Recipient Integrity and Performance

If the total value of a selected applicant's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then the applicant during that period of time must maintain the currency of information reported to the SAM that is made available in the designated integrity and performance system (currently FAPIIS) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

**G. Federal Awarding Agency Contacts**

For further information concerning this notice please contact the BUILD Transportation grant program staff via email at *BUILDgrants@dot.gov,* or call Howard Hill at 202–366–0301. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, DOT will post answers to questions and requests for clarifications on DOT's website at *www.transportation.gov/BUILDgrants.* To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact DOT directly, rather than through intermediaries or third parties, with questions. DOT staff may also conduct briefings on the BUILD Transportation grant selection and award process upon request.

**H. Other information**

*1. Protection of Confidential Business Information*

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the applicant submits information that the applicant considers to be a trade secret or confidential commercial or financial information, the applicant must provide that information in a separate document, which the applicant may cross-reference from the application narrative or other portions of the application. For the separate document containing confidential information, the applicant must do the following: (1) State on the cover of that document that it ''Contains Confidential Business Information (CBI)''; (2) mark each page that contains confidential information with ''CBI''; (3) highlight or otherwise denote the confidential content on each page; and (4) at the end of the document, explain how disclosure of the confidential information would cause substantial competitive harm. DOT will protect confidential information complying with these requirements to the extent

required under applicable law. If DOT receives a Freedom of Information Act (FOIA) request for the information that the applicant has marked in accordance with this section, DOT will follow the procedures described in its FOIA regulations at 49 CFR 7.29. Only information that is in the separate document, marked in accordance with this section, and ultimately determined to be confidential under § 7.29 will be exempt from disclosure under FOIA.

*2. Publication/Sharing of Application Information*

Following the completion of the selection process and announcement of awards, DOT intends to publish a list of all applications received along with the names of the applicant organizations and funding amounts requested. Except for the information properly marked as described in Section H.1., DOT may make application narratives publicly available or share application information within DOT or with other Federal agencies if DOT determines that sharing is relevant to the respective program's objectives.

*3. Department Feedback on Applications*

DOT strives to provide as much information as possible to assist applicants with the application process. DOT will not review applications in advance, but DOT staff are available for technical questions and assistance. To efficiently use Department resources, DOT will prioritize interactions with applicants who have not already received a debrief on their FY 2019 BUILD Transportation grant application. Program staff will address questions received at *BUILDgrants@dot.gov* throughout the application period. DOT staff will make reasonable efforts to schedule meetings on projects through April 1, 2020. After that date, DOT staff will schedule meetings only to the extent possible and consistent with timely completion of other activities.

Issued On: February 18, 2020.

**Elaine L. Chao,**

*Secretary.*

[FR Doc. 2020–03711 Filed 2–24–20; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

**ACTION:** Notice and request for public comment.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Community Development Financial Institutions Fund (CDFI Fund), U.S. Department of the Treasury, is soliciting comments concerning the Community Development Financial Institutions CDFI Program (CDFI Program) and New Markets Tax Credit Program (NMTC Program) Annual Report including the Awards Management and Information System (AMIS) Compliance and Performance Reporting (ACPR).

**DATES:** Written comments must be received on or before April 27, 2020 to be assured of consideration.

**ADDRESSES:** Submit your comments via email to Greg Bischak, Program Manager for Financial Strategies and Research, CDFI Fund, at *CDFI-FinancialStrategiesandResearch@cdfi.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Greg Bischak, Program Manager for Financial Strategies and Research, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220 or by telephone at (202) 653–0300. Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's website at *http://www.cdfifund.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* CDFI Program and NMTC Program Annual Report including AMIS.

*OMB Number:* 1559–0027.

*Abstract:* This collection captures quantitative information from Community Development Financial Institutions (CDFIs) and Community Development Entities (CDEs) at the institution and transaction levels. This information is used to assess: (1) The recipient's/allocatee's activities as detailed in its application materials; (2) the recipient's/allocatee's approved use of the assistance; (3) the recipient's/allocatee's financial condition; (4) the socio-economic characteristics of recipient's/allocatee's borrowers/investees, loan and investment terms, repayment status, and community development outcomes; and (5) overall compliance with the terms and conditions of the assistance/allocation agreement entered into by the CDFI Fund and the recipient/allocatee.

A CDFI Program or Native American CDFI Assistance Program (NACA Program) recipient must submit an Annual Report that is comprised of several sections that depend on the program and the type of award. The specific components that comprise a recipient's Annual Report are set forth in the assistance agreement that the recipient enters into with the CDFI Fund in order to receive a CDFI Program or a NACA Program award. The current CDFI/NACA reporting requirements can be found in the assistance agreement templates located on the CDFI Fund website at *www.cdfifund.gov.*

For CDFI/NACA recipients, three significant changes were made to annual reporting. First, as part of its IT modernization strategy, the CDFI Fund developed a unified technology platform called the Awards Management Information System (AMIS) that facilitates better data collection and efficiency for users, improves data validations, and enhances computing capacity. Second, in developing the AMIS-based Compliance and Performance Reporting platform (ACPR), we sought to reduce the reporting burden by eliminating the Institution Level Report (ILR) which cut aggregate recipient reporting time by 3,066 hours. Third, the CDFI/NACA Transaction Level Report (TLR) requirements were substantially reduced by 70% by limiting transactional reporting to only newly originated and closed loans and investments and eliminating reporting on outstanding loans and investments.

For NMTC Program allocatees, the reporting structure remained the same. Each allocatee must submit an Annual Report that comprises: (i) A financial statement that has been audited by an independent certified public accountant; (ii) an Institution Level Report (ILR) (including the IRS Compliance Questions section), if the allocatee has issued any Qualified Equity Investments; and (iii) a Transaction Level Report (TLR) if the allocatee has issued any Qualified Low-Income Community Investments in the form of loans or investments. The components that comprise an allocatee's Annual Report are set forth in the allocation agreement that the allocatee enters into with the CDFI Fund in order to receive a NMTC Program allocation. These NMTC requirements can be found in the allocation agreement templates located on the CDFI Fund website at *www.cdfifund.gov.* With the efficiency gains from the implementation of AMIS, the average NMTC reporting time has gone down slightly, while the total number of reporting entities has remained the same so there is a slight net reduction in total burden. Altogether, the total annual burden for

both CDFI/NACA and NMTC annual reporting has decreased substantially from 53,175 hours in 2017 to 34,000 hours in 2020.

*Type of Review:* Regular Review.

*Affected Public:* CDFIs and CDEs; including businesses or other for-profit institutions, non-profit entities, and State, local and Tribal entities participating in CDFI Fund programs.

*Estimated Number of Respondents:*

*CDFI Annual TLR:* 300.

*NMTC Annual TLR and ILR:* 275.

*Estimated Annual Time (in hours) per Respondent:*

*CDFI Annual TLR:* 40.

*NMTC Annual TLR and ILR:* 80.

*Estimated Total Annual Burden in Hours:* 34,000.

*CDFI Annual TLR:* 12,000.

*NMTC Annual TLR and ILR:* 22,000.

*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 all aspects of the information collections, but commentators may wish to focus particular attention on: (a) The cost for CDFIs and CDEs to operate and maintain the services/systems required to provide the required information; (b) ways to enhance the quality, utility, and clarity of the information to be collected; (c) whether the collection of information is necessary for the proper evaluation of the effectiveness and impact of the CDFI Fund's programs, including whether the information has practical utility; (d) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (e) ways to minimize the burden of the collection of information including through the use of technology, such as software for internal accounting and geocoding to capture geographic detail while streamlining and aggregating TLR reporting for upload to AMIS, and; (f) what methods might be used to improve the data quality, internal accounting and efficiency of reporting transactions for serving other targeted populations.

Please note that this request for public comment is necessary in order to renew the OMB data collection 1559–0027 under the Paperwork Reduction Act, (formerly CIIS) and now executed through AMIS. Later in 2020 the CDFI Fund plans to publish a request for public comment to solicit feedback on proposed additions and revisions to the NMTC and CDFI TLRs and estimates on reporting burdens which are not contained in this notice.

(Authority: 12 U.S.C. 4707 *et seq.;* 26 U.S.C. CFR part 1805)

**Jodie Harris,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. 2020–03748 Filed 2–24–20; 8:45 am]

**BILLING CODE 4810–70–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** OFAC's actions described in this notice were effective February 5, 2018.

**FOR FURTHER INFORMATION CONTACT:** OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director for Regulatory Affairs, tel. 202–622–4855.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

#### Notice of OFAC Action(s)

On February 5, 2018, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

*Individuals:*

1. MWISSA, Guidon Shimiray; DOB 13 Mar 1980; POB Kigoma, Walikale, North Kivu, Democratic Republic of the Congo; nationality Congo, Democratic Republic of the; Gender Male (individual) [DRCONGO].

Designated pursuant to Section 1(a)(ii)(E) of Executive Order 13413 of October 28, 2006 ''Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo'' as amended by Executive Order 13671 of July 8, 2014 ''Taking Additional Steps to Address the National Emergency With Respect to the Conflict in the Democratic Republic of the Congo'' (''Order''), for being a leader of an entity, including armed groups, that has, or whose members have, been responsible for or complicit in, or engaged in, directly or indirectly, actions or policies that threaten the peace, security, or stability of the Democratic Republic of the Congo (DRC).

2. NZABAMWITA, Lucien (a.k.a. ANDRE, Karume; a.k.a. KALUME, Andre; a.k.a. KARUME, Andrew; a.k.a. NZABANITA, Lucien); DOB 15 Sep 1966; POB Kinyami, Byumba Province, Rwanda; nationality Rwanda; Gender Male (individual) [DRCONGO].

Designated pursuant to Section 1(a)(ii)(G) of the Order, for having acted or purported to act for or on behalf of, directly or indirectly, the Forces Démocratiques de Libération du Rwanda, an entity designated pursuant to the Order.

3. MUNDOS, Muhindo Akili (a.k.a. MUNDOS, Charles Muhindo Akili), Mambasa, Congo, Democratic Republic of the; DOB 10 Nov 1972; POB Democratic Republic of the Congo; nationality Congo, Democratic Republic of the; Gender Male; Brigadier General (individual) [DRCONGO].

Designated pursuant to Section 1(a)(ii)(C) of the Order, for being responsible for or complicit in, or engaging in, directly or indirectly, actions or policies that threaten the peace, security, or stability of the DRC, and the targeting of women, children, or any civilians through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual violence), abduction, forced displacement, or attack on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or through conduct that would constitute a serious abuse or violation of international humanitarian law.

Also designated pursuant to Section 1(a)(ii)(F) of the Order, for materially assisting, sponsoring, or providing financial, material, logistical, or technological support for, or goods or services in support of, the Allied Democratic Forces, a person whose property and interests in property are blocked pursuant to the Order.

4. MUTANGA, Gedeon Kyungu (a.k.a. GEDEON, Kyungu Mutanga; a.k.a. MTANGA, Gedeon; a.k.a. MUTANGA WA BAFUNKWA KANONGA, Gedeon Kyungu; a.k.a. MUTANGA, Gideon Kyungu); DOB 1972; alt. DOB 1974; POB Manono territory, Katanga Province (now Tanganyika Province), Democratic Republic of the Congo; nationality Congo, Democratic Republic of the; Gender Male (individual) [DRCONGO].

Designated pursuant to Section 1(a)(ii)(E) of the Order, for being a leader of an entity, including armed groups, that has, or whose members have, been responsible for or complicit in, or engaged in, directly or indirectly, actions or policies that threaten the peace, security, or stability of the DRC.

Dated: February 19, 2020.

**Andrea M. Gacki,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2020–03696 Filed 2–24–20; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF THE TREASURY

### Notice of Charter Renewal for the Financial Research Advisory Committee

**AGENCY:** Office of Financial Research, Department of the Treasury.

**ACTION:** Financial Research Advisory Committee—Notice of Charter Renewal.

**SUMMARY:** The charter for the Financial Research Advisory Committee has been renewed for a two-year period beginning January 30, 2020.

**FOR FURTHER INFORMATION CONTACT:** Melissa Avstreih, Designated Federal Officer, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 927–8032 (this is not a toll-free number), or *OFR_FRAC@ofr.treasury.gov.* Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act, (Pub. L. 92–463, 5 U.S.C. App. 2 § 1–16, as amended), the Treasury Department established a Financial Research Advisory Committee (Committee) to provide advice and recommendations to the Office of Financial Research (OFR) and to assist the OFR in carrying out its duties and authorities.

**(I) Authorities of the OFR**

The OFR was established under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, July 21, 2010). The purpose of the OFR is to support the Financial Stability Oversight Council (Council) in fulfilling the purposes and duties of the Council and to support the Council's member agencies by:

—Collecting data on behalf of the Council, and providing such data to the Council and member agencies;
—Standardizing the types and formats of data reported and collected;
—Performing applied research and essential long-term research;
—Developing tools for risk measurement and monitoring;
—Performing other related services;
—Making the results of the activities of the OFR available to financial regulatory agencies; and
—Assisting such member agencies in determining the types and formats of data authorized by the Dodd-Frank Act to be collected by such member agencies.

**(II) Scope of the Committee**

The Committee was established to advise the OFR on issues related to the responsibilities of the office. It may provide its advice, recommendations, analysis, and information directly to the OFR and the OFR may share the Committee's advice and recommendations with the Secretary of the Treasury or other Treasury officials.

The OFR will share information with the Committee as the Director determines will be helpful in allowing the Committee to carry out its role. The Committee charter was renewed for a two-year term on January 30, 2020.

Dated: February 6, 2020.

**Alex Pollock,**

*Principal Deputy Director, Research and Analysis and Data.*

[FR Doc. 2020–03721 Filed 2–24–20; 8:45 am]

**BILLING CODE 4810–25–P**

## UNITED STATES INSTITUTE OF PEACE

### Notice of Board Meeting

*Agency:* United States Institute of Peace.

*Date/Time:* Friday, January 17, 2020 (10:00 a.m.–12:30 p.m.).

*Location:* 2301 Constitution Avenue NW, Washington, DC 20037.

*Status:* Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

*Agenda:* January 17, 2020 Board Meeting: Chairman's Report; Vice Chairman's Report; President's Report; Approval of Minutes of the October 18, 2019 Board of Directors Meeting; Report from the Office of Administration; Reports from USIP Building, Program, Audit & Finance and Security Committees; and Reports/Updates from the Front Lines: Iran/Iraq, Sudan/Ethiopia, and the Afghanistan Peace Process.

*Contact:* Megan O'Hare, Chief of Staff: *mohare@usip.org.*

Dated: February 20, 2020.

**Megan O'Hare,**

*Chief of Staff.*

[FR Doc. 2020–03761 Filed 2–24–20; 8:45 am]

**BILLING CODE 6820–AR–P**

# FEDERAL REGISTER

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Part II

## Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans and Surface Coating of Metal Coil Residual Risk and Technology Reviews; Final Rule

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[EPA–HQ–OAR–2017–0684, EPA–HQ–OAR–2017–0685; FRL–10003–81–OAR]**

**RIN 2060–AT51**

## National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans and Surface Coating of Metal Coil Residual Risk and Technology Reviews

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is taking final action on the residual risk and technology reviews (RTRs) conducted for the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories regulated under national emission standards for hazardous air pollutants (NESHAP). The EPA is also taking final action on amendments for the two source categories to address emissions during periods of startup, shutdown, and malfunction (SSM); electronic reporting of performance test results and compliance reports; the addition of EPA Method 18 and updates to several measurement methods; and the addition of requirements for periodic performance testing. Additionally, several miscellaneous technical amendments are being made to improve the clarity of the rule requirements. We are making no revisions to the numerical emission limits for the two source categories based on the residual risk and technology reviews.

**DATES:** This final rule is effective on February 25, 2020. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of February 25, 2020.

**ADDRESSES:** The EPA has established dockets for this action under Docket ID No. EPA–HQ–OAR–2017–0684 for 40 Code of Federal Regulations (CFR) part 63, subpart KKKK, Surface Coating of Metal Cans, and Docket ID No. EPA–HQ–OAR–2017–0685 for 40 CFR part 63, subpart SSSS, Surface Coating of Metal Coil. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov/,* or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** For questions about this final action, contact Ms. Paula Hirtz, Minerals and Manufacturing Group, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2618; fax number: (919) 541–4991; and email address: *hirtz.paula@epa.gov.* For specific information regarding the risk modeling methodology, contact Mr. Chris Sarsony, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4843; fax number: (919) 541–0840; and email address: *sarsony.chris@epa.gov.* For information about the applicability of these NESHAP to a particular entity, contact Mr. John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–1395; and email address: *cox.john@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Preamble acronyms and abbreviations.* We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ASTM American Society for Testing and Materials
BPA bisphenol A
BPA–NI not intentionally containing BPA
CAA Clean Air Act
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CEMS continuous emissions monitoring systems
CFR Code of Federal Regulations
DGME diethylene glycol monobutyl ether
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
HAP hazardous air pollutant(s)
HCl hydrochloric acid
HF hydrogen fluoride
HI hazard index
HQ hazard quotient
HQREL hazard quotient recommended exposure limit
IBR incorporation by reference
ICR Information Collection Request
kg kilogram
km kilometer
MACT maximum achievable control technology
MIR maximum individual risk
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
NSPS new source performance standard
NSR New Source Review
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
PDF portable document format
PRA Paperwork Reduction Act
PTE permanent total enclosure
REL reference exposure level
RFA Regulatory Flexibility Act
RTR residual risk and technology review
SSM startup, shutdown, and malfunction
TOSHI target organ-specific hazard index
tpy tons per year
µg/m3 micrograms per cubic meter
UMRA Unfunded Mandates Reform Act
VCS voluntary consensus standards

*Background information.* On June 4, 2019, the EPA proposed revisions to the Surface Coating of Metal Cans NESHAP and the Surface Coating of Metal Coil NESHAP based on our RTRs. In this action, we are finalizing decisions and revisions to the rules. In this preamble, we summarize some of the more significant comments we timely received regarding the proposed rule and provide our responses. A summary of all the public comments on the proposed rules and the EPA's responses to those comments is available in the ''Summary of Public Comments and Responses for the Risk and Technology Reviews for the Surface Coating of Metal Cans and the Surface Coating of Metal Coil NESHAP,'' in Docket ID Nos. EPA–HQ–OAR–2017–0684 and EPA–HQ–OAR–2017–0685. A ''track changes'' version of the regulatory language that incorporates the changes in this action is available in the docket for each rule.

*Organization of this document.* The information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. Judicial Review and Administrative Reconsideration
II. Background
A. What is the statutory authority for this action?
B. What are the source categories and how does the NESHAP regulate HAP emissions from the source categories?
C. What changes did we propose for the source categories in our June 4, 2019, RTR proposal?
III. What is included in these final rules?
A. What are the final rule amendments based on the risk reviews for the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories?
B. What are the final rule amendments based on the technology reviews for the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories?
C. What are the final rule amendments addressing emissions during periods of SSM?
D. What other changes have been made to the NESHAP?
E. What are the effective and compliance dates of the revisions to the standards?
F. What are the requirements for submission of performance test data to the EPA?
IV. What is the rationale for our final decisions and amendments for the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories?
A. Residual Risk Reviews
B. Technology Reviews
C. Electronic Reporting Provisions
D. SSM Provisions
E. Ongoing Compliance Demonstrations
V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted
A. What are the affected sources?
B. What are the air quality impacts?
C. What are the cost impacts?
D. What are the economic impacts?
E. What are the benefits?
F. What analysis of environmental justice did we conduct?
G. What analysis of children's environmental health did we conduct?
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
C. Paperwork Reduction Act (PRA)
D. Regulatory Flexibility Act (RFA)
E. Unfunded Mandates Reform Act (UMRA)
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
L. Congressional Review Act (CRA)

## I. General Information

### *A. Does this action apply to me?*

*Regulated entities.* Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

| NESHAP source category | NAICS [1] code | Regulated entities [2] |
|---|---|---|
| Surface Coating of Metal Cans | 332431 | Two-piece Beverage Can Facilities, Three-piece Food Can Facilities, Two-piece Draw and Iron Facilities, One-piece Aerosol Can Facilities. |
| | 332115 | |
| | 332116 | |
| | 332812 | |
| | 332999 | |
| | 332431 | Can Assembly Facilities. |
| | 332812 | End Manufacturing Facilities. |
| Surface Coating of Metal Coil | 325992 | Photographic Film, Paper, Plate, and Chemical Manufacturing. |
| | 326199 | All Other Plastics Product Manufacturing. |
| | 331110 | Iron and Steel Mills and Ferroalloy Manufacturing. |
| | 331221 | Rolled Steel Shape Manufacturing. |
| | 331315 | Aluminum Sheet, Plate, and Foil Manufacturing. |
| | 331318 | Other Aluminum Rolling, Drawing, and Extruding. |
| | 331420 | Copper Rolling, Drawing, Extruding, and Alloying. |
| | 332311 | Prefabricated Metal Building and Component Manufacturing. |
| | 332312 | Fabricated Structural Metal Manufacturing. |
| | 332322 | Sheet Metal Work Manufacturing. |
| | [3] 332812 | Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers. |
| | 332999 | All Other Miscellaneous Fabricated Metal Product Manufacturing. |
| | 333249 | Other Industrial Machinery Manufacturing. |
| | 337920 | Blind and Shade Manufacturing. |

[1] North American Industry Classification System.
[2] Regulated entities are major source facilities that apply surface coatings to these parts or products.
[3] The majority of coil coating facilities are included in NAICS Code 332812.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source categories listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of these NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

### *B. Where can I get a copy of this document and other related information?*

In addition to being available in the dockets, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post

copies of this final action at: *https://www.epa.gov/stationary-sources-air-pollution/surface-coating-metal-cans-national-emission-standards-hazardous* and *https://www.epa.gov/stationary-sources-air-pollution/surface-coating-metal-coil-national-emission-standards-hazardous.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at these same websites.

Additional information is available on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/risk-and-technology-review-national-emissions-standards-hazardous.* This information includes an overview of the RTR program, links to project websites for the RTR source categories, and detailed emissions data and other data we used as inputs to the risk assessments.

*C. Judicial Review and Administrative Reconsideration*

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by April 27, 2020. Under CAA section 307(b)(2), the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

## II. Background

*A. What is the statutory authority for this action?*

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems, or techniques, including, but not limited to, those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT floor for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[1] For more information on the statutory authority for this rule, see the proposal preamble (84 FR 25908, June 4, 2019) and the memorandum, *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology,* December 14, 2017, in the Surface Coating of Metal Cans Docket and the Surface Coating of Metal Coil Docket.

*B. What are the source categories and how do the NESHAP regulate HAP emissions from the source categories?*

1. What is the Surface Coating of Metal Cans source category and how does the current NESHAP regulate its HAP emissions?

The EPA promulgated the Surface Coating of Metal Cans NESHAP on November 13, 2003 (68 FR 64432). The standards are codified at 40 CFR part 63, subpart KKKK. The Surface Coating of Metal Cans industry consists of facilities that are engaged in the surface coating of metal cans and ends (including decorative tins) and metal crowns and

[1] The Court has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008) (''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'').

closures. The source category covered by this MACT standard currently includes five facilities.

The Surface Coating of Metal Cans NESHAP (40 CFR 63.3561) defines a ''metal can'' as ''a single-walled container manufactured from metal substrate equal to or thinner than 0.3785 millimeter (mm) (0.0149 inch)'' and includes coating operations for four subcategories: (1) One- and two- piece draw and iron can body coating; (2) sheetcoating; (3) three-piece can body assembly coating; and (4) end coating. The Surface Coating of Metal Cans NESHAP also defines a ''coating'' as ''a material that is applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, inks, adhesives, and maskants.'' This source category is further described in the June 4, 2019, RTR proposal. See 84 FR 25908.

The primary HAP emitted from this source category are organic HAP and include glycol ethers, formaldehyde, xylenes, toluene, methyl isobutyl ketone, 2-(hexyloxy) ethanol, ethyl benzene, and methanol. These HAP account for 99 percent of the HAP emissions from the source category. The HAP emissions from the Surface Coating of Metal Cans source category are emitted from the coating materials which include the coatings, thinners, and cleaning materials used in the coating operations. The coating operations include: The equipment used to apply the coatings; the equipment to dry or cure the coatings after application; all storage containers and mixing vessels; all manual and automated equipment and containers used to convey the coating materials; and all storage containers and manual and automated equipment used for conveying waste materials generated by the coating operations. The coating application lines and the drying and curing ovens are the largest sources of HAP emissions. The coating application lines apply an exterior base coat to two- and three-piece cans using a lithographic/printing (*i.e.,* roll) application process. The inside, side seam, and repair coatings are spray applied using airless spray equipment and are a minor portion of the can coating operations. As indicated by the name, repair spray coatings are used to cover breaks in the coating that are caused during the formation of the score in easy-open ends or to provide, after the manufacturing process, an additional protective layer for corrosion resistance.

The Surface Coating of Metal Cans NESHAP specifies numerical emission limits for existing sources and for new or reconstructed sources for organic HAP emissions from four subcategories of can coating operations. Within the four subcategories are several different types of coatings with separate emission limits. The specific organic HAP emission limits are provided in Tables 1 and 2 of 40 CRF part 63, subpart KKKK.

The Surface Coating of Metal Cans NESHAP provides that emission limits can be achieved using several different options, including a compliant material option, an emission rate without add-on controls option (averaging option), an emission rate with add-on controls option, or a control efficiency/outlet concentration option. For any coating operation(s) on which the facility uses the compliant material option or the emission rate without add-on controls option, the facility is not required to meet any work practice standards.

If the facility uses the emission rate with add-on controls option, the facility must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the coating operation(s) using that option. The plan must specify practices and procedures to ensure that a set of minimum work practices specified in the NESHAP are implemented. The facility must also comply with site-specific operating limits for the emission capture and control system.

2. What is the Surface Coating of Metal Coil source category and how does the current NESHAP regulate its HAP emissions?

The EPA promulgated the Surface Coating of Metal Coil source category NESHAP on June 10, 2002 (67 FR 39794). The standards are codified at 40 CFR part 63, subpart SSSS. The Surface Coating of Metal Coil industry consists of facilities that operate a metal coil coating line. The source category covered by this MACT standard currently includes 48 facilities.

The Surface Coating of Metal Coil NESHAP (40 CFR 63.5110) defines a ''coil coating line'' as ''a process and the collection of equipment used to apply an organic coating to the surface of metal coil.'' A coil coating line includes a web unwind or feed section, a series of one or more work stations, and any associated curing oven, wet section, and quench station. A work station is ''a unit on a coil coating line where the coating material is deposited onto the metal coil substrate'' or a coating application station. This source category is further described in the June 4, 2019, RTR proposal. See 84 FR 25909.

The primary HAP emitted from metal coil coating operations are organic HAP and include xylenes, glycol ethers, naphthalene, isophorone, toluene, diethylene glycol monobutyl ether (DGME), and ethyl benzene. The majority of organic HAP emissions are from the coating application stations and the curing ovens.

The Surface Coating of Metal Coil NESHAP specifies numerical emission limits for organic HAP emissions from the coating application stations and associated curing ovens. The Surface Coating of Metal Coil NESHAP provides that emission limits can be achieved using several different options: (1) Use only individually compliant coatings with an organic HAP content that does not exceed 0.046 kilogram (kg)/liter of solids applied, (2) use coatings with an average organic HAP content that does not exceed 0.046 kg/liter of solids on a rolling 12-month average, (3) use a capture system and add-on control device to either reduce emissions by 98 percent or use a 100-percent efficient capture system (permanent total enclosure (PTE)) and an oxidizer to reduce organic HAP emissions to no more than 20 parts per million by volume as carbon, or (4) use a combination of compliant coatings and control devices to maintain an average equivalent emission rate of organic HAP not exceeding 0.046 kg/liter of solids on a rolling 12-month average basis. These compliance options apply to an individual coil coating line, to multiple lines as a group, or to the entire affected source.

### *C. What changes did we propose for the source categories in our June 4, 2019, RTR proposal?*

On June 4, 2019, the EPA published proposed rule amendments in the **Federal Register** for the Surface Coating of Metal Cans NESHAP, 40 CFR part 63, subpart KKKK, and the Surface Coating of Metal Coil NESHAP, 40 CFR part 63, subpart SSSS, that took into consideration the RTR analyses.

For each source category, we proposed that the risks are acceptable, and that additional emission controls for each source category are not necessary to provide an ample margin of safety. For the technology reviews, we did not identify any developments in practices, processes, or control technologies, and, therefore, we did not propose any changes to the standards under CAA section 112(d)(6).

We also proposed the following amendments:

- For each source category, a requirement for electronic submittal of notifications, semi-annual reports, and compliance reports (which include performance test reports);
- for each source category, revisions to the SSM provisions of each NESHAP in order to ensure that they are consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted source owners and operators from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM;
- for the Surface Coating of Metal Coil NESHAP, adding the option of conducting EPA Method 18 of appendix A to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography,'' to measure and then subtract methane emissions from measured total gaseous organic mass emissions as carbon;
- for the Surface Coating of Metal Coil NESHAP, revising 40 CFR 63.5090 to clarify that the NESHAP does not apply to the application of markings (including letters, numbers, or symbols) to bare metal coils that are used for product identification or for product inventory control;
- for each source category, removing references to paragraph (d)(4) of the Occupational Safety and Health Administration's (OSHA's) Hazard Communication standard (29 CFR 1910.1200), which dealt with OSHA-defined carcinogens, and replacing that reference with a list of HAP that must be regarded as potentially carcinogenic based on EPA guidelines;
- for each source category, a requirement to conduct performance testing and reestablish operating limits no less frequently than every 5 years for sources that are using add-on controls to demonstrate compliance; and
- for each source category, Incorporation by Reference (IBR) of alternative test methods and references to updated alternative test methods; and several minor editorial and technical changes in each subpart.

## III. What is included in these final rules?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the Surface Coating of Metal Cans source category and the Surface Coating of Metal Coil source category. This action also finalizes other changes to the NESHAP for each source category, including:

- A requirement for electronic submittal of notifications, semi-annual reports, and compliance reports (which include performance test reports);
- revisions to the SSM provisions;
- removing references to paragraph (d)(4) of OSHA's Hazard Communication standard (29 CFR 1910.1200), which dealt with OSHA-defined carcinogens, and replacing that reference with a list of HAP that must be regarded as potentially carcinogenic based on EPA guidelines;
- adding a requirement to conduct performance testing and reestablish operating limits no less frequently than every 5 years for sources that are using add-on controls to demonstrate compliance, unless they are already required to perform comparable periodic testing as a condition of renewing their title V operating permit;
- IBR of alternative test methods and references to updated alternative test methods; and
- several minor editorial and technical changes.

This action also finalizes the proposed changes to the NESHAP for the Surface Coating of Metal Coil source category by adding the option of conducting EPA Method 18 of appendix A to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography,'' to measure and then subtract methane emissions from measured total gaseous organic mass emissions as carbon; and by revising 40 CFR 63.5090 to clarify that the NESHAP does not apply to the application of markings (including letters, numbers, or symbols) to bare metal coils that are used for product identification or for product inventory control.

### *A. What are the final rule amendments based on the risk reviews for the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories?*

This section describes the final amendments to the Surface Coating of Metal Cans NESHAP (subpart KKKK) and the Surface Coating of Metal Coil NESHAP (subpart SSSS) being promulgated pursuant to CAA section 112(f). In this action, we are finalizing our proposed determinations that risks from these two subparts are acceptable, and that the standards provide an ample margin of safety to protect public health and to prevent an adverse environmental effect. The EPA proposed no changes to these two subparts based on the risk reviews conducted pursuant to CAA section 112(f). The EPA received no new data or other information during the public comment period that causes us to change those proposed determinations. Therefore, we are not requiring additional controls under CAA section 112(f)(2) for either of the two subparts in this action.

### *B. What are the final rule amendments based on the technology reviews for the Surface Coating of Metal Cans and the Surface Coating of Metal Coil source categories?*

We determined that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for these source categories. Therefore, we are not finalizing revisions to the MACT standards under CAA section 112(d)(6).

### *C. What are the final rule amendments addressing emissions during periods of startup, shutdown, and malfunction?*

We are finalizing the proposed amendments to the Surface Coating of Metal Cans NESHAP and the Surface Coating of Metal Coil NESHAP to eliminate the SSM exemption. Consistent with *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), the EPA is establishing standards in these rules that apply at all times. As detailed in section IV.C of the proposal preamble (84 FR 25904, June 4, 2019), Table 5 to Subpart KKKK of Part 63 and Table 2 to Subpart SSSS of Part 63 (General Provisions applicability tables) are being revised to change several references related to the provisions that apply during periods of SSM. We also eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption. The EPA also made other harmonizing changes to remove or modify inappropriate, unnecessary, or redundant language in the absence of the SSM exemption. We determined that facilities in both of these source categories can meet the applicable emission standards in the Surface Coating of Metal Cans NESHAP and the Surface Coating of Metal Coil NESHAP at all times, including periods of startup and shutdown. Therefore, the EPA determined that no additional standards are needed to address emissions during these periods. The legal rationale and explanation of the changes for SSM periods are set forth in the proposed rule. See 84 FR 25925 through 25929 and 25936 through 25939.

Further, the EPA is not finalizing standards for malfunctions. As discussed in section IV.C of the June 4, 2019, proposal preamble, the EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards, although the EPA has the discretion to set standards for malfunctions where feasible. For these

source categories, it is unlikely that a malfunction would result in a violation of the standards, and no comments or information were submitted that support a contrary conclusion. Refer to section IV.C of the June 4, 2019 proposal preamble for further discussion of the EPA's rationale for the decision not to set standards for malfunctions, as well as a discussion of the actions a source could take in the unlikely event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, given that administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and the EPA can consider all relevant information when determining the appropriate response to those situations.

We are finalizing a revision to the performance testing requirements at 40 CFR 63.4164 and 40 CFR 63.5160. The final performance testing provisions prohibit performance testing during startup, shutdown, or malfunction as these conditions are not representative of steady state operating conditions. The final rules also require that operators maintain records to document that operating conditions during performance tests represent steady state conditions.

*D. What other changes have been made to the NESHAPs?*

For both the Surface Coating of Metal Cans NESHAP and the Surface Coating of Metal Coil NESHAP, the EPA is finalizing, as proposed, several other revisions that are described in the following paragraphs.

To increase the ease and efficiency of data submittal and data accessibility, we are finalizing a requirement that owners and operators of facilities in the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories submit electronic copies of required performance test reports through the EPA's Central Data Exchange (CDX) website using an electronic performance test report tool called the Electronic Reporting Tool (ERT). We also are finalizing, as proposed, provisions that allow facility operators the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility, *i.e.,* for a possible outage in the CDX or Compliance and Emissions Data Reporting Interface (CEDRI) or for a *force majeure* event in the time just prior to a report's due date, as well as the process to assert such a claim.

For each subpart, we also are changing the format of references to test methods in 40 CFR part 60, appendix A to indicate where, in the eight sections of appendix A, each method is found.

For each subpart, we are finalizing the proposal to re-designate the list of applicable organic HAP that must be used when a facility chooses to use the compliant material option (*i.e.,* for calculating total organic HAP content of a coating material present at 0.1 percent or greater by mass). To specify the applicable HAP, we are changing the rule to remove the reference to paragraph (d)(4) of OSHA's Hazard Communication standard (29 CFR 1910.1200) and replace it with a new table in each subpart (Table 8 in 40 CFR part 63, subpart KKKK and Table 3 in 40 CFR part 63, subpart SSSS) that lists the applicable HAP. The organic HAP in these new tables are those HAP that were categorized in the EPA's ''Prioritized Chronic Dose-Response Values for Screening Risk Assessments'' (dated May 9, 2014) as a ''human carcinogen,'' ''probable human carcinogen,'' or ''possible human carcinogen'' according to *The Risk Assessment Guidelines of 1986* (EPA/600/8–87/045, August 1987) [2] or as ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' or with ''suggestive evidence of carcinogenic potential'' according to the *Guidelines for Carcinogen Risk Assessment* (EPA/630/P–03/001F, March 2005).

We are including in the final rule for each subpart a requirement for facilities that use control devices to conduct control device performance testing no less frequently than once every 5 years. For facilities with title V permits that require comparable periodic testing prior to permit renewal, no additional testing is required, and we included provisions in the rule to allow sources to harmonize the NESHAP testing schedule with a facility's current title V testing schedule.

1. Technical Amendments to the Surface Coating of Metal Cans NESHAP

In the final rule, we are amending 40 CFR 63.3481(c)(5), as proposed, to revise the reference to ''future subpart MMMM'' of this part by removing the word ''future'' because subpart MMMM was promulgated in 2004.

We are revising the monitoring provisions for thermal and catalytic oxidizers, as proposed, to clarify that a thermocouple is part of the temperature sensor referred to in 40 CFR 63.3547(c)(3) and 40 CFR 63.3557(c)(3) for purposes of performing periodic calibration and verification checks.

Currently, 40 CFR 63.3513(a) allows records, ''where appropriate,'' to be maintained as ''electronic spreadsheets'' or a ''database.'' As proposed, we are adding a clarification to this provision that the allowance to retain electronic records applies to all records that were submitted as reports electronically via the EPA's CEDRI. We are also adding text to the same provision, as proposed, clarifying that this ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

In the final rule, as proposed, we are adding and updating test methods that are incorporated by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference the following voluntary consensus standards (VCS) described in the amendments to 40 CFR 63.14:

- ASTM D1475–13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, proposed to be IBR approved for 40 CFR 63.3521(c) and 63.3531(c);
- ASTM D2111–10 (2015), Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures, proposed to be IBR approved for 40 CFR 63.3521(c) and 63.3531(c);
- ASTM D2369–10 (2015), Test Method for Volatile Content of Coatings, proposed to be IBR approved for 40 CFR 63.3521(a)(2) and 63.3541(i)(3);
- ASTM D2697–03 (2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, proposed to be IBR approved for 40 CFR 63.3521(b)(1); and
- ASTM D6093–97 (2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using Helium Gas Pycnometer, proposed to be IBR approved for 40 CFR 63.3521(b)(1).

2. Technical Amendments to the Surface Coating of Metal Coil NESHAP

We are finalizing, as proposed, changes to 40 CFR 63.5090 to clarify that 40 CFR part 63, subpart SSSS does not apply to the application to bare metal coils of markings (including letters, numbers, or symbols) that are used for product identification or for product inventory control.

We are finalizing amendments to 40 CFR 63.5160(d) in 40 CFR part 63, subpart SSSS, as proposed, to add the option of conducting EPA Method 18 of appendix A to 40 CFR part 60,

[2] See *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography,'' to measure and then subtract methane emissions from measured total gaseous organic mass emissions, as carbon, for those facilities using the emission rate with add-on control compliance option and EPA Method 25A to measure control device destruction efficiency.

Currently 40 CFR 63.5190 specifies records that must be maintained. We are adding, as proposed, clarification to 40 CFR 63.5190(c) that specifies the allowance to retain electronic records applies to all records that were submitted as reports electronically via the EPA's CEDRI. We are also adding text to the same provision clarifying that this ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

We are clarifying and harmonizing, as proposed, the general duty requirement in 40 CFR 63.5140(a) with the reporting requirements in 40 CFR 63.5180(g)(2)(v) and 40 CFR 63.5180(h)(4) and the recordkeeping requirement in 40 CFR 63.5190(a)(5), by including new language in 40 CFR 63.5140(a) to read as, ''. . . you must be in compliance with the applicable emission standards in § 63.5120 and the operating limits in Table 1 of this subpart at all times.''

We are revising, as proposed, the text in the semi-annual reporting provisions of 40 CFR 63.5180(g)(2)(v) to read, ''A statement that there were no deviations from the applicable emission limit in § 63.5120 or the applicable operating limit(s) established according to § 63.5121 during the reporting period, and that no continuous emissions monitoring systems (CEMS) were inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.'' Conforming changes are also being made to the reporting requirement at 40 CFR 63.5180(h)(4) and the recordkeeping requirement at 40 CFR 63.5190(a)(5).

We are revising, as proposed, one instance in 40 CFR 63.5160(e) in which an erroneous rule citation, ''§ 63.5170(h)(2) through (4),'' is made by correcting the citation to ''§ 63.5170(g)(2) through (4).''

We are amending, as proposed, 40 CFR 63.5130(a) to clarify that the compliance date for existing affected sources is June 10, 2005.

We are amending, as proposed, 40 CFR 63.5160(d)(3)(ii)(D) to correct a typographical error in a reference to paragraphs ''(d)(3)(ii)(D)(1 (3).'' The correct reference is to paragraphs (d)(3)(ii)(D)(1)–(3).

We are amending, as proposed, 40 CFR 63.5170(c)(1) and (2) to correct the cross references to 40 CFR 63.5120(a)(1) or (2). The correct cross references are to 40 CFR 63.5120(a)(1) or (3).

We are amending, as proposed, Equation 11 in 40 CFR 63.5170 so that the value calculated by the equation is correctly identified as ''$H_e$'' instead of just ''e.''

In the final rule, as proposed, we are adding and updating test methods that are incorporated by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference the following methods and VCS described in the amendments to 40 CFR 63.14:

- ASTM D1475–13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, proposed to be IBR approved for 40 CFR 63.5160(c);
- ASTM D2111–10 (2015), Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures, proposed to be IBR approved for 40 CFR 63.5160(c);
- ASTM D2369–10 (2015), Test Method for Volatile Content of Coatings, proposed to be IBR approved for 40 CFR 63.5160(b)(2);
- ASTM D2697–03 (2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, proposed to be IBR approved for 40 CFR 63.5160(c); and
- ASTM D6093–97 (2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using Helium Gas Pycnometer, proposed to be IBR approved for 40 CFR 63.5160(c).

*E. What are the effective and compliance dates of the revisions to the standards?*

The revisions to the MACT standards being promulgated in this action are effective on February 25, 2020.

The compliance date for existing affected sources in both the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories is August 24, 2020, with the exception of the electronic format for submitting semiannual compliance reports. New sources must comply with all of the standards immediately upon the effective date of the standard, February 25, 2020, or upon startup, whichever is later, with the exception of the electronic format for submitting semiannual compliance reports. For the electronic format for submitting semiannual compliance reports, both existing and new affected sources will have 1 year after the electronic reporting templates are available on CEDRI, or 1 year after February 25, 2020, whichever is later. The EPA selected these compliance dates based on experience with similar industries and the EPA's detailed justification for the selected compliance dates is included in the preamble to the proposed rule (84 FR 25931 and 25942).

*F. What are the requirements for submission of performance test data to the EPA?*

As proposed, the EPA is taking a step to increase the ease and efficiency of data submittal and data accessibility. Specifically, the EPA is finalizing the requirement for owners and operators of facilities in the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories to submit electronic copies of certain required performance test reports.

Data will be collected by direct computer-to-computer electronic transfer using EPA-provided software. This EPA-provided software is an electronic performance test report tool called the ERT. The ERT will generate an electronic report package which will be submitted to CEDRI and then archived to the EPA's CDX. A description of the ERT and instructions for using ERT can be found at *https://www3.epa.gov/ttn/chief/ert/index.html.* The CEDRI interface can be accessed through the CDX website (*https://cdx.epa.gov/*).

The requirement to submit performance test data electronically to the EPA does not create any additional performance testing requirements and will apply only to those performance tests conducted using test methods that are supported by the ERT. A listing of the pollutants and test methods supported by the ERT is available at the ERT website. Through this approach, industry will save time in the performance test submittal process. Additionally, this rulemaking will benefit industry by reducing recordkeeping costs, as the performance test reports that are submitted to the EPA using CEDRI are no longer required to be kept in hard copy.

State, local, and tribal agencies may benefit from a more streamlined and accurate review of performance test data that will become available to the public through WebFIRE. Having such data publicly available enhances transparency and accountability. For a more thorough discussion of electronic reporting of performance tests using direct computer-to-computer electronic transfer and using EPA-provided software, see the discussion in the

preamble of the proposed rules (84 FR 25904, June 24, 2019) and the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* August 8, 2018, in the Surface Coating of Metal Cans and Surface Coating of Metal Coil Dockets.

In summary, in addition to supporting regulation development, control strategy development, and other air pollution control activities, having an electronic database populated with performance test data will save industry, state/local/tribal agencies, and the EPA significant time, money, and effort while improving the quality of emission inventories and air quality regulations.

## IV. What is the rationale for our final decisions and amendments for the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories?

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document available in the Surface Coating of Metal Cans and Surface Coating of Metal Coil Dockets.

### *A. Residual Risk Reviews*

1. What did we propose pursuant to CAA section 112(f)?

a. Surface Coating of Metal Cans (40 CFR Part 63, subpart KKKK) Source Category

Pursuant to CAA section 112(f), the EPA conducted a residual risk review and presented the results of this review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in sections IV.A.2.a and b of the proposed rule preamble (84 FR 25904, June 24, 2019). The results of this review are presented briefly below in Table 2 of this preamble. Additional detail is provided in the residual risk technical support document titled, *Residual Risk Assessment for the Surface Coating of Metal Cans Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the Surface Coating of Metal Cans Docket.

TABLE 2—SURFACE COATING OF METAL CANS SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS AT PROPOSAL

| Risk assessment | Maximum individual cancer risk (in 1 million) | | Estimated population at increased risk of cancer ≥1-in-1 million | | Estimated annual cancer incidence (cases per year) | | Maximum chronic noncancer TOSHI [1] | | Maximum screening acute noncancer HQ [2] |
|---|---|---|---|---|---|---|---|---|---|
| | Based on actual emissions | Based on allowable emissions | Based on actual emissions | Based on allowable emissions | Based on actual emissions | Based on allowable emissions | Based on actual emissions | Based on allowable emissions | |
| Source Category | 3 | 3 | 700 | 800 | 0.0009 | 0.001 | 0.02 | 0.02 | HQREL = 0.4. |
| Whole Facility | 8 | | 1,500 | | 0.002 | | 0.2 | | |

[1] The target organ-specific hazard index (TOSHI) is the sum of the chronic noncancer hazard quotients (HQ) values for substances that affect the same target organ or organ system.
[2] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values (HQREL = hazard quotient reference exposure level).

The results of the proposal inhalation risk modeling using actual emissions data, as shown in Table 2 of this preamble, indicate that the maximum individual cancer risk based on actual emissions (lifetime) is 3-in-1 million (driven by formaldehyde), the maximum chronic noncancer TOSHI value based on actual emissions is 0.02 (driven by formaldehyde), and the maximum screening acute noncancer HQ value (off-facility site) could be up to 0.4 (driven by formaldehyde). At proposal, the total annual cancer incidence (national) from these facilities based on actual emission levels was estimated to be 0.0009 excess cancer cases per year, or one case in every 1,100 years.

The results of the proposal inhalation risk modeling using allowable emissions data, as shown in Table 2 of this preamble, indicate that the maximum individual cancer risk based on allowable emissions (lifetime) is 3-in-1 million (driven by formaldehyde), and the maximum chronic noncancer TOSHI value based on allowable emissions is 0.02 (driven by formaldehyde). At proposal, the total annual cancer incidence (national) from these facilities based on allowable emissions was estimated to be 0.001 excess cancer cases per year, or one case in every 1,000 years.

The maximum individual cancer risk (lifetime) for the whole facility was determined to be 8-in-1 million at proposal, driven by formaldehyde from miscellaneous industrial processes (other/not classified) and acetaldehyde from beer production (brew kettle). At proposal, the total estimated cancer incidence from the whole facility was determined to be 0.002 excess cancer cases per year, or one excess case in every 500 years. Approximately 1,500 people were estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-MACT sources at three of the five facilities in this source category. The maximum facility-wide TOSHI for the source category was estimated to be 0.2, mainly driven by emissions of acetaldehyde from beer production (brew kettle) and formaldehyde from miscellaneous industrial processes (other/not classified).

There are no persistent and bioaccumulative HAP (PB HAP) emitted by facilities in this source category; therefore, we did not estimate any human health multi-pathway risks from this source category. Two environmental HAP are emitted by sources within this source category: Hydrochloric acid (HCl) and hydrogen fluoride (HF). Therefore, at proposal, we conducted a screening-level evaluation of the potential adverse environmental risks associated with emissions of HCl and HF. Based on this evaluation, we proposed that we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

We weighed all health risk factors, including those shown in Table 2 of this preamble, in our risk acceptability determination and proposed that the residual risks from the Surface Coating of Metal Cans source category are acceptable (section IV.A.2.a of proposal preamble, 84 FR 25922, June 4, 2019).

We then considered whether 40 CFR part 63, subpart KKKK provides an ample margin of safety to protect public health and prevents, taking into consideration costs, energy, safety, and other relevant factors, an adverse

environmental effect. In considering whether the standards should be tightened to provide an ample margin of safety to protect public health, we considered the same risk factors that we considered for our acceptability determination and also considered the costs, technological feasibility, and other relevant factors related to emissions control options that might further reduce risk associated with emissions from the source category. Related to risk, the baseline risks were low, and regardless of the availability of further control options, little risk reduction could be realized. As discussed further in section IV.B of this preamble, the only development identified in the technology review was the ongoing development and the potential future conversion from conventional interior can coatings that contain bisphenol A (BPA) to interior coatings that do not intentionally contain BPA (BPA–NI). Since BPA and BPA–NI are not HAP, this change would have no effect on the HAP emissions. There were no other technological developments identified that affect HAP emissions for the Surface Coating of Metal Cans source category. Therefore, given the low baseline risks and lack of options for further risk reductions, we proposed that additional emission controls for this source category are not necessary to provide an ample margin of safety (section IV.A.2.b of proposal preamble, 84 FR 25922, June 4, 2019).

b. Surface Coating of Metal Coil (40 CFR Part 63, Subpart KKKK) Source Category

Pursuant to CAA section 112(f), the EPA conducted a residual risk review and presented the results of this review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in sections IV.B.2.a and b of the proposed rule preamble (84 FR 25904, June 24, 2019). The results of this review are presented briefly below in Table 3 of this preamble. Additional detail is provided in the residual risk technical support document titled, *Residual Risk Assessment for the Surface Coating of Metal Coil Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the Surface Coating of Metal Coil Docket.

TABLE 3—SURFACE COATING OF METAL COIL SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS AT PROPOSAL

| Risk assessment | Maximum individual cancer risk (in 1 million) | | Estimated population at increased risk of cancer ≥ 1-in-1 million | | Estimated annual cancer incidence (cases per year) | | Maximum chronic noncancer TOSHI [1] | | Maximum screening acute noncancer HQ [2] |
|---|---|---|---|---|---|---|---|---|---|
| | Based on actual emissions | Based on allowable emissions | Based on actual emissions | Based on allowable emissions | Based on actual emissions | Based on allowable emissions | Based on actual emissions | Based on allowable emissions | |
| Source Category | 10 | 10 | 19,000 | 24,000 | 0.005 | 0.006 | 0.1 | 0.1 | HQREL = 3. |
| Whole Facility | 40 | ..... | 270,000 | ..... | 0.03 | ..... | 5 | ..... | |

[1] The TOSHI is the sum of the chronic noncancer HQ values for substances that affect the same target organ or organ system.
[2] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values (HQREL = hazard quotient reference exposure level).

The results of the proposal inhalation risk modeling using actual emissions data, as shown in Table 3 of this preamble, indicate that the maximum individual cancer risk based on actual emissions (lifetime) is 10-in-1 million (driven by naphthalene from solvent storage), the maximum chronic noncancer TOSHI value based on actual emissions is 0.1 (driven by glycol ethers from prime and finish coating application), and the maximum screening acute noncancer HQ value (off-facility site) could be up to 3 (driven by DGME). At proposal, the total annual cancer incidence (national) from these facilities based on actual emission levels was estimated to be 0.005 excess cancer cases per year, or one case in every 200 years.

The results of the proposal inhalation risk modeling using allowable emissions data, as shown in Table 3 of this preamble, indicate that the maximum individual cancer risk based on allowable emissions (lifetime) is 10-in-1 million (driven by naphthalene from solvent storage), and the maximum chronic noncancer TOSHI value based on allowable emissions is 0.1 (driven by glycol ethers from prime and finish coating application). At proposal, the total annual cancer incidence (national) from these facilities based on allowable emissions was estimated to be 0.006 excess cancer cases per year, or one case in every 167 years.

The maximum individual cancer risk (lifetime) for the whole facility was determined to be 40-in-1 million at proposal, driven by naphthalene from equipment cleanup of metal coil coating processes. At proposal, the total estimated cancer incidence from the whole facility was determined to be 0.03 excess cancer cases per year, or one excess case in every 30 years. Approximately 270,000 people were estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-MACT sources of the 48 facilities in this source category. The maximum facility-wide TOSHI for the source category was estimated to be 5, driven by emissions of chlorine from a secondary aluminum fluxing process.

One PB HAP is emitted by facilities in the source category: lead. In evaluating the potential for multipathway effects from emissions of lead, the modeled maximum annual lead concentration of 0.0004 micrograms per cubic meter (μg/m$^3$) was compared to the National Ambient Air Quality Standards (NAAQS) for lead of 0.15 microgram per cubic meter (μg/m$^3$). Results of this analysis confirmed that the NAAQS for lead would not be exceeded by any facility. Based on this evaluation, we proposed that there is no significant potential for human health multi-pathway risks as a result of HAP emissions from this source category. Two environmental HAP are emitted by sources within this source category: HF and lead. Therefore, at proposal we conducted a screening-level evaluation of the potential adverse environmental risks associated with emissions of HF and lead. Based on this evaluation, we proposed that we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

We weighed all health risk factors, including those shown in Table 3 of this preamble, in our risk acceptability determination and proposed that the residual risks from the Surface Coating of Metal Coil source category are acceptable (section IV.B.2.a of proposal preamble, 84 FR 25933 June 4, 2019).

We then considered whether 40 CFR part 63, subpart SSSS provides an ample margin of safety to protect public

health and prevents, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. In considering whether the standards should be tightened to provide an ample margin of safety to protect public health, we considered the same risk factors that we considered for our acceptability determination and also considered the costs, technological feasibility, and other relevant factors related to emissions control options that might further reduce risk associated with emissions from the source category. As discussed further in section IV.B of this preamble, based on our technology review, we did not identify any developments in practices, processes, or control technologies, and, therefore, we did not propose any changes to the standards under CAA section 112(d)(6).

Due to the low baseline risks for the Surface Coating of Metal Coil source category and lack of options for further risk reductions, we proposed that additional emission controls for this source category are not necessary to provide an ample margin of safety (section IV.B.2.b of proposal preamble, 84 FR 25934, June 4, 2019).

2. How did the risk reviews change?

We have not changed any aspect of the risk assessment for either of these two source categories as a result of public comments received on the June 2019 proposal.

3. What key comments did we receive on the risk reviews, and what are our responses?

We received comments in support of and against the proposed residual risk reviews and our determinations that no revisions were warranted under CAA section 112(f)(2) for either source category. Generally, the comments that were not supportive of our determinations based on the risk reviews suggested changes to the underlying risk assessment methodology. For example, one commenter stated that the EPA should lower the acceptability benchmark so that risks below 100-in-1 million are deemed unacceptable, include emissions outside of the source categories in question in the risk assessment, and assume that pollutants with noncancer health risks have no safe level of exposure. After review of all the comments received, we determined that no changes to our Science Advisory Board-approved residual risk review process were necessary. The comments and our specific responses can be found in the document, *Summary of Public Comments and Responses for the Risk and Technology Reviews for Surface Coating of Metal Cans and Surface Coating of Metal Coil,* available in the dockets for these actions (Docket ID Nos. EPA–HQ–OAR–2017–0684 and EPA–HQ–OAR–2017–0685).

4. What is the rationale for our final approach and final decisions for the risk reviews?

As noted in our proposal, the EPA sets standards under CAA section 112(f)(2) using ''a two-step standard-setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on the maximum individual risk (MIR) of ''approximately 1-in-10 thousand'' (see 54 FR 38045, September 14, 1989). We weigh all health risk factors in our risk acceptability determination, including the cancer MIR, cancer incidence, the maximum chronic noncancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and the risk estimation uncertainties.

Since proposal, neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety, or adverse environmental effects have changed. For the reasons explained in the proposed rule, we determined that the risks from the Surface Coating of Metal Cans and the Surface Coating of Metal Coil source categories are acceptable, and that the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Therefore, we are not revising either subpart to require additional controls pursuant to CAA section 112(f)(2) based on the residual risk review, and we are readopting the existing standards under CAA section 112(f)(2).

*B. Technology Reviews*

1. What did we propose pursuant to CAA section 112(d)(6)?

Based on our review, we did not identify any developments in practices, processes, or control technologies for the Surface Coating of Metal Cans source category, and, therefore, we did not propose any changes to the standards under CAA section 112(d)(6). A brief summary of the EPA's findings in conducting the technology review of metal can coating operations was included in the preamble to the proposed rule (84 FR 25922, June 4, 2019), and a detailed discussion of the EPA's technology review and findings was included in the memorandum, *Technology Review for Surface Coating Operations in the Metal Can Category,* April 24, 2019, in the Surface Coating of Metal Cans Docket.

Based on our review, we did not identify any developments in practices, processes, or control technologies for the Surface Coating of Metal Coil source category, and, therefore, we did not propose any changes to the standards under CAA section 112(d)(6). A brief summary of the EPA's findings in conducting the technology review of coil coating operations was included in the preamble to the proposed rule (84 FR 25934, June 4, 2019), and a detailed discussion of the EPA's technology review and findings was included in the memorandum, *Technology Review for Surface Coating Operations in the Metal Coil Category,* September 2017, in the Surface Coating of Metal Coil Docket.

2. How did the technology reviews change?

We are making no changes to the conclusions of the technology reviews and are finalizing the results of the technology reviews for the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories as proposed.

3. What key comments did we receive on the technology reviews, and what are our responses?

We received two general comments supporting the results of our technology reviews for metal cans and metal coil surface coating and one comment objecting to our conclusions that there have been no technology developments in these two source categories.

*Comment:* One commenter alleged that the EPA has not met the legal obligation under CAA section 112(d)(6) to review and revise emission standards ''as necessary'' to account for ''developments in practices, processes, and control technologies.'' The commenter objected that the EPA proposed no revisions to the emission limits and claimed the EPA provided no legally valid or rational explanation for its determination of a lack of ''developments'' for these two source categories. The commenter pointed out that the EPA identified several HAP control advancements, including alternative coatings, developments for similar source categories, and work practices and housekeeping measures for metal coil facilities, which would reduce emissions and are in use at a number of facilities, yet failed to determine that it was ''necessary'' to revise the standard. In addition, the

commenter alleged that the EPA technology review analysis did not consider some relevant sources to determine ''developments.'' As examples, the commenter stated that the EPA did not analyze any control methods or requirements from other national or state or local jurisdictions that might have proven more effective; did not appear to analyze the different methods or brands of emission controls implemented to see which was most effective, efficient, or reliable; and did not examine facility procedures or best practices, including records of malfunctions, to identify best practices to mitigate malfunctions.

*Response:* We disagree with the commenter that the EPA has failed to meet the CAA's legal obligation to complete the technology reviews for the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories. The EPA concluded there were no HAP control advancements for these source categories as a result of the technology reviews. The technology reviews included review of coatings currently used by these source categories and any advancements in the coatings; review of HAP control requirements in NESHAP for similar coating source categories and application of those HAP controls to the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories; state and local HAP control requirements in facility title V operating permits and application of those HAP controls to the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories; and work practices and housekeeping measures currently used by these source categories and any advances that were applicable to these source categories.

As stated in the proposal preamble (84 FR 25935) for the Surface Coating of Metal Coil source category, alternatives to solvent borne coatings have been in use by the coil coating industry since development of the 2002 Surface Coating of Metal Coil NESHAP but are not considered to be suitable for all end-product applications. The 2002 proposed NESHAP provided an alternative facility HAP emission limit of 0.24 pounds of HAP per gallon of solids applied which was established to provide a compliance option for facilities that chose to limit their coating line HAP emissions either through a combination of low-HAP coatings and add-on controls or through the use of waterborne, high solids, or other pollution prevention coatings. The EPA found no developments in alternative coating technologies during the technology review that would result in achievable emission rates that are substantially lower than those reflected in the current emission limits.

The commenter also asserted that the EPA did not consider developments in control methods for similar source categories and did not analyze the regulations set by state or local jurisdictions that might have proven more effective than the NESHAP requirements. We disagree with the commenter and refer the commenter to the technology review memorandums titled *Technology Review for Surface Coating Operations in the Metal Can Category* and *Technology Review for Surface Coating Operations in the Metal Coil Category* which summarizes the EPA's review of the title V operating permits for the five metal can facilities and for 39 metal coil facilities that are major sources and subject to these NESHAP. The title V operating permits incorporate all relevant local, state, or Regional emission limitations, as well as federal limitations. In no case did the EPA find a facility subject to a HAP limit more stringent than the limits in the current NESHAP or a facility using a control technology that was not considered during development of the NESHAP and reflected in the current standards. The results of the technology reviews were documented in these memorandums in the respective docket for each proposed rule.

The technology basis for MACT for metal coil coating operations in the 2002 Surface Coating of Metal Coil NESHAP was emission capture and add on control with an overall control efficiency of 98 percent for new or reconstructed sources and existing sources. This overall control efficiency represents the use of PTE to achieve 100-percent capture of application station HAP emissions and a thermal oxidizer to achieve a destruction efficiency of 98 percent. No technology was identified during the technology review that could achieve a better overall control efficiency than the use of a PTE to capture HAP emissions from the coating application station and a thermal oxidizer to destroy HAP emissions from the coating application and the curing oven.

It would not be feasible, nor is it required under CAA section 112(d)(6), for the EPA to evaluate HAP control advancement by examining different brands of emission controls to see which was most effective, efficient, or reliable, as suggested by the commenter. Similarly, it would not be feasible to examine facility procedures or best practices, nor review records of malfunctions to identify best practices to mitigate malfunctions. That information is not currently available to the EPA. If the information was available, it would be difficult, if not impossible, to correlate that information with emissions performance and develop practical regulatory requirements. Instead, the current emission limits are based on actual performance of existing sources in the two categories determined to represent the MACT level of control for new and existing sources. The performance data used to develop the emission limits were collected during emission tests when the control devices were performing properly and the emission sources were at steady-state operating conditions. Data collected during periods of startup, shutdown, or malfunction were not used to establish the emission limits. After the initial compliance demonstration, facilities using add-on controls must comply with operating limits to ensure the add-on controls continue to be properly operated and maintained to achieve the same level of performance as during the performance test. Facilities experiencing deviations from the emission limits or the operating limits must report these deviations to the EPA, and the EPA will then determine on a case-by-case basis whether the deviation constitutes a violation. Because of the diversity of factors that could lead to a malfunction in these source categories, it would not be practical for the EPA to prescribe specific actions that must be taken to reduce the frequency of malfunctions or to minimize emissions in the event of a malfunction.

The commenter also asserted that the EPA identified work practices and housekeeping measures for metal coil facilities, which would reduce emissions and are in use at a number of facilities yet failed to determine that it was ''necessary'' to revise the standard. The commenter's assertion appears to be based on a statement in the preamble to the proposal where we note that the facility survey conducted as part of the development of the 2002 MACT standard for Surface Coating of Metal Coil had revealed several types of work practices and housekeeping measures in use at that time. (84 FR at 25935). We also noted in the preamble, however, that we had identified no developments in work practices or procedures for the Surface Coating of Metal Coil source category. As the commenter has provided no additional information regarding possible developments and as the EPA has no information about developments in such work practices and housekeeping measures, we do not agree that it is necessary to revise the

standard for this source category as a result of the technology review.

4. What is the rationale for our final approach for the technology reviews?

For the reasons explained in the preamble to the proposed rules (84 FR 25922 and 25934, June 4, 2019), and in the comment responses above in section IV.B.3 of this preamble, we are making no changes and are finalizing the results of the technology reviews as proposed.

*C. Electronic Reporting Provisions*

1. What did we propose?

In the June 4, 2019, notice we proposed to require owners and operators of surface coating of metal can and metal coil facilities to submit electronic copies of notifications, reports, and performance tests through the EPA's CDX, using the CEDRI. These include the initial notifications required in 40 CFR 63.9(b) and 63.3510(b) for metal can coating and 63.5180(b) for metal coil coating; notifications of compliance status required in 40 CFR 63.9(h) and 63.3510(c) for metal can coating and 63.5180(d) for metal coil coating; the performance test reports required in 40 CFR 63.3511(b) for metal can coating and 63.5160(d) for metal coil coating; and the semiannual reports required in 40 CFR 63.3511(a) for metal can coating and 63.5180(g) for metal coil coating. A description of the electronic submission process is provided in the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP),* August 8, 2018, in the Surface Coating of Metal Cans and Surface Coating of Metal Coil Dockets. The proposed rule requirements would replace the current rule requirements to submit the notifications and reports to the Administrator at the appropriate address listed in 40 CFR 63.13. The proposed rule requirement would not affect submittals required by state air agencies. For metal can facilities, the proposed compliance schedule language in 40 CFR 63.3511(f) for submission of semiannual compliance reports would have provided 181 days after the final rule is published to begin electronic reporting or 1 year after the 40 CFR part 63, subpart KKKK semiannual compliance report template is available in CEDRI, whichever is later. For metal coil facilities, the proposed compliance schedule language in 40 CFR 63.5181(c) for submission of semiannual compliance reports would have provided 1 year after the final rule is published to begin electronic reporting or 1 year after the 40 CFR part 63, subpart SSSS semiannual compliance report template is available in CEDRI, whichever is later.

2. What changed since proposal?

For metal can facilities, the compliance schedule language in proposed 40 CFR 63.3511(f) for submission of semiannual compliance reports has been revised from the proposed 181 days, to either 1 year after the final rule is published or 1 year after the 40 CFR part 63, subpart KKKK, semiannual compliance report template is available in CEDRI, whichever is later. No changes were made to the metal coil compliance schedule.

3. What key comments did we receive and what are our responses?

*Comment:* One commenter suggested that the EPA change the metal can compliance schedule language in proposed 40 CFR 63.3511(f) for submission of semiannual compliance reports to give facilities either 1year (instead of 181 days) after the final rule is published to begin electronic reporting or 1 year after the 40 CFR part 63, subpart KKKK, semiannual compliance report template is available in CEDRI, whichever is later. The commenter recommended revising 40 CFR 63.3511(f) to say that on and after the date 1 year (instead of 181 days) after the date of publication of the final rule in the **Federal Register**, or once the reporting template has been available on the CEDRI website for 1 year, whichever date is later, the owner or operator is required to submit the semiannual compliance report via the CEDRI. The commenter noted that the proposed 181-day requirement for 40 CFR part 63, subpart KKKK, is not consistent with the 1-year requirement the EPA is proposing for 40 CFR 63.5181(c) in 40 CFR part 63, subpart SSSS for the Surface Coating of Metal Coil source category. The commenter also argued that 1 year would be justified because metal can coating facilities are not currently using CEDRI and would need to learn how to access and use CEDRI.

*Response:* The EPA agrees that both rules should be consistent and that the owners and operators should have 1 year after the date of publication of the final rule or 1 year after the reporting template has been on CEDRI, whichever is later, before they are required to submit semiannual compliance reports via CEDRI. This will provide users 1 year to become familiar with the template and electronic reporting system prior to being required to submit reports electronically. This will provide adequate time for facilities to adjust to electronic reporting, as well as assure that the forms will work properly, prior to the date that owners and operators must start submitting these reports electronically. The EPA encourages users to become familiar with the system well in advance of being required to use it. For previous rulemakings with reports required to be submitted electronically via CEDRI, prior to a compliance reporting deadline, the EPA has provided webinars to our various stakeholders on the access and reporting of the given report in CEDRI. The EPA is planning to provide this same service to the industry trade association and facilities subject to the 40 CFR part 63, subparts KKKK and SSSS electronic reporting requirements, if requested to do so. The EPA plans to publish the final template on CEDRI about the same time the final rule is signed and published. Although facilities will have up to 1 year after the final template is on CEDRI to begin using the template and submitting reports via CEDRI, facilities may begin submitting reports via CEDRI as soon as the final template is available.

*Comment:* One commenter stated they will need an interactive discussion with the EPA (*e.g.,* by conference call or webinar) to answer questions about how to use CEDRI and about the draft electronic reporting template before they can effectively comment on whether the template is appropriate and workable for metal can surface coating facilities subject to subpart 40 CFR part 63, KKKK. The commenter further asked that the EPA not finalize the reporting template until after the proposed rule is finalized.

*Response:* The EPA agrees that interactive discussions via conference calls or a webinar with the industry trade organization and members would be appropriate to review the electronic reporting process using CEDRI and to collaborate on improvements to the draft electronic reporting template. The EPA has arranged interactive discussions with both the metal can and metal coil industry trade organizations and members in an attempt to finalize the electronic reporting templates concurrent with the final rule promulgation. If that is the case facilities will have 1 year after the final rule is published to submit notifications and semiannual compliance reports using the electronic reporting template in CEDRI. If the reporting templates are not finalized concurrent with the final rule promulgation, the EPA will continue to work with the industry trade organizations and members to finalize the templates and will make the final templates available on the CEDRI

website. Facilities would then be required to submit notifications and semiannual compliance reports using the electronic reporting template in CEDRI one year after the reporting template has been available on the CEDRI website.

4. What is the rationale for our final approach for the electronic reporting provisions?

For the reasons explained in the preamble to the proposed rules (84 FR 25922 and 25934, June 4, 2019), and in the comment responses above in section IV.C.3 of this preamble, we are finalizing the electronic reporting provisions for both 40 CFR parts 63, subparts KKKK and SSSS, as proposed with the exception of the change in date by which electronic reporting must commence for the Surface Coating of Metal Cans source category (described in section IV.C.2 of this preamble).

*D. SSM Provisions*

1. What did we propose?

In the June 4, 2019, action, we proposed amendments to the Surface Coating of Metal Cans NESHAP and the Surface Coating of Metal Coil NESHAP to remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning the elimination of SSM provisions is in the preamble to the proposed rule (84 FR 25909, June 4, 2019).

2. What changed since proposal?

We are finalizing the SSM provisions as proposed with no changes (84 FR 25909, June 4, 2019).

3. What key comments did we receive and what are our responses?

*Comment:* One commenter noted that new language has been proposed for 40 CFR 63.5150(a) which states that on and after the compliance date sources must also maintain the monitoring equipment at all times in accordance with 40 CFR 63.5140(b) and keep the necessary parts readily available for routine repairs of the monitoring equipment. The commenter expressed concern that different inspectors could have different interpretations of what parts would be ''necessary'' to be kept readily available and what repairs would be ''routine.'' The commenter recommended revising the proposed language for 40 CFR 63.5150(a) to omit ''and keep the necessary parts readily available for routine repairs of the monitoring equipment.''

The commenter argued that the compliance requirement language will always be open to some degree of interpretation, but the suggested change would minimize differences in how this new language is interpreted and allow the individual facilities to manage and defend their compliance practices required in this section as they see best.

*Response:* The EPA disagrees with the commenter and is not accepting this recommended change. The requirement is not new, it was simply moved from the 40 CFR part 63 General Provisions to subparts KKKK and SSSS. The language proposed for 40 CFR 63.5150(a) replaces language in 40 CFR 63.8(c)(1)(i) and (ii) that no longer applies. The EPA is amending Table 5 to Subpart KKKK of Part 63 so that 40 CFR 63.8(c)(1) no longer applies because 40 CFR 63.8(c)(1)(iii) requires, ''The owner or operator of an affected source must develop a written startup, shutdown, and malfunction plan for CMS as specified in § 63.6(e)(3).'' Because 40 CFR 63.8(c)(1) no longer applies as part of the amendments to remove the SSM exemptions, the provisions of 40 CFR 63.8(c)(1)(i) and (ii) are being added to each subpart. The EPA disagrees that the proposed language would lead to differences in interpretation and the commenter provided no evidence that the same language led to compliance issues when it was located only in 40 CFR 63.8(c)(1)(ii).

4. What is the rationale for our final approach for the SSM provisions?

For the reasons explained in the proposed rule and after evaluation of the comments on the proposed amendments to the SSM provisions for the Surface Coating of Metal Cans NESHAP and the Surface Coating of Metal Coil NESHAP, we are finalizing the proposed revisions related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning the proposed amendments to the SSM provisions is in the preamble to the proposed rule (84 FR 25909, June 4, 2019).

*E. Ongoing Compliance Demonstrations*

1. What did we propose?

In the June 4, 2019, action we proposed to require owners and operators of surface coating of metal can facilities and surface coating of metal coil facilities to conduct periodic performance testing of add-on control devices on a regular frequency of every 5 years to ensure the equipment continues to operate properly for facilities using the emission rate with add-on controls compliance option. This proposed periodic testing requirement included an exception to the general requirement for periodic testing for facilities using the catalytic oxidizer control options and following catalyst maintenance procedures that are found in both 40 CFR part 63, subparts KKKK and SSSS. These catalyst maintenance procedures include annual testing of the catalyst and other maintenance procedures that provide ongoing demonstrations that the control system is operating properly and may, thus, be considered comparable to conducting a performance test. The proposed periodic performance testing requirement also allows an exception from periodic testing for facilities using CEMS to show actual emissions. The use of CEMS to demonstrate compliance would obviate the need for periodic testing.

This proposed requirement did not require periodic testing or CEMS monitoring of facilities using the compliant materials option or the emission-rate without add-on controls compliance option because these two compliance options do not use any add-on controls or control efficiency measurements in the compliance calculations.

The proposed periodic performance testing requirement requires facilities complying with the standards using emission capture systems and add-on controls and which are not already on a 5-year testing schedule to conduct the first of the periodic performance tests within 3 years of the effective date of the revised standards. Afterward, they would generally conduct periodic testing before they renew their title V operating permits, but in no case more than 5 years following the previous performance test. Additionally, facilities that have already tested as a condition of their permit within the last 2 years before the effective date would be permitted to maintain their current 5-year schedule.

2. What changed since proposal?

We have revised the proposed periodic testing language in 40 CFR part 63, subparts KKKK and SSSS, since proposal to clarify that facilities already conducting comparable periodic testing as a requirement of renewing their title V operating permit under 40 CFR part 70 or part 71 may continue with their current testing schedule. We also reformatted the electronic reporting language in 40 CFR part 63, subparts KKKK and SSSS, to provide clarification on the requirements for asserting a claim of EPA system outage or *force majeure* for failure to timely comply with the reporting requirements.

3. What key comments did we receive and what are our responses?

*Comment:* One commenter recommended that language in the proposed rule for 40 CFR part 63, subpart KKKK should be revised to more clearly state that facilities are permitted to use the performance tests conducted under their title V permits, as required by state and local permitting authorities, to meet the proposed requirement for periodic performance testing under 40 CFR part 63, subpart KKKK. The commenter suggested that the EPA modify the proposed language for 40 CFR 63.3540(a)(1)(ii), 63.3540(b)(1)(ii), 63.3550(a)(1)(ii), and 63.3550(b)(1)(ii) and offered clarifying language to say that if a source is not required to complete periodic performance tests as a requirement of renewing its title V operating permit under 40 CFR part 70 or 40 CFR part 71, it must conduct the first periodic performance test before the date 3 years after date of publication of the final rule in the **Federal Register**, unless the source has already conducted a performance test on or after the date 2 years before the date of publication of the final rule in the **Federal Register**. The commenter then suggested adding language to say that if a source is already required to complete periodic performance tests as a requirement of renewing its title V operating permit under 40 CFR part 70 or 40 CFR part 71, it must conduct the periodic testing in accordance with the terms and schedule required by its permit conditions.

*Response:* The EPA agrees that the recommended changes would clarify that facilities can continue to use tests conducted under title V to meet the 40 CFR part 63, subpart KKKK requirement to conduct periodic performance tests. The EPA is making the recommended changes to 40 CFR 63.3540(a)(1)(ii), 63.3540(b)(1)(ii), 63.3550(a)(1)(ii), and 63.3550(b)(1)(ii) and is making comparable changes to Table 1 To 40 CFR 63.5160—Required Performance Testing Summary, in 40 CFR part 63, subpart SSSS.

4. What is the rationale for our final approach for the ongoing compliance demonstrations?

For the reasons explained in the preamble to the proposed rules (84 FR 25922 and 25934, June 4, 2019), and in the comment responses above in section IV.C.3 of this preamble, we are finalizing the periodic testing provisions for both 40 CFR part 63, subparts KKKK and SSSS, as proposed with the exception of the rule clarification change described for 40 CFR part 63, subparts KKKK and SSSS in section IV.D.2 of this preamble.

## V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

### *A. What are the affected sources?*

Currently, five major sources subject to the Surface Coating of Metal Cans NESHAP are operating in the United States. The affected source under the NESHAP is the collection of all equipment used to apply coating to a metal can or end (including decorative tins), or metal crown or closure, and to dry or cure the coating after application; all storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed; all manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by the coating operations. A coating operation always includes at least the point at which a coating is applied and all subsequent points in the affected source where organic HAP emissions from that coating occur. There may be multiple coating operations in an affected source.

Currently, 48 major sources subject to the Surface Coating of Metal Coil NESHAP are operating in the United States. The affected source under the NESHAP is the collection of all the coil coating lines at a facility, including the equipment used to apply an organic coating to the surface of metal coil. A coil coating line includes a web unwind or feed section, a series of one or more work stations, and any associated curing oven, wet section, and quench station. A coil coating line does not include ancillary operations such as mixing/thinning, cleaning, wastewater treatment, and storage of coating material. Metal coil is a continuous metal strip that is at least 0.15 mm (0.006 inch) thick, which is packaged in a roll or coil prior to coating. Material less than 0.15 mm (0.006 inch) thick is considered metal foil, not metal coil. The NESHAP applies to coating lines on which more than 15 percent of the material coated, based on surface area, meets the definition of metal coil. There may be multiple coating operations in an affected source.

### *B. What are the air quality impacts?*

The EPA estimates the current emissions of volatile organic HAP from the Surface Coating of Metal Cans source category are approximately 77 tpy and the current emissions of volatile organic HAP from the Surface Coating of Metal Coil source category are approximately 291 tpy.

The amendments require that all 53 major sources in the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories comply with the relevant emission standards at all times, including periods of SSM. We were unable to quantify the emissions that occur during periods of SSM or the specific emissions reductions that will occur as a result of this action. However, eliminating the SSM exemption has the potential to reduce emissions by requiring facilities to meet the applicable standard during SSM periods.

The amendments will have no effect on the energy needs of the affected facilities in either of the two source categories and will, therefore, have no adverse energy impacts or indirect or secondary air emissions impacts. Energy impacts consist of the electricity and steam needed to operate control devices and other equipment. Indirect or secondary air emissions impacts are impacts that would result from the increased energy usage associated with the operation of control devices (*e.g.,* increased secondary emissions of criteria pollutants from power plants).

### *C. What are the cost impacts?*

We estimate that each facility in these two source categories will experience increased costs as a result of these final amendments for recordkeeping and reporting. Each facility will experience costs to read and understand the rule amendments. Costs associated with elimination of the SSM exemption were estimated as part of the reporting and recordkeeping costs and include time for re-evaluating and modifying, as necessary, previously developed SSM record systems. Costs associated with the requirement to electronically submit notifications and semi-annual compliance reports using CEDRI were estimated as part of the reporting and recordkeeping costs and include time for becoming familiar with CEDRI and the reporting template for semi-annual compliance reports. The recordkeeping and reporting costs are presented in section VI.C of this preamble.

We are also finalizing a requirement for performance testing no less frequently than every 5 years for sources in each source category that use the add-on controls compliance options. We estimate that the new periodic testing requirement will impose additional costs for 22 facilities across the two source categories. We estimate that one facility using three add-on control devices subject to the Surface Coating of

Metal Cans NESHAP will incur costs to conduct control device performance testing because it is using the emission rate with add-on controls compliance option and is not required by its title V operating permit to conduct testing every 5 years. We estimate that 21 facilities subject to the Surface Coating of Metal Coil NESHAP will incur costs to conduct periodic testing because they are currently using the emission rate with add-on controls compliance option and are not required by their title V operating permits to conduct testing every 5 years. These 21 metal coil coating facilities have a total of 30 add-on control devices. This total does not include facilities in the Surface Coating of Metal Coil source category that have add-on controls and are currently required to perform periodic performance testing as a condition of their title V operating permit. The cost for a facility to conduct a destruction or removal efficiency performance test using EPA Method 25 or 25A is estimated to be about $19,000, with tests of additional control devices at the same facility costing 25 percent less due to reduced travel costs. The estimated total cost for the one metal can surface coating facility to test three add-on control devices in a single year would be $47,000. The estimated total cost for all 21 metal coil facilities to test 30 add-on control devices in a single year, plus two retests to account for 5 percent of control devices failing to pass the first test, would be $560,000. The total annualized testing cost is estimated to be approximately $11,000 per year for the Surface Coating of Metal Cans source category, and $130,000 per year for the Surface Coating of Metal Coil source category, including retests. In addition to the testing costs, each facility performing a test will have an estimated additional $5,500 in reporting costs in the year in which the test occurs.

As a result of changes to recordkeeping and reporting requirements, a one-time review of the updated rule language, and the addition of the periodic testing requirement for facilities using add-on controls, the costs of the final amendments are estimated to be $21,800 for the Surface Coating of Metal Cans source category and $271,000 for the Surface Coating of Metal Coil source category averaged over the first 3 years after the amendments are finalized. For further information on the estimated costs, see the cost tables in the memoranda titled *Estimated Costs/Impacts of the 40 CFR part 63 Subparts KKKK and SSSS Monitoring Review Revisions,* February 2019, and the *Economic Impact and Small Business Screening Assessments for Hazardous Air Pollutants for Metal Cans Coating Plants (Subpart KKKK) and the Economic Impact and Small Business Screening Assessments for Hazardous Air Pollutants for Metal Coil Coating Plants (Subpart SSSS)* in the Surface Coating of Metal Cans and Surface Coating of Metal Coil Dockets.

*D. What are the economic impacts?*

The economic impact analysis is designed to inform decision makers about the potential economic consequences of a regulatory action. For the final revisions, the EPA estimated the cost of becoming familiar with the rule and re-evaluating and revising, as necessary, previously developed SSM record systems and performing periodic emissions testing at certain facilities with add-on controls that are not already required to perform testing. To assess the maximum potential impact, the largest cost expected to be experienced in any 1 year is compared to the total sales for the ultimate owners of the affected facilities to estimate the total burden for each ultimate owner.

For the final revisions to the NESHAP for the Surface Coating of Metal Cans, the annualized cost is estimated to be $11,000 for the five affected entities. The five affected facilities are owned by three different parent companies, and the total costs associated with the final requirements range from 0.00002 to 0.77 percent of annual sales revenue per ultimate owner. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

For the final revisions to the NESHAP for the Surface Coating of Metal Coil, the annualized cost is estimated to be $130,000 for the 48 affected entities. The 48 affected facilities are owned by 25 different parent companies, and the total costs associated with the proposed requirements range from 0.00001 to 0.28 percent of annual sales revenue per ultimate owner. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

The EPA also prepared a small business screening assessment to determine whether any of the identified affected entities are small entities, as defined by the U.S. Small Business Administration. One of the facilities potentially affected by the final revisions to the NESHAP for the Surface Coating of Metal Cans is a small entity. Ten of the facilities potentially affected by the final revisions to the NESHAP for the Surface Coating of Metal Coil are small entities. However, the annualized costs associated with the final revisions for the seven ultimate owners of these eleven affected small entities range from 0.0029 to 0.77 percent of annual sales revenues per ultimate owner. Therefore, there are no significant economic impacts on a substantial number of small entities from these final amendments.

More information and details of this analysis are provided in the technical documents titled *Economic Impact and Small Business Screening Assessments for Proposed Amendments to the National Emission Standards for Hazardous Air Pollutants for the Surface Coating of Metal Cans (Subpart KKKK)* and *Economic Impact and Small Business Screening Assessments for Proposed Amendments to the National Emission Standards for Hazardous Air Pollutants for the Surface Coating of Metal Coil (Subpart SSSS),* available in the Surface Coating of Metal Cans and Surface Coating of Metal Coil Dockets, respectively.

*E. What are the benefits?*

As stated above in section V.B of this preamble, we were unable to quantify the specific emissions reductions associated with eliminating the SSM exemption or as a result of adding the requirement to conduct periodic add-on control device performance tests, although these final revisions have the potential to reduce emissions of volatile organic HAP.

Because these final amendments are not considered economically significant, as defined by Executive Order 12866, and because we were unable to quantify the specific emission reductions that will occur as a result of this action, we did not monetize the benefits of reducing these emissions. This does not mean that there are no benefits associated with the potential reduction in volatile organic HAP from this rule.

*F. What analysis of environmental justice did we conduct?*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

To examine the potential for any environmental justice issues that might be associated with these source categories, we performed a demographic analysis for each source category, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. In these analyses, we evaluated the distribution of HAP-related cancer and noncancer risks from each source category across different demographic groups within the populations living near facilities.

1. Surface Coating of Metal Cans

The results of the demographic analysis for the Surface Coating of Metal Cans source category are summarized in Table 4 of this preamble. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities.

The results of the Surface Coating of Metal Cans source category demographic analysis indicate that emissions from the source category expose approximately 700 people to a cancer risk at or above 1-in-1 million and no one to a chronic noncancer TOSHI greater than 1. The percentages of the population exposed to emissions from the source category in three demographic groups (White, Above Poverty Level, and Over 25 with a High School Diploma) are greater than their respective nationwide percentages. The methodology and the results of the demographic analysis are presented in more detail in the technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Metal Cans Source Category Operations,* May 2018, in the Surface Coating of Metal Cans Docket.

TABLE 4—SURFACE COATING OF METAL CANS SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS

| | Nationwide | Population with cancer risk at or above 1-in-1 million due to surface coating of metal cans | Population with chronic noncancer HI above 1 due to surface coating of metal cans |
|---|---|---|---|
| Total Population | 317,746,049 | 700 | 0 |
| **White and Minority by Percent** | | | |
| White | 62 | 92 | 0 |
| Minority | 38 | 8 | 0 |
| **Minority by Percent** | | | |
| African American | 12 | 0 | 0 |
| Native American | 0.8 | 0 | 0 |
| Hispanic | 18 | 4 | 0 |
| Other and Multiracial | 7 | 4 | 0 |
| **Income by Percent** | | | |
| Below Poverty Level | 14 | 4 | 0 |
| Above Poverty Level | 86 | 96 | 0 |
| **Education by Percent** | | | |
| Over 25 and without High School Diploma. | 14 | 4 | 0 |
| Over 25 and with a High School Diploma. | 86 | 96 | 0 |
| **Linguistically Isolated by Percent** | | | |
| Linguistically Isolated | 6 | 0 | 0 |

2. Surface Coating of Metal Coil

The results of the demographic analysis for the Surface Coating of Metal Coil source category are summarized in Table 5 of this preamble. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities.

The results of the Surface Coating of Metal Coil source category demographic analysis indicate that emissions from the source category expose approximately 19,000 people to a cancer risk at or above 1-in-1 million and no one is exposed to a chronic noncancer TOSHI greater than 1. The percentages of the population exposed to emissions from the source category in three demographic groups (White, African American, and Over 25 and with a High School Diploma) are greater than their respective nationwide percentages.

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Metal Coil Source Category Operations,* May 2017, available in the Surface Coating of Metal Coil Docket.

TABLE 5—SURFACE COATING OF METAL COIL SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS

| | Nationwide | Population with cancer risk at or above 1-in-1 million due to surface coating of metal coil | Population with chronic noncancer HI above 1 due to surface coating of metal coil |
|---|---|---|---|
| Total Population | 317,746,049 | 19,000 | 0 |
| **White and Minority by Percent** | | | |
| White | 62 | 70 | 0 |
| Minority | 38 | 30 | 0 |
| **Minority by Percent** | | | |
| African American | 12 | 21 | 0 |
| Native American | 0.8 | 0.1 | 0 |
| Hispanic | 18 | 4 | 0 |
| Other and Multiracial | 7 | 5 | 0 |
| **Income by Percent** | | | |
| Below Poverty Level | 14 | 15 | 0 |
| Above Poverty Level | 86 | 85 | 0 |
| **Education by Percent** | | | |
| Over 25 and without High School Diploma | 14 | 10 | 0 |
| Over 25 and with a High School Diploma | 86 | 90 | 0 |
| **Linguistically Isolated by Percent** | | | |
| Linguistically Isolated | 6 | 1 | 0 |

*G. What analysis of children's environmental health did we conduct?*

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are summarized in section IV.A of this preamble and are further documented in the *Residual Risk Assessment for the Surface Coating of Metal Cans Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* and the *Residual Risk Assessment for the Surface Coating of Metal Coil Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* in the Surface Coating of Metal Cans and Surface Coating of Metal Coil Dockets, respectively.

## VI. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was, therefore, not submitted to 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 this action is not significant under Executive Order 12866.

*C. Paperwork Reduction Act (PRA)*

The information collection activities in this action have been submitted for approval to OMB under the PRA, as discussed for each source category covered by this action in sections VI.C.1 and 2.

1. Surface Coating of Metal Cans

The Information Collection Request (ICR) document that the EPA prepared for this source category has been assigned EPA ICR number 2079.08. You can find a copy of the ICR document in the Surface Coating of Metal Cans Docket (Docket ID No. EPA–HQ–OAR–2017–0684), and it is briefly summarized here. The information collection requirements are not enforced until OMB approves them.

As part of the RTR for the Surface Coating of Metal Cans NESHAP, the EPA is not revising the emission limit requirements. The EPA is revising the SSM provisions of the rule and requiring the use of electronic data reporting for future performance test data submittals, notifications, and reports. This information is being collected to assure compliance with 40 CFR part 63, subpart KKKK.

*Respondents/affected entities:* Facilities performing surface coating of metal cans.

*Respondent's obligation to respond:* Mandatory (40 CFR part 63, subpart KKKK).

*Estimated number of respondents:* In the 3 years after the amendments are final, approximately five respondents per year will be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

*Frequency of response:* The total number of responses in year 1 is 15 and in year 3 is one. Year 2 would have no responses.

*Total estimated burden:* The average annual information collection burden to the five metal can facilities over the 3 years after the amendments are finalized is estimated to be 54 hours (per year). The average annual burden to the

Agency over the 3 years after the amendments are finalized is estimated to be 23 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* The average annual labor cost to the metal can facilities is estimated to be $6,200 in the first 3 years after the amendments are finalized. The average annual capital and operation and maintenance (O&M) cost is estimated to be $15,600 over this period. The average annual Agency cost over the first 3 years after the amendments are finalized is estimated to be $1,090.

2. Surface Coating of Metal Coil

The ICR document that the EPA prepared for this source category has been assigned EPA ICR number 1957.10. You can find a copy of the ICR document in the Surface Coating of Metal Coil Docket (Docket ID No. EPA–HQ–OAR–2017–0685), and it is briefly summarized here. The information collection requirements are not enforced until OMB approves them.

As part of the RTR for the Surface Coating of Metal Coil NESHAP, the EPA is not revising the emission limit requirements. The EPA is revising the SSM provisions of the rule and requiring the use of electronic data reporting for future performance test data submittals, notifications, and reports. This information is being collected to assure compliance with 40 CFR part 63, subpart SSSS.

*Respondents/affected entities:* Facilities performing surface coating of metal coil.

*Respondent's obligation to respond:* Mandatory (40 CFR part 63, subpart SSSS).

*Estimated number of respondents:* In the 3 years after the amendments are finalized, approximately 48 respondents per year will be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

*Frequency of response:* The total number of responses in year 1 is 144 and in year 3 is 69. Year 2 would have no responses.

*Total estimated burden:* The average annual burden to the 48 metal coil coating facilities over the 3 years after the amendments are finalized is estimated to be 738 hours (per year). The average annual burden to the Agency over the 3 years after the amendments are finalized is estimated to be 179 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* The average annual cost to the 48 metal coil coating facilities is estimated to be $85,000 in labor costs and $186,000 in capital and O&M costs in the first 3 years after the amendments are finalized. The average annual Agency cost over the first 3 years after the amendments are finalized is estimated to be $8,530.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves the ICRs, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection actions contained in the final rule.

*D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The eleven small entities that are subject to the requirements of this action are small businesses. The Agency has determined that the seven ultimate owners of these eleven affected small entities (21 percent of the facilities affected by this action) so impacted may experience an impact of 0.0029 to 0.77 percent of annual sales revenues per ultimate owner. Details of this analysis are described in section V.D above and in the economic impact memorandums located in the dockets for this action.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of $100 million or more 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. No tribal facilities are known to be engaged in any of the industries that would be affected by this action (metal can surface coating and metal coil surface coating). Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III.A and C, IV.A.1 and 2, IV.B.1 and 2, and IV.C.1 and 2 of the proposal preamble (84 FR 25904, June 4, 2019) and are further documented in the *Residual Risk Assessment for the Surface Coating of Metal Cans Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* and the *Residual Risk Assessment for the Surface Coating of Metal Coil Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* in the Surface Coating of Metal Cans Docket and the Surface Coating of Metal Coil Docket, respectively.

*I. Executive Order 13211: Actions Concerning Regulations 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 (NTTAA) and 1 CFR Part 51*

This rulemaking involves technical standards. The EPA amended the Surface Coating of Metal Coil NESHAP in this action to provide owners and operators with the option of conducting two new methods: EPA Method 18 of appendix A to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography,'' to measure and subtract methane emissions from measured total gaseous organic mass emissions as carbon, and ASTM Method D1475–13, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products.'' We are incorporating ASTM Method D1475–13 by reference. We are adding these two standards to the Surface Coating of Metal Coil NESHAP only, as these methods are already provided in the Surface Coating of Metal Cans NESHAP.

The EPA is also amending the Surface Coating of Metal Cans NESHAP to update three ASTM test methods and

amend the Surface Coating of Metal Coil NESHAP to update two ASTM test methods. We are updating ASTM Method D1475–90, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products,'' in the Surface Coating of Metal Cans NESHAP by incorporating by reference ASTM Method D1475–13. The updated version, ASTM Method D1475–13, clarifies units of measure and reduces the number of determinations required. We are updating ASTM Method D2697–86 (1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' in both the Surface Coating of Metal Cans and the Surface Coating of Metal Coil NESHAP by incorporating by reference ASTM D2697–03 (2014), which is the updated version of the previously approved method. We are also updating ASTM Method D6093–97 (2003), ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using Helium Gas Pycnometer,'' in both the Surface Coating of Metal Cans and the Surface Coating of Metal Coil NESHAP by incorporating by reference ASTM D6093–97 (2016), which is the updated version of the previously approved method. ASTM D2697–03 (2014) is a test method that can be used to determine the volume of nonvolatile matter in clear and pigmented coatings and ASTM D6093–97 (2016) is a test method that can be used to determine the percent volume of nonvolatile matter in clear and pigmented coatings.

For the Surface Coating of Metal Cans NESHAP and the Surface Coating of Metal Coil NESHAP, we are incorporating by reference ASTM D2369–10 (2015), ''Test Method for Volatile Content of Coatings,'' as an alternative to EPA Method 24 for the determination of the volatiles emitted by the surface coatings. The test method determines the weight percent volatile content of solvent borne and water borne coatings under specified test conditions. It is viable for coatings wherein one or more parts may, at ambient conditions, contain liquid co-reactants that are volatile until a chemical reaction has occurred with another component of a multi-package system.

For the Surface Coating of Metal Cans and the Surface Coating of Metal Coil NESHAP, we are incorporating by reference ASTM D2111–10 (2015), ''Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures,'' for the determination of the specific gravity of halogenated organic solvents and solvent admixtures in surface coatings. ASTM D2111–10 (2015) includes three test methods to measure specific gravity using suitable apparatus (*i.e.,* a hydrometer, a pycnometer, or an electronic densitometer), procedures, and details underlying the interpretation of test data and the selection of numerical limits.

The ASTM standards are available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. See *http://www.astm.org/.*

The EPA decided not to include certain other VCS; these methods are impractical as alternatives because of the lack of equivalency, documentation, validation date, and other important technical and policy considerations. The search and review results have been documented and are in the memoranda titled *Voluntary Consensus Standard Results for Surface Coating of Metal Cans,* August 16, 2018, and *Voluntary Consensus Standard Results for Surface Coating of Metal Coil,* August 16, 2018, in the Surface Coating of Metal Cans Docket and the Surface Coating of Metal Coil Docket, respectively.

Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule or any amendments.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not significantly affect the level of protection provided to human health or the environment. The documentation for this decision is contained in section IV of this preamble and the technical reports titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Metal Cans Source Category Operations,* May 2018, and *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Metal Coil Source Category Operations,* May 2018, which are available in the Surface Coating of Metal Cans and Surface Coating of Metal Coil Dockets, respectively.

*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)

**List of Subjects in 40 CFR Part 63**

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Surface Coating of Metal Cans, Surface Coating of Metal Coil, Reporting and recordkeeping requirements, Appendix A.

Dated: December 20, 2019.

**Andrew R. Wheeler,**

*Administrator.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 63 as follows:

## PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

## Subpart A—General Provisions

■ 2. Section 63.14 is amended by revising paragraphs (h)(13), (21), (26), (29), (30), (78) and (79) to read as follows:

**§ 63.14 Incorporations by reference.**

* * * * *

(h) * * *

(13) ASTM D1475–13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, approved November 1, 2013, IBR approved for §§ 63.3521(c), 63.3531(c), 63.4141(b) and (c), 63.4741(b) and (c), 63.4751(c), 63.4941(b) and (c), and 63.5160(c).

* * * * *

(21) ASTM D2111–10 (Reapproved 2015), Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures, approved June 1, 2015, IBR approved for §§ 63.3531(c), 63.4141(b) and (c), 63.4741(a), and 63.5160(c).

* * * * *

(26) ASTM D2369–10 (Reapproved 2015)$^{e}$, Standard Test Method for Volatile Content of Coatings, approved June 1, 2015, IBR approved for §§ 63.3521(a), 63.3541(i), 63.4141(a) and (b), 63.4161(h), 63.4321(e), 63.4341(e), 63.4351(d), 63.4741(a), 63.4941(a) and (b), 63.4961(j), and 63.5160(b).

* * * * *

(29) ASTM D2697–86 (Reapproved 1998), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, IBR approved for §§ 63.3161(f), 63.3941(b), 63.4141(b), 63.4741(b), and 63.4941(b).

(30) ASTM D2697–03 (Reapproved 2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, approved July 1, 2014, IBR approved for §§ 63.3521(b), 63.4141(b), 63.4741(a) and (b), 63.4941(b), and 63.5160(c).

* * * * *

(78) ASTM D6093–97 (Reapproved 2003), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, IBR approved for §§ 63.3161 and 63.3941.

(79) ASTM D6093–97 (Reapproved 2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, Approved December 1, 2016, IBR approved for §§ 63.3521(b), 63.4141(b), 63.4741(a) and (b), 63.4941(b), and 63.5160(c).

* * * * *

## Subpart KKKK—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans

■ 3. Section 63.3481 is amended by revising paragraph (c)(5) to read as follows:

### § 63.3481 Am I subject to this subpart?

* * * * *

(c) * * *

(5) Surface coating of metal pails, buckets, and drums. Subpart MMMM of this part covers surface coating of all miscellaneous metal parts and products not explicitly covered by another subpart.

■ 4. Section 63.3492 is amended by revising paragraph (b) to read as follows:

### § 63.3492 What operating limits must I meet?

* * * * *

(b) For any controlled coating operation(s) on which you use the emission rate with add-on controls option or the control efficiency/outlet concentration option, except those for which you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.3541(i), you must meet the operating limits specified in Table 4 to this subpart. Those operating limits apply to the emission capture and control systems for the coating operation(s) used for purposes of complying with this subpart. You must establish the operating limits during the performance tests required in § 63.3540 or § 63.3550 according to the requirements in § 63.3546 or § 63.3556. You must meet the operating limits established during the most recent performance tests required in § 63.3540 or § 63.3550 at all times after they have been established during the performance test.

* * * * *

■ 5. Section 63.3500 is amended by revising paragraphs (a)(1), (b), and (c) to read as follows:

### § 63.3500 What are my general requirements for complying with this subpart?

(a) * * *

(1) Any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, as specified in § 63.3491(a) and (b), must be in compliance with the applicable emission limit in § 63.3490 at all times.

* * * * *

(b) Before August 24, 2020, you must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i). On and after August 24, 2020, at all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the affected source.

(c) Before August 24, 2020, if your affected source uses an emission capture system and add-on control device for purposes of complying with this subpart, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). The plan must address startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures. On and after August 24, 2020, the SSMP is not required.

■ 6. Section 63.3511 is amended by:

■ a. Revising paragraphs (a)(4), (a)(5) introductory text, (a)(5)(i), and (a)(5)(iv);

■ b. Adding paragraph (a)(5)(v);

■ c. Revising paragraph (a)(6) introductory text and (a)(6)(iii);

■ d. Adding paragraph (a)(6)(iv);

■ e. Revising paragraphs (a)(7) introductory text, (a)(7)(iii), (a)(7)(vi) through (viii), (a)(7)(x), and (a)(7)(xiii) and (xiv);

■ f. Adding paragraph (a)(7)(xv);

■ g. Revising paragraphs (a)(8) introductory text, (a)(8)(i), (a)(8)(iv) through (vi), (a)(8)(viii), and (a)(8)(xi) and (xii);

■ f. Adding paragraph (a)(8)(xiii);

■ g. Revising paragraph (c) introductory text; and

■ h. Adding paragraphs (d) through (h).

The revisions and additions read as follows:

### § 63.3511 What reports must I submit?

(a) * * *

(4) *No deviations.* If there were no deviations from the emission limits, operating limits, or work practice standards in §§ 63.3490, 63.3492, and 63.3493 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period. If you used the emission rate with add-on controls option or the control efficiency/outlet concentration option and there were no periods during which the continuous parameter monitoring systems (CPMS) were out of control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out of control during the reporting period.

(5) *Deviations: Compliant material option.* If you used the compliant material option and there was a deviation from the applicable emission limit in § 63.3490, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (v) of this section.

(i) Identification of each coating used that deviated from the emission limit, each thinner used that contained organic HAP, and the date, time, and duration each was used.

* * * * *

(iv) Before August 24, 2020, a statement of the cause of each deviation. On and after August 24, 2020, a statement of the cause of each deviation (including unknown cause, if applicable).

(v) On and after August 24, 2020, the number of deviations and, for each deviation, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.3490, a description of the method used to estimate the emissions, and the actions you took to minimize emissions in accordance with § 63.3500(b).

(6) *Deviations: Emission rate without add-on controls option.* If you used the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.3490, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iv) of this section.

* * * * *

(iii) Before August 24, 2020, a statement of the cause of each deviation. On and after August 24, 2020, a statement of the cause of each deviation (including unknown cause, if applicable).

(iv) On and after August 24, 2020, the number of deviations, date, time, duration, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.3490, a description of the method used to estimate the emissions, and the actions you took to minimize emissions in accordance with § 63.3500(b).

(7) *Deviations: Emission rate with add-on controls option.* If you used the emission rate with add-on controls option and there was a deviation from the applicable emission limit in § 63.3490 or the applicable operating limit(s) in Table 4 to this subpart (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), before August 24, 2020, the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiv) of this section. That includes periods of startup, shutdown, and malfunction during which deviations occurred. On and after August 24, 2020, the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xii), (a)(7)(xiv), and (a)(7)(xv) of this section. If you use the emission rate with add-on controls option and there was a deviation from the applicable work practice standards in § 63.3493(b), the semiannual compliance report must contain the information in paragraph (a)(7)(xiii) of this section.

* * * * *

(iii) The date and time that each malfunction of the capture system or add-on control devices started and stopped.

* * * * *

(vi) Before August 24, 2020, the date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks. On and after August 24, 2020, the number of instances that the CPMS was inoperative, and for each instance, except for zero (low-level) and high-level checks, the date, time, and duration that the CPMS was inoperative; the cause (including unknown cause) for the CPMS being inoperative; and the actions you took to minimize emissions in accordance with § 63.3500(b).

(vii) Before August 24, 2020, the date, time, and duration that each CPMS was out of control, including the information in § 63.8(c)(8). On and after August 24, 2020, the number of instances that the CPMS was out of control as specified in § 63.8(c)(7) and, for each instance, the date, time, and duration that the CPMS was out-of-control; the cause (including unknown cause) for the CPMS being out-of-control; and descriptions of corrective actions taken.

(viii) Before August 24, 2020, the date and time period of each deviation from an operating limit in Table 4 to this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period. On and after August 24, 2020, the number of deviations from an operating limit in Table 4 to this subpart and, for each deviation, the date, time, and duration of each deviation; the date, time, and duration of any bypass of the add-on control device.

* * * * *

(x) Before August 24, 2020, a breakdown of the total duration of the deviations from the operating limits in Table 4 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after August 24, 2020, a breakdown of the total duration of the deviations from the operating limits in Table 4 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(xiii) Before August 24, 2020, for each deviation from the work practice standards, a description of the deviation; the date, and time period of the deviation; and the actions you took to correct the deviation. On and after August 24, 2020, for deviations from the work practice standards, the number of deviations, and, for each deviation, the information in paragraphs (a)(7)(xiii)(A) and (B) of this section:

(A) A description of the deviation; the date, time, and duration of the deviation; and the actions you took to minimize emissions in accordance with § 63.3500(b).

(B) The description required in paragraph (a)(7)(xiii)(A) of this section must include a list of the affected sources or equipment for which a deviation occurred and the cause of the deviation (including unknown cause, if applicable.

(xiv) Before August 24, 2020, a statement of the cause of each deviation. On and after August 24, 2020, for deviations from an emission limit in § 63.3490 or an operating limit in Table 4 to this subpart, a statement of the cause of each deviation (including unknown cause, if applicable) and the actions you took to minimize emissions in accordance with § 63.3500(b).

(xv) On and after August 24, 2020, for each deviation from an emission limit in § 63.3490 or operating limit in Table 4 to this subpart, a list of the affected sources or equipment for which a deviation occurred, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.3490 or operating limit in Table 4 to this subpart, and a description of the method used to estimate the emissions.

(8) *Deviations: control efficiency/outlet concentration option.* If you used the control efficiency/outlet concentration option, and there was a deviation from the applicable emission limit in § 63.3490 or the applicable operating limit(s) in Table 4 to this subpart (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), before August 24, 2020, the semiannual compliance report must contain the information in paragraphs (a)(8)(i) through (xii) of this section. This includes periods of startup, shutdown, and malfunction during which deviations occurred. On and after August 24, 2020, the semiannual compliance report must specify the number of deviations during the compliance period and contain the

information in paragraphs (a)(8)(i) through (x), (xii), and (xiii) of this section. If you use the control efficiency/outlet concentration option and there was a deviation from the applicable work practice standards in § 63.3493(b), the semiannual compliance report must contain the information in paragraph (a)(8)(xi) of this section.

(i) The date and time that each malfunction of the capture system or add-on control devices started and stopped.

* * * * *

(iv) Before August 24, 2020, the date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks. On and after August 24, 2020, for each instance that the CPMS was inoperative, except for zero (low-level) and high-level checks, the date, time, and duration that the CPMS was inoperative; the cause (including unknown cause) for the CPMS being inoperative; and the actions you took to minimize emissions in accordance with § 63.3500(b).

(v) For each instance that the CPMS was out of control as specified in § 63.8(c)(7), the date, time, and duration that the CPMS was out of control; the cause (including unknown cause) for the CPMS being out of control; and the actions you took to minimize emissions in accordance with § 63.3500(b).

(vi) Before August 24, 2020, the date and time period of each deviation from an operating limit in Table 4 to this subpart; date and time of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period. On and after August 24, 2020, the date, time, and duration of each deviation from an operating limit in Table 4 to this subpart; and the date, time, and duration of any bypass of the add-on control device.

* * * * *

(viii) Before August 24, 2020, a breakdown of the total duration of the deviations from the operating limits in Table 4 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after August 24, 2020, a breakdown of the total duration of the deviations from the operating limits in Table 4 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(xi) Before August 24, 2020, for each deviation from the work practice standards, a description of the deviation; the date and time period of the deviation; and the actions you took to correct the deviation. On and after August 24, 2020, for deviations from the work practice standards in § 63.3493(b), the number of deviations, and, for each deviation, the information in paragraphs (a)(8)(xiii)(A) and (B) of this section:

(A) A description of the deviation; the date, time, and duration of the deviation; and the actions you took to minimize emissions in accordance with § 63.3500(b).

(B) The description required in paragraph (a)(8)(xi)(A) of this section must include a list of the affected sources or equipment for which a deviation occurred and the cause of the deviation (including unknown cause, if applicable).

(xii) Before August 24, 2020, a statement of the cause of each deviation. On and after August 24, 2020, for deviations from an emission limit in § 63.3490 or operating limit in Table 4 to this subpart, a statement of the cause of each deviation (including unknown cause, if applicable).

(xiii) On and after August 24, 2020, for each deviation from an emission limit in § 63.3490 or operating limit in Table 4 to this subpart, a list of the affected sources or equipment for which a deviation occurred, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.3490, and a description of the method used to estimate the emissions.

* * * * *

(c) *Startup, shutdown, malfunction reports.* Before August 24, 2020, if you used the emission rate with add-on controls option or the control efficiency/outlet concentration option and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section. On and after August 24, 2020, the reports specified in paragraphs (c)(1) and (2) of this section are not required.

* * * * *

(d) On and after August 24, 2020, you must submit the results of the performance test required in §§ 63.3540 and 63.3550 following the procedure specified in paragraphs (d)(1) through (3) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). The CEDRI interface can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test, you must submit the results of the performance test in portable document format (PDF) using the attachment module of the ERT.

(3) If you claim that some of the performance test information being submitted under paragraph (d)(1) of this section is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (c)(1) of this section.

(e) On and after August 24, 2020, the owner or operator shall submit the initial notifications required in § 63.9(b) and the notification of compliance status required in §§ 63.9(h) and 63.3510(c) to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov*). The owner or operator must upload to CEDRI an electronic copy of each applicable notification in PDF. The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the XML schema listed on the EPA's

CEDRI website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(f) On and after March 25, 2021, or once the reporting template has been available on the CEDRI website for 1 year, whichever date is later, the owner or operator shall submit the semiannual compliance report required in paragraph (a) of this section to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov*). The owner or operator must use the appropriate electronic template on the CEDRI website for this subpart (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*). The date report templates become available will be listed on the CEDRI website. If the reporting form for the semiannual compliance report specific to this subpart is not available in CEDRI at the time that the report is due, you must submit the report to the Administrator at the appropriate addresses listed in § 63.13. Once the form has been available in CEDRI for 1 year, you must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(g) If you are required to electronically submit a report through the CEDRI in the EPA's CDX, you may assert a claim of the EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of the EPA system outage, you must meet the requirements outlined in paragraphs (g)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of the EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(h) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (h)(1) through (5) of this section.

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

■ 7. Section 63.3512 is amended by revising paragraphs (i), (j) introductory text, and (j)(1) and (2) to read as follows:

**§ 63.3512 What records must I keep?**

* * * * *

(i) Before August 24, 2020, a record of the date, time, and duration of each deviation. On and after August 24, 2020, for each deviation from an emission limitation reported under § 63.3511(a)(5) through (8), a record of the information specified in paragraphs (i)(1) through (4) of this section, as applicable.

(1) The date, time, and duration of the deviation, as reported under § 63.3511(a)(5) through (8).

(2) A list of the affected sources or equipment for which the deviation occurred and the cause of the deviation, as reported under § 63.3511(a)(5) through (8).

(3) An estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.3490 or any applicable operating limit in Table 4 to this subpart, and a description of the method used to calculate the estimate, as reported under § 63.3511(a)(5) through (8).

(4) A record of actions taken to minimize emissions in accordance with § 63.3500(b) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(j) If you use the emission rate with add-on controls option or the control efficiency/outlet concentration option, you must also keep the records specified in paragraphs (j)(1) through (8) of this section.

(1) Before August 24, 2020, for each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction. On and after August 24, 2020, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction is not required.

(2) Before August 24, 2020, the records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction. On and after August 24, 2020, the records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction are not required.

* * * * *

■ 8. Section 63.3513 is amended by revising paragraph (a) to read as follows:

**§ 63.3513 In what form and for how long must I keep my records?**

(a) Your records must be kept in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database. On and after August 24, 2020, any records required to be maintained by this subpart that are in reports that were submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

* * * * *

■ 9. Section 63.3521 is amended by revising paragraphs (a)(1)(i), (a)(2), (a)(4), (b)(1), and (c) to read as follows:

**§ 63.3521 How do I demonstrate initial compliance with the emission limitations?**

* * * * *

(a) * * *

(1) * * *

(i) Count each organic HAP in Table 8 to this subpart that is measured to be present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in Table 8 to this subpart) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (*e.g.,* 0.3791).

* * * * *

(2) *Method 24 (appendix A to 40 CFR part 60).* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP. As an alternative to using Method 24, you may use ASTM D2369–10 (2015), ''Test Method for Volatile Content of Coatings'' (incorporated by reference, see § 63.14).

* * * * *

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP in Table 8 to this subpart that is present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in Table 8 to this subpart) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence unless, after consultation, a regulated source can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

* * * * *

(b) * * *

(1) *ASTM Method D2697–03 (2014) or D6093–97 (2016).* You may use ASTM D2697–*03* (2014), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' (incorporated by reference, *see* § 63.14) or ASTM D6093–97 (2016), ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer'' (incorporated by reference, *see* § 63.14), to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids. If these values cannot be determined using these methods, the owner/operator may submit an alternative technique for determining the values for approval by the Administrator.

* * * * *

(c) *Determine the density of each coating.* Determine the density of each coating used during the compliance period from test results using ASTM Method D1475–13 ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products'' (incorporated by reference, see § 63.14) or information from the supplier or manufacturer of the material. If there is disagreement between ASTM Method D1475–13 test results and the supplier's or manufacturer's information, the test results will take precedence.

* * * * *

■ 10. Section 63.3531 is amended by revising paragraph (c) to read as follows:

**§ 63.3531 How do I demonstrate initial compliance with the emission limitations?**

* * * * *

(c) *Determine the density of each material.* Determine the density of each coating and thinner used during each month from test results using ASTM D1475–13 or ASTM D2111–10 (2015) (both incorporated by reference, see § 63.14), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM D1475–13 or ASTM D2111–10 (2015) test results and such other information sources, the test results will take precedence.

* * * * *

■ 11. Section 63.3540 is amended by revising the section heading and paragraphs (a)(1), (a)(4), and (b)(1) to read as follows:

**§ 63.3540 By what date must I conduct performance tests and initial compliance demonstrations?**

(a) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3541(i), you must conduct according to the schedule in paragraphs (a)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to the procedures in §§ 63.3543, 63.3544, and 63.3545 and establish the operating limits required by § 63.3492. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3541(i), you must initiate the first material balance no later than the applicable compliance date specified in § 63.3483.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483.

(ii) If you are not required to complete periodic performance tests as a requirement of renewing your facility's

operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the first periodic performance test before March 25, 2023, unless you already have conducted a performance test on or after March 25, 2018. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. If you are required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the periodic testing in accordance with the terms and schedule required by your permit conditions.

* * * * *

(4) For the initial compliance demonstration, you do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3492 until after you have completed the initial performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits established based on the initial performance tests specified in paragraph (a)(1) of this section for your affected source on the date you complete the performance tests. The requirements in this paragraph (a)(4) do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements in § 63.3541(i).

(b) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3541(i), you must conduct according to the schedule in paragraphs (b)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to the procedures in §§ 63.3543, 63.3544, and 63.3545 and establish the operating limits required by § 63.3492. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3541(i), you must initiate the first material balance no later than the compliance date specified in § 63.3483.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483.

(ii) If you are not required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the first periodic performance test before March 25, 2023, unless you already have conducted a performance test on or after March 25, 2018. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. If you are required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the periodic testing in accordance with the terms and schedule required by your permit conditions.

* * * * *

■ 12. Section 63.3541 is amended by revising paragraphs (h) introductory text and (i)(3) to read as follows:

**§ 63.3541 How do I demonstrate initial compliance?**

* * * * *

(h) *Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balances.* For each controlled coating operation using an emission capture system and add-on control device, other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction, using Equation 1 of this section. The calculation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings and thinners that are used in the coating operation served by the emission capture system and add-on control device during each month. For any period of time a deviation specified in § 63.3542(c) or (d) occurs in the controlled coating operation, you must assume zero efficiency for the emission capture system and add-on control device, unless you have other data indicating the actual efficiency of the emission capture system and add-on control device, and the use of these data has been approved by the Administrator. Equation 1 of this section treats the materials used during such a deviation as if they were used on an uncontrolled coating operation for the time period of the deviation.

* * * * *

(i) * * *

(3) Determine the mass fraction of volatile organic matter for each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, in kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, ASTM D2369–10 (2015), ''Test Method for Volatile Content of Coatings'' (incorporated by reference, see § 63.14), or an EPA approved alternative method. Alternatively, you may determine the volatile organic matter mass fraction using information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, ASTM D2369–10 (2015) or an approved alternative method, the test method results will take precedence unless, after consultation, a regulated source can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

* * * * *

■ 13. Section 63.3542 is amended by revising paragraphs (f) and (h) to read as follows:

**§ 63.3542 How do I demonstrate continuous compliance with the emission limitations?**

* * * * *

(f) As part of each semiannual compliance report required in § 63.3511, you must identify the coating operation(s) for which you used the emission rate with add-on controls option. If there were no deviations from the emission limits in § 63.3490, the operating limits in § 63.3492, and the work practice standards in § 63.3493, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3490, and you achieved the operating limits required by § 63.3492 and the work practice standards required by § 63.3493 during each compliance period.

* * * * *

(h) Before August 24, 2020, consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may

affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e). On and after August 24, 2020, deviations that occur due to malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are required to operate in accordance with § 63.3500(b). The Administrator will determine whether the deviations are violations according to the provisions in § 63.3500(b).

* * * * *

■ 14. Section 63.3543 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

**§ 63.3543 What are the general requirements for performance tests?**

(a) Before August 24, 2020, you must conduct each performance test required by § 63.3540 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h). On and after August 24, 2020, you must conduct each performance test required by § 63.3540 according to the requirements in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 15. Section 63.3544 is amended by revising the introductory text to read as follows:

**§ 63.3544 How do I determine the emission capture system efficiency?**

You must use the procedures and test methods in this section to determine capture efficiency as part of each performance test required by § 63.3540.

* * * * *

■ 16. Section 63.3545 is amended by revising the introductory text, paragraph (b) introductory text, and paragraphs (b)(1) through (4) to read as follows:

**§ 63.3545 How do I determine the add-on control device emission destruction or removal efficiency?**

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance tests required by § 63.3540. For each performance test, you must conduct three test runs as specified in § 63.7(e)(3) and each test run must last at least 1 hour.

* * * * *

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously using either Method 25 or 25A of appendix A–7 to 40 CFR part 60 as specified in paragraphs (b)(1) through (5) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 of appendix A–7 to 40 CFR part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 ppm at the control device outlet.

(2) Use Method 25A of appendix A–7 to 40 CFR part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A of appendix A–7 to 40 CFR part 60 if the add-control device is not an oxidizer.

(4) You may use Method 18 of appendix A–6 to 40 CFR part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

* * * * *

■ 17. Section 63.3546 is amended by revising the introductory text and paragraphs (a)(1) and (2), (b)(1) through (3), (d)(1), (e)(1) and (2), (f)(1) through (3), and (f)(5) and (6) to read as follows:

**§ 63.3546 How do I establish the emission capture system and add-on control device operating limits during the performance test?**

During performance tests required by § 63.3540 and described in §§ 63.3543, 63.3544, and 63.3545, you must establish the operating limits required by § 63.3492 unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3492.

(a) * * *

(1) During performance tests, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. That average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) * * *

(1) During performance tests, you must monitor and record the temperature at the inlet to the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature at the inlet to the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. The average temperature difference is the minimum operating limit for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During performance tests, you must monitor and record the temperature at the inlet to the catalyst bed at least once every 15 minutes during each of the three test runs. For each performance test, use the data collected during the performance test to calculate and record the average temperature at the inlet to the catalyst bed during the performance test. That is the minimum operating limit for your catalytic oxidizer.

* * * * *

(d) * * *

(1) During performance tests, you must monitor and record the total regeneration desorbing gas (*e.g.,* steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

* * * * *

(e) * * *

(1) During performance tests, monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs of the performance test.

(2) For each performance test, use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(f) * * *

(1) During performance tests, monitor and record the inlet temperature to the desorption/reactivation zone of the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption/reactivation zone inlet temperature.

(3) During each performance test, monitor and record an indicator(s) of performance for the desorption/reactivation fan operation at least once every 15 minutes during each of the three runs of the performance test. The indicator can be speed in revolutions per minute (rpm), power in amps, static pressure, or flow rate.

* * * * *

(5) During each performance test, monitor the rotational speed of the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(6) For each performance test, use the data collected during the performance test to calculate and record the average rotational speed. This is the minimum operating limit for the rotational speed of the concentrator. However, the indicator range for the rotational speed may be changed if an engineering evaluation is conducted and a determination made that the change in speed will not affect compliance with the emission limit.

* * * * *

■ 18. Section 63.3547 is amended by revising paragraphs (a)(4) and (5), (a)(7), and (c)(3) introductory text to read as follows:

**§ 63.3547 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?**

(a) * * *

(4) Before August 24, 2020, you must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment. On and after August 24, 2020, you must maintain the CPMS at all times in accordance with § 63.3500(b) and keep necessary parts readily available for routine repairs of the monitoring equipment.

(5) Before August 24, 2020, you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments). On and after August 24, 2020, you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times in accordance with § 63.3500(b).

* * * * *

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused, in part, by poor maintenance or careless operation are not malfunctions. Before August 24, 2020, any period for which the monitoring system is out of control and data are not available for required calculations is a deviation from the monitoring requirements. On and after August 24, 2020, except for periods of required quality assurance or control activities, any period for which the CPMS fails to operate and record data continuously as required by paragraph (a)(5) of this section, or generates data that cannot be included in calculating averages as specified in (a)(6) of this section constitutes a deviation from the monitoring requirements.

* * * * *

(c) * * *

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (ii) of this section for each gas temperature monitoring device. For the purposes of this paragraph (c)(3), a thermocouple is part of the temperature sensor.

* * * * *

■ 19. Section 63.3550 is amended by revising the section heading and paragraphs (a)(1), (a)(4), and (b)(1) to read as follows:

**§ 63.3550 By what date must I conduct performance tests and initial compliance demonstrations?**

(a) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. You must conduct according to the schedule in paragraphs (a)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to §§ 63.3553, 63.3554, and 63.3555 and establish the operating limits required by § 63.3492.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483.

(ii) If you are not required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the first periodic performance test before March 25, 2023, unless you already have conducted a performance test on or after March 25, 2018. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. If you are required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the periodic testing in accordance with the terms and schedule required by your permit conditions.

* * * * *

(4) For the initial compliance demonstration, you do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3492 until after you have completed the initial performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits established based on the initial performance tests specified in paragraph (a)(1) of this section on the date you complete the performance tests.

(b) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3541(i), you must conduct

according to the schedule in paragraphs (a)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to the procedures in §§ 63.3543, 63.3544, and 63.3545 and establish the operating limits required by § 63.3492.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483.

(ii) If you are not required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the first periodic performance test before March 25, 2023, unless you already have conducted a performance test on or after March 25, 2018. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. If you are required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the periodic testing in accordance with the terms and schedule required by your permit conditions.

* * * * *

■ 20. Section 63.3552 is amended by revising paragraph (g) to read as follows:

**§ 63.3552 How do I demonstrate continuous compliance with the emission limitations?**

* * * * *

(g) Before August 24, 2020, consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e). On and after August 24, 2020 deviations that occur due to malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are required to operate in accordance with § 63.3500(b). The Administrator will determine whether the deviations are violations according to the provisions in § 63.3500(b).

* * * * *

■ 21. Section 63.3553 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

**§ 63.3553 What are the general requirements for performance tests?**

(a) Before August 24, 2020, you must conduct each performance test required by § 63.3550 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h). On and after August 24, 2020, you must conduct each performance test required by § 63.3550 according to the requirements in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation(s). Operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 22. Section 63.3555 is amended by revising the introductory text, paragraph (b) introductory text, and paragraphs (b)(1) through (4) to read as follows:

**§ 63.3555 How do I determine the outlet THC emissions and add-on control device emission destruction or removal efficiency?**

You must use the procedures and test methods in this section to determine either the outlet THC emissions or add-on control device emission destruction or removal efficiency as part of the performance tests required by § 63.3550. You must conduct three test runs as specified in § 63.7(e)(3), and each test run must last at least 1 hour.

* * * * *

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously using either Method 25 or 25A of appendix A–7 to 40 CFR part 60 as specified in paragraphs (b)(1) through (3) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 of appendix A–7 to 40 CFR part 60 if the add-on control device is an oxidizer, and you expect the total gaseous organic concentration as carbon to be more than 50 ppm at the control device outlet.

(2) Use Method 25A of appendix A–7 to 40 CFR part 60 if the add-on control device is an oxidizer, and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A of appendix A–7 to 40 CFR part 60 if the add-on control device is not an oxidizer.

(4) You may use Method 18 of appendix A–6 to 40 CFR part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

* * * * *

■ 23. Section 63.3556 is amended by revising the introductory text and paragraphs (a)(1) and (2), (b)(1) through (3), (d)(1), (e)(1) and (2), (f)(1) through (3), and (f)(5) and (6) to read as follows:

**§ 63.3556 How do I establish the emission capture system and add-on control device operating limits during the performance test?**

During the performance tests required by § 63.3550 and described in §§ 63.3553, 63.3554, and 63.3555, you must establish the operating limits required by § 63.3492 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3492.

(a) * * *

(1) During performance tests, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. That average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) * * *

(1) During performance tests, you must monitor and record the temperature at the inlet to the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature at the inlet to the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. The average temperature difference is the minimum operating limit for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During performance tests, you must monitor and record the temperature at the inlet to the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during each performance test to calculate and record the average temperature at the inlet to the catalyst bed during the performance test. That is the minimum operating limit for your catalytic oxidizer.

* * * * *

(d) * * *

(1) You must monitor and record the total regeneration desorbing gas (*e.g.,* steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following performance tests.

* * * * *

(e) * * *

(1) During performance tests, monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(f) * * *

(1) During performance tests, monitor and record the inlet temperature to the desorption/reactivation zone of the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption/reactivation zone inlet temperature.

(3) During performance tests, monitor and record an indicator(s) of performance for the desorption/reactivation fan operation at least once every 15 minutes during each of the three runs of the performance test. The indicator can be speed in rpm, power in amps, static pressure, or flow rate.

* * * * *

(5) During performance tests, monitor the rotational speed of the concentrator at least once every 15 minutes during each of the three runs of a performance test.

(6) For each performance test, use the data collected during the performance test to calculate and record the average rotational speed. This is the minimum operating limit for the rotational speed of the concentrator. However, the indicator range for the rotational speed may be changed if an engineering evaluation is conducted and a determination made that the change in speed will not affect compliance with the emission limit.

* * * * *

■ 24. Section 63.3557 is amended by revising paragraphs (a)(4) and (5), (a)(7), and (c)(3) introductory text to read as follows:

**§ 63.3557 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?**

(a) * * *

(4) You must maintain the CPMS at all times in accordance with § 63.3500(b) and have readily available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times in accordance with § 63.3500(b) that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

* * * * *

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused, in part, by poor maintenance or careless operation are not malfunctions. Before August 24, 2020, any period for which the monitoring system is out of control and data are not available for required calculations is a deviation from the monitoring requirements. On and after August 24, 2020, except for periods of required quality assurance or control activities, any period for which the CPMS fails to operate and record data continuously as required by paragraph (a)(5) of this section, or generates data that cannot be included in calculating averages as specified in (a)(6) of this section constitutes a deviation from the monitoring requirements.

* * * * *

(c) * * *

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (ii) of this section for each gas temperature monitoring device. For the purposes of this paragraph (c)(3), a thermocouple is part of the temperature sensor.

* * * * *

■ 25. Section 63.3561 is amended by removing the definition for ''*Deviation*'' and adding definitions for ''*Deviation,* before'' and ''*Deviation,* on and after'' in alphabetical order to read as follows:

**§ 63.3561 What definitions apply to this subpart?**

* * * * *

*Deviation,* before August 24, 2020, means any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including but not limited to any emission limit, operating limit, or work practice standard; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction regardless of whether or not such failure is permitted by this subpart.

*Deviation,* on and after August 24, 2020, means any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including but not limited to any emission limit, operating limit, or work practice standard; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

* * * * *

■ 26. Table 5 to subpart KKKK of part 63 is revised to read as follows:

TABLE 5 TO SUBPART KKKK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK

You must comply with the applicable General Provisions requirements according to the following table:

| Citation | Subject | Applicable to subpart KKKK | Explanation |
|---|---|---|---|
| § 63.1(a)(1)–(4) | General Applicability | Yes. | |
| § 63.1(a)(6) | Source Category Listing | Yes. | |
| § 63.1(a)(10)–(12) | Timing and Overlap Clarifications | Yes. | |
| § 63.1(b)(1) | Initial Applicability Determination | Yes | Applicability to subpart KKKK is also specified in § 63.3481. |
| § 63.1(b)(3) | Applicability Determination Recordkeeping. | Yes. | |
| § 63.1(c)(1) | Applicability after Standard Established. | Yes. | |
| § 63.1(c)(2) | Applicability of Permit Program for Area Sources. | No | Area sources are not subject to subpart KKKK. |
| § 63.1(c)(5) | Extensions and Notifications | Yes. | |
| § 63.1(e) | Applicability of Permit Program before Relevant Standard is Set. | Yes. | |
| § 63.2 | Definitions | Yes | Additional definitions are specified in § 63.3561. |
| § 63.3 | Units and Abbreviations | Yes. | |
| § 63.4(a)(1)–(2) | Prohibited Activities | Yes. | |
| § 63.4(b)–(c) | Circumvention/Fragmentation | Yes. | |
| § 63.5(a) | Construction/Reconstruction | Yes. | |
| § 63.5(b)(1), (3), (4), (6) | Requirements for Existing, Newly Constructed, and Reconstructed Sources. | Yes. | |
| § 63.5(d)(1)(i)–(ii)(F), (d)(1)(ii)(H), (d)(1)(ii)(J), (d)(1)(iii), (d)(2)–(4). | Application for Approval of Construction/Reconstruction. | Yes. | |
| § 63.5(e) | Approval of Construction/Reconstruction. | Yes. | |
| § 63.5(f) | Approval of Construction/Reconstruction Based on Prior State Review. | Yes. | |
| § 63.6(a) | Compliance with Standards and Maintenance Requirements—Applicability. | Yes. | |
| § 63.6(b)(1)–(5), (b)(7) | Compliance Dates for New and Reconstructed Sources. | Yes | Section 63.3483 specifies the compliance dates. |
| § 63.6(c)(1), (2), (5) | Compliance Dates for Existing Sources. | Yes | Section 63.3483 specifies the compliance dates. |
| § 63.6(e)(1)(i)–(ii) | Operation and Maintenance | Yes before August 24, 2020, No on and after August 24, 2020. | See § 63.3500(b) for general duty requirement. |
| § 63.6(e)(1)(iii) | Operation and Maintenance | Yes. | |
| § 63.6(e)(3)(i), (e)(3)(iii)–(ix) | SSMP | Yes before August 24, 2020, No on and after August 24, 2020. | |
| § 63.6(f)(1) | Compliance Except during Start-up, Shutdown, and Malfunction. | Yes before August 24, 2020, No on and after August 24, 2020. | |
| § 63.6(f)(2)–(3) | Methods for Determining Compliance. | Yes. | |
| § 63.6(g) | Use of an Alternative Standard | Yes. | |
| § 63.6(h) | Compliance with Opacity/Visible Emission Standards. | No | Subpart KKKK does not establish opacity standards and does not require continuous opacity monitoring systems (COMS). |
| § 63.6(i)(1)–(14) | Extension of Compliance | Yes. | |
| § 63.6(i)(16) | Compliance Extensions and Administrator's Authority. | Yes. | |
| § 63.6(j) | Presidential Compliance Exemption. | Yes. | |
| § 63.7(a)(1) | Performance Test Requirements—Applicability. | Yes | Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.3543, 63.3544, 63.3545, 63.3554, and 63.3555. |
| § 63.7(a)(2) except (a)(2)(i)–(viii) | Performance Test Requirements—Dates. | Yes | Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standards. Sections 63.3540 and 63.3550 specify the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2). |

TABLE 5 TO SUBPART KKKK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK—Continued

You must comply with the applicable General Provisions requirements according to the following table:

| Citation | Subject | Applicable to subpart KKKK | Explanation |
|---|---|---|---|
| § 63.7(a)(3) | Performance Tests Required by the Administrator. | Yes. | |
| § 63.7(b)–(d) | Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test. | Yes | Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards. |
| § 63.7(e)(1) | Conduct of Performance Tests | Yes before August 24, 2020, No on and after August 24, 2020. | See §§ 63.3543 and 63.3553. |
| § 63.7(e)(2)–(4) | Conduct of Performance Tests | Yes. | |
| § 63.7(f) | Performance Test Requirements—Use of Alternative Test Method. | Yes | Applies to all test methods except those used to determine capture system efficiency. |
| § 63.7(g)–(h) | Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test. | Yes | Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards. |
| § 63.8(a)(1)–(2) | Monitoring Requirements—Applicability. | Yes | Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for monitoring are specified in §§ 63.3547 and 63.3557. |
| § 63.8(a)(4) | Additional Monitoring Requirements. | No | Subpart KKKK does not have monitoring requirements for flares. |
| § 63.8(b) | Conduct of Monitoring | Yes. | |
| § 63.8(c)(1) | Continuous Monitoring System (CMS) Operation and Maintenance. | Yes before August 24, 2020, No on and after August 24, 2020. | Sections 63.3547 and 63.3557 specify the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply. |
| § 63.8(c)(2)–(3) | CMS Operation and Maintenance | Yes | Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for CMS operations and maintenance are specified in §§ 63.3547 and 63.3557. |
| § 63.8(c)(4) | CMS | No | Sections 63.3547 and 63.3557 specify the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply. |
| § 63.8(c)(5) | COMS | No | Subpart KKKK does not have opacity or visible emission standards. |
| § 63.8(c)(6) | CMS Requirements | No | Sections 63.3547 and 63.3557 specify the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply. |
| § 63.8(c)(7) | CMS Out-of-Control Periods | Yes. | |
| § 63.8(c)(8) | CMS Out-of-Control Periods Reporting. | No | Section 63.3511 requires reporting of CMS out of control periods. |
| § 63.8(d)–(e) | Quality Control Program and CMS Performance Evaluation. | No. | |
| § 63.8(f)(1)–(5) | Use of an Alternative Monitoring Method. | Yes. | |
| § 63.8(f)(6) | Alternative to Relative Accuracy Test. | No | Section 63.8(f)(6) provisions are not applicable because subpart KKKK does not require CEMS. |

TABLE 5 TO SUBPART KKKK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK—Continued

You must comply with the applicable General Provisions requirements according to the following table:

| Citation | Subject | Applicable to subpart KKKK | Explanation |
|---|---|---|---|
| § 63.8(g) | Data Reduction | No | Sections 63.3542, 63.3547, 63.3552 and 63.3557 specify monitoring data reduction. |
| § 63.9(a) | Notification Applicability | Yes. | |
| § 63.9(b)(1)–(2) | Initial Notifications | Yes. | |
| § 63.9(b)(4)(i), (b)(4)(v), (b)(5) | Application for Approval of Construction or Reconstruction. | Yes. | |
| § 63.9(c) | Request for Extension of Compliance. | Yes. | |
| § 63.9(d) | Special Compliance Requirement Notification. | Yes. | |
| § 63.9(e) | Notification of Performance Test | Yes | Applies only to capture system and add-on control device performance tests at sources using these to comply with the standards. |
| § 63.9(f) | Notification of Visible Emissions/Opacity Test. | No | Subpart KKKK does not have opacity or visible emission standards. |
| § 63.9(g) | Additional Notifications When Using CMS. | No. | |
| § 63.9(h)(1)–(3) | Notification of Compliance Status | Yes | Section 63.3510 specifies the dates for submitting the notification of compliance status. |
| § 63.9(h)(5)–(6) | Clarifications | Yes. | |
| § 63.9(i) | Adjustment of Submittal Deadlines. | Yes. | |
| § 63.9(j) | Change in Previous Information | Yes. | |
| § 63.10(a) | Recordkeeping/Reporting—Applicability and General Information. | Yes. | |
| § 63.10(b)(1) | General Recordkeeping Requirements. | Yes | Additional requirements are specified in §§ 63.3512 and 63.3513. |
| § 63.10(b)(2)(i)–(ii) | Recordkeeping of Occurrence and Duration of Startups and Shutdowns and of Failures to Meet Standards. | Yes before August 24, 2020, No on and after August 24, 2020. | See § 63.3512(i). |
| § 63.10(b)(2)(iii) | Recordkeeping Relevant to Maintenance of Air Pollution Control and Monitoring Equipment. | Yes. | |
| § 63.10(b)(2)(iv)–(v) | Actions Taken to Minimize Emissions During Startup, Shutdown, and Malfunction. | Yes before August 24, 2020, No on and after August 24, 2020. | See § 63.3512(i)(4) for a record of actions taken to minimize emissions duration a deviation from the standard. |
| § 63.10(b)(2)(vi) | Recordkeeping for CMS Malfunctions. | Yes before August 24, 2020, No on and after August 24, 2020. | See § 63.3512(i) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control. |
| § 63.10(b)(2) (vii)–(xii) | Records | Yes. | |
| § 63.10(b)(2) (xiii) | | No. | |
| § 63.10(b)(2) (xiv) | | Yes. | |
| § 63.10(b)(3) | Recordkeeping Requirements for Applicability Determinations. | Yes. | |
| § 63.10(c)(1) | Additional Recordkeeping Requirements for Sources with CMS. | Yes. | |
| § 63.10(c)(5)–(6) | | Yes. | |
| § 63.10(c)(7)–(8) | Additional Recordkeeping Requirements for Sources with CMS. | No | See § 63.3512(i) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control. |
| § 63.10(c)(10)–(14) | Additional Recordkeeping Requirements for Sources with CMS. | Yes. | |
| § 63.10(c)(15) | Records Regarding the Startup, Shutdown, and Malfunction Plan. | Yes before August 24, 2020, No on and after August 24, 2020. | |
| § 63.10(d)(1) | General Reporting Requirements | Yes | Additional requirements are specified in § 63.3511. |

TABLE 5 TO SUBPART KKKK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK—Continued

You must comply with the applicable General Provisions requirements according to the following table:

| Citation | Subject | Applicable to subpart KKKK | Explanation |
|---|---|---|---|
| § 63.10(d)(2) | Report of Performance Test Results. | Yes | Additional requirements are specified in § 63.3511(b). |
| § 63.10(d)(3) | Reporting Opacity or Visible Emissions Observations. | No | Subpart KKKK does not require opacity or visible emissions observations. |
| § 63.10(d)(4) | Progress Reports for Sources with Compliance Extensions. | Yes. | |
| § 63.10(d)(5) | Startup, Shutdown, Malfunction Reports. | Yes before August 24, 2020, No on and after August 24, 2020. | See § 63.3511(a)(7) and (8). |
| § 63.10(e)(1)–(2) | Additional CMS Reports | No. | |
| § 63.10(e)(3) | Excess Emissions/CMS Performance Reports. | No | Section 63.3511(b) specifies the contents of periodic compliance reports. |
| § 63.10(e)(4) | COMS Data Reports | No | Subpart KKKK does not specify requirements for opacity or COMS. |
| § 63.10(f) | Recordkeeping/Reporting Waiver | Yes. | |
| § 63.11 | Control Device Requirements/Flares. | No | Subpart KKKK does not specify use of flares for compliance. |
| § 63.12 | State Authority and Delegations | Yes. | |
| § 63.13(a) | Addresses | Yes before August 24, 2020, No on and after August 24, 2020. | |
| § 63.13(b) | Submittal to State Agencies | Yes. | |
| § 63.13(c) | Submittal to State Agencies | Yes before August 24, 2020, No unless the state requires the submittal via CEDRI, on and after August 24, 2020. | |
| § 63.14 | Incorporation by Reference | Yes. | |
| § 63.15 | Availability of Information/Confidentiality. | Yes. | |

■ 27. Table 8 to subpart KKKK of part 63 is added to read as follows:

TABLE 8 TO SUBPART KKKK OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

| Chemical name | CAS No. |
|---|---|
| 1,1,2,2-Tetrachloroethane | 79–34–5 |
| 1,1,2-Trichloroethane | 79–00–5 |
| 1,1-Dimethylhydrazine | 57–14–7 |
| 1,2-Dibromo-3-chloropropane | 96–12–8 |
| 1,2-Diphenylhydrazine | 122–66–7 |
| 1,3-Butadiene | 106–99–0 |
| 1,3-Dichloropropene | 542–75–6 |
| 1,4-Dioxane | 123–91–1 |
| 2,4,6-Trichlorophenol | 88–06–2 |
| 2,4/2,6-Dinitrotoluene (mixture) | 25321–14–6 |
| 2,4-Dinitrotoluene | 121–14–2 |
| 2,4-Toluene diamine | 95–80–7 |
| 2-Nitropropane | 79–46–9 |
| 3,3′-Dichlorobenzidine | 91–94–1 |
| 3,3′-Dimethoxybenzidine | 119–90–4 |
| 3,3′-Dimethylbenzidine | 119–93–7 |
| 4,4′-Methylene bis(2-chloroaniline) | 101–14–4 |
| Acetaldehyde | 75–07–0 |
| Acrylamide | 79–06–1 |
| Acrylonitrile | 107–13–1 |
| Allyl chloride | 107–05–1 |
| alpha-Hexachlorocyclohexane (a-HCH) | 319–84–6 |
| Aniline | 62–53–3 |
| Benzene | 71–43–2 |
| Benzidine | 92–87–5 |
| Benzotrichloride | 98–07–7 |
| Benzyl chloride | 100–44–7 |
| beta-Hexachlorocyclohexane (b-HCH) | 319–85–7 |
| Bis(2-ethylhexyl)phthalate | 117–81–7 |

TABLE 8 TO SUBPART KKKK OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

| Chemical name | CAS No. |
|---|---|
| Bis(chloromethyl)ether | 542–88–1 |
| Bromoform | 75–25–2 |
| Captan | 133–06–2 |
| Carbon tetrachloride | 56–23–5 |
| Chlordane | 57–74–9 |
| Chlorobenzilate | 510–15–6 |
| Chloroform | 67–66–3 |
| Chloroprene | 126–99–8 |
| Cresols (mixed) | 1319–77–3 |
| DDE | 3547–04–4 |
| Dichloroethyl ether | 111–44–4 |
| Dichlorvos | 62–73–7 |
| Epichlorohydrin | 106–89–8 |
| Ethyl acrylate | 140–88–5 |
| Ethylene dibromide | 106–93–4 |
| Ethylene dichloride | 107–06–2 |
| Ethylene oxide | 75–21–8 |
| Ethylene thiourea | 96–45–7 |
| Ethylidene dichloride (1,1-Dichloroethane) | 75–34–3 |
| Formaldehyde | 50–00–0 |
| Heptachlor | 76–44–8 |
| Hexachlorobenzene | 118–74–1 |
| Hexachlorobutadiene | 87–68–3 |
| Hexachloroethane | 67–72–1 |
| Hydrazine | 302–01–2 |
| Isophorone | 78–59–1 |
| Lindane (hexachlorocyclohexane, all isomers) | 58–89–9 |
| m-Cresol | 108–39–4 |
| Methylene chloride | 75–09–2 |
| Naphthalene | 91–20–3 |
| Nitrobenzene | 98–95–3 |
| Nitrosodimethylamine | 62–75–9 |
| o-Cresol | 95–48–7 |
| o-Toluidine | 95–53–4 |
| Parathion | 56–38–2 |
| p-Cresol | 106–44–5 |
| p-Dichlorobenzene | 106–46–7 |
| Pentachloronitrobenzene | 82–68–8 |
| Pentachlorophenol | 87–86–5 |
| Propoxur | 114–26–1 |
| Propylene dichloride | 78–87–5 |
| Propylene oxide | 75–56–9 |
| Quinoline | 91–22–5 |
| Tetrachloroethene | 127–18–4 |
| Toxaphene | 8001–35–2 |
| Trichloroethylene | 79–01–6 |
| Trifluralin | 1582–09–8 |
| Vinyl bromide | 593–60–2 |
| Vinyl chloride | 75–01–4 |
| Vinylidene chloride | 75–35–4 |

## Subpart SSSS—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil

■ 28. Section 63.5090 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

### § 63.5090 Does this subpart apply to me?

(a) The provisions of this subpart apply to each facility that is a major source of HAP, as defined in § 63.2, at which a coil coating line is operated, except as provided in paragraphs (b) and (e) of this section.

* * * * *

(e) This subpart does not apply to the application of incidental markings (including letters, numbers, or symbols) that are added to bare metal coils and that are used for only product identification or for product inventory control. The application of letters, numbers, or symbols to a coated metal coil is considered a coil coating process and part of the coil coating affected source.

■ 29. Section 63.5110 is amended by removing the definition for ''*Deviation*'' and adding definitions for ''*Deviation,* before'' and ''*Deviation,* on and after'' in alphabetical order to read as follows:

### § 63.5110 What special definitions are used in this subpart?

* * * * *

*Deviation,* before August 24, 2020, means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any

emission limitation (including any operating limit) or work practice standard; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during start-up, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

*Deviation,* on and after August 24, 2020, means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

* * * * *

■ 30. Section 63.5121 is amended by revising paragraph (a) to read as follows:

**§ 63.5121 What operating limits must I meet?**

(a) Except as provided in paragraph (b) of this section, for any coil coating line for which you use an add-on control device, unless you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.5170(e)(1), you must meet the applicable operating limits specified in Table 1 to this subpart. You must establish the operating limits during performance tests according to the requirements in § 63.5160(d)(3) and Table 1 to § 63.5160. You must meet the operating limits established during the most recent performance test required in § 63.5160 at all times after you establish them.

* * * * *

■ 31. Section 63.5130 is amended by revising paragraph (a) to read as follows:

**§ 63.5130 When must I comply?**

(a) For an existing affected source, the compliance date is June 10, 2005.

* * * * *

■ 32. Section 63.5140 is amended by:

■ a. Revising paragraph (a);

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

■ c. Adding paragraph (b).

The revision and addition read as follows:

**§ 63.5140 What general requirements must I meet to comply with the standards?**

(a) Before August 24, 2020, you must be in compliance with the applicable emission standards in § 63.5120 and the operating limits in Table 1 to this subpart at all times, except during periods of start-up, shutdown, and malfunction of any capture system and control device used to comply with this subpart. On and after August 24, 2020 you must be in compliance with the applicable emission standards in § 63.5120 and the operating limits in Table 1 to this subpart at all times. If you are complying with the emission standards of this subpart without the use of a capture system and control device, you must be in compliance with the standards at all times.

(b) Before August 24, 2020, you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1). On and after August 24, 2020, at all times, you must operate and maintain your affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the affected source.

* * * * *

■ 33. Section 63.5150 is amended by revising paragraph (a) introductory text, paragraph (a)(4)(i), and paragraph (b) to read as follows:

**§ 63.5150 If I use a control device to comply with the emission standards, what monitoring must I do?**

* * * * *

(a) To demonstrate continuing compliance with the standards, you must monitor and inspect each capture system and each control device required to comply with § 63.5120 following the date on which the initial performance test of the capture system and control device is completed. You must install and operate the monitoring equipment as specified in paragraphs (a)(1) through (4) of this section. On and after August 24, 2020, you must also maintain the monitoring equipment at all times in accordance with § 63.5140(b) and keep the necessary parts readily available for routine repairs of the monitoring equipment.

* * * * *

(4) * * *

(i) The monitoring plan must identify the operating parameter to be monitored to ensure that the capture efficiency measured during compliance tests is maintained, explain why this parameter is appropriate for demonstrating ongoing compliance, and identify the specific monitoring procedures.

* * * * *

(b) If an operating parameter monitored in accordance with paragraphs (a)(3) and (4) of this section is out of the allowed range specified in Table 1 to this subpart it will be considered a deviation from the operating limit.

■ 34. Section 63.5160 is amended by revising Table 1 and paragraphs (b)(1)(i), (b)(2), (b)(4), (c), (d) introductory text, (d)(1) introductory text, (d)(1)(vi) introductory text, (d)(1)(vii), (d)(2), (d)(3) introductory text, (d)(3)(i)(A), (d)(3)(ii)(D) introductory text, and (e) introductory text to read as follows:

**§ 63.5160 What performance tests must I complete?**

TABLE 1 TO § 63.5160—REQUIRED PERFORMANCE TESTING SUMMARY

| If you control HAP on your coil coating line by: | You must: |
|---|---|
| 1. Limiting HAP or Volatile matter content of coatings. | Determine the HAP or volatile matter and solids content of coating materials according to the procedures in § 63.5160(b) and (c). |

TABLE 1 TO § 63.5160—REQUIRED PERFORMANCE TESTING SUMMARY—Continued

| If you control HAP on your coil coating line by: | You must: |
|---|---|
| 2. Using a capture system and add-on control device. | Except as specified in paragraph (a) of this section, conduct an initial performance test within 180 days of the applicable compliance date in § 63.5130, and conduct periodic performance tests within 5 years following the previous performance test, as follows: If you are not required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the first periodic performance test before March 25, 2023, unless you already have conducted a performance test on or after March 25, 2018; thereafter, you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. If you are required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, you must conduct the periodic testing in accordance with the terms and schedule required by your permit conditions. For each performance test: (1) For each capture and control system, determine the destruction or removal efficiency of each control device according to § 63.5160(d) and the capture efficiency of each capture system according to § 63.5160(e), and (2) confirm or re-establish the operating limits. |

* * * * *

(b) * * *

(1) * * *

(i) Count only those organic HAP in Table 3 to this subpart that are measured to be present at greater than or equal to 0.1 weight percent and greater than or equal to 1.0 weight percent for other organic HAP compounds.

* * * * *

(2) *Method 24 in appendix A–7 of part 60.* For coatings, you may determine the total volatile matter content as weight fraction of nonaqueous volatile matter and use it as a substitute for organic HAP, using Method 24 in appendix A–7 of part 60. As an alternative to using Method 24, you may use ASTM D2369–10 (2015), ''Test Method for Volatile Content of Coatings'' (incorporated by reference, see § 63.14). The determination of total volatile matter content using a method specified in this paragraph (b)(2) or as provided in paragraph (b)(3) of this section may be performed by the manufacturer of the coating and the results provided to you.

* * * * *

(4) *Formulation data.* You may use formulation data provided that the information represents each organic HAP in Table 3 to this subpart that is present at a level equal to or greater than 0.1 percent and equal to or greater than 1.0 percent for other organic HAP compounds in any raw material used, weighted by the mass fraction of each raw material used in the material. Formulation data may be provided to you by the manufacturer of the coating material. In the event of any inconsistency between test data obtained with the test methods specified in paragraphs (b)(1) through (3) of this section and formulation data, the test data will govern.

(c) *Solids content and density.* You must determine the solids content and the density of each coating material applied. You may determine the volume solids content using ASTM D2697–03(2014) Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings (incorporated by reference, see § 63.14) or ASTM D6093–97 (2016) Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer (incorporated by reference, see § 63.14), or an EPA approved alternative method. You must determine the density of each coating using ASTM D1475–13 ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products'' (incorporated by reference, see § 63.14) or ASTM D2111–10 (2015) ''Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures'' (incorporated by reference, see § 63.14). The solids determination using ASTM D2697–03(2014) or ASTM D6093–97 (2016) and the density determination using ASTM D1475–13 or ASTM 2111–10 (2015) may be performed by the manufacturer of the material and the results provided to you. Alternatively, you may rely on formulation data provided by material providers to determine the volume solids. In the event of any inconsistency between test data obtained with the ASTM test methods specified in this section and formulation data, the test data will govern.

(d) *Control device destruction or removal efficiency.* If you are using an add-on control device, such as an oxidizer, to comply with the standard in § 63.5120, you must conduct performance tests according to Table 1 to § 63.5160 to establish the destruction or removal efficiency of the control device or the outlet HAP concentration achieved by the oxidizer, according to the methods and procedures in paragraphs (d)(1) and (2) of this section. During performance tests, you must establish the operating limits required by § 63.5121 according to paragraph (d)(3) of this section.

(1) Performance tests conducted to determine the destruction or removal efficiency of the control device must be performed such that control device inlet and outlet testing is conducted simultaneously. To determine the outlet organic HAP concentration achieved by the oxidizer, only oxidizer outlet testing must be conducted. The data must be reduced in accordance with the test methods and procedures in paragraphs (d)(1)(i) through (ix).

* * * * *

(vi) Method 25 or 25A in appendix A–7 of part 60 is used to determine total gaseous non-methane organic matter concentration. You may use Method 18 in appendix A–6 of part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon. Use the same test method for both the inlet and outlet measurements, which must be conducted simultaneously. You must submit notification of the intended test method to the Administrator for approval along with notification of the performance test required under § 63.7 (b). You must use Method 25A if any of the conditions described in paragraphs (d)(1)(vi)(A) through (D) of this section apply to the control device.

* * * * *

(vii) Each performance test must consist of three separate runs, except as provided by § 63.7(e)(3); each run must be conducted for at least 1 hour under the conditions that exist when the affected source is operating under normal operating conditions. For the purpose of determining volatile organic matter concentrations and mass flow rates, the average of the results of all runs will apply. If you are demonstrating compliance with the outlet organic HAP concentration limit in § 63.5120(a)(3), only the average outlet volatile organic matter concentration must be determined.

* * * * *

(2) You must record such process information as may be necessary to determine the conditions in existence at the time of the performance test. Before August 24, 2020, operations during periods of start-up, shutdown, and

malfunction will not constitute representative conditions for the purpose of a performance test. On and after August 24, 2020, you must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of start-up, shutdown, or nonoperation do not constitute representative conditions for the purpose of a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(3) *Operating limits.* If you are using a capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance to comply with the requirements in § 63.5120, you must establish the applicable operating limits required by § 63.5121. These operating limits apply to each capture system and to each add-on emission control device that is not monitored by CEMS, and you must establish the operating limits during performance tests required by paragraph (d) of this section according to the requirements in paragraphs (d)(3)(i) through (iii) of this section.

(i) * * *

(A) During performance tests, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

* * * * *

(ii) * * *

(D) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (d)(3)(ii)(C) of this section. The plan must address, at a minimum, the elements specified in paragraphs (d)(3)(ii)(D) *(1) through (3)* of this section.

* * * * *

(e) *Capture efficiency.* If you are required to determine capture efficiency to meet the requirements of § 63.5170(e)(2), (f)(1) and (2), (g)(2) through (4), or (i)(2) and (3), you must determine capture efficiency using the procedures in paragraph (e)(1), (2), or (3) of this section, as applicable.

* * * * *

■ 35. Section 63.5170 is amended by revising Table 1 and paragraphs (c)(1) and (2), (c)(4) introductory text, (e)(2) introductory text, (f)(1) introductory text, (f)(2), (g)(2) introductory text, (g)(3) introductory text, (g)(4) introductory text, Equation 11 of paragraph (h)(6), (i) introductory text, and (i)(1) to read as follows:

**§ 63.5170 How do I demonstrate compliance with the standards?**

* * * * *

TABLE 1 TO § 63.5170—COMPLIANCE DEMONSTRATION REQUIREMENTS INDEX

| If you choose to demonstrate compliance by: | Then you must demonstrate that: |
|---|---|
| 1. Use of ''as purchased'' compliant coatings .... | a. Each coating material used during the 12-month compliance period does not exceed 0.046 kg HAP per liter solids, as purchased. Paragraph (a) of this section. |
| 2. Use of ''as applied'' compliant coatings ..... | a. Each coating material used does not exceed 0.046 kg HAP per liter solids on a rolling 12-month average as applied basis, determined monthly. Paragraphs (b)(1) of this section; or<br>b. Average of all coating materials used does not exceed 0.046 kg HAP per liter solids on a rolling 12-month average as applied basis, determined monthly. Paragraph (b)(2) of this section. |
| 3. Use of a capture system and control device .. | Overall organic HAP control efficiency is at least 98 percent on a monthly basis for individual or groups of coil coating lines; or overall organic HAP control efficiency is at least 98 percent during performance tests conducted according to Table 1 to § 63.5170 and operating limits are achieved continuously for individual coil coating lines; or oxidizer outlet HAP concentration is no greater than 20 ppmv and there is 100-percent capture efficiency during performance tests conducted according to Table 1 to § 63.5170 and operating limits are achieved continuously for individual coil coating lines. Paragraph (c) of this section. |
| 4. Use of a combination of compliant coatings and control devices and maintaining an acceptable equivalent emission rate. | Average equivalent emission rate does not exceed 0.046 kg HAP per liter solids on a rolling 12-month average as applied basis, determined monthly. Paragraph (d) of this section. |

* * * * *

(c) * * *

(1) If the affected source uses one compliance procedure to limit organic HAP emissions to the level specified in § 63.5120(a)(1) or (3) and has only always-controlled work stations, then you must demonstrate compliance with the provisions of paragraph (e) of this section when emissions from the affected source are controlled by one or more solvent recovery devices.

(2) If the affected source uses one compliance procedure to limit organic HAP emissions to the level specified in § 63.5120(a)(1) or (3) and has only always-controlled work stations, then you must demonstrate compliance with the provisions of paragraph (f) of this section when emissions are controlled by one or more oxidizers.

* * * * *

(4) The method of limiting organic HAP emissions to the level specified in § 63.5120(a)(3) is the installation and operation of a PTE around each work station and associated curing oven in the coating line and the ventilation of all organic HAP emissions from each PTE to an oxidizer with an outlet organic HAP concentration of no greater than 20 ppmv on a dry basis. An enclosure that meets the requirements in § 63.5160(e)(1) is considered a PTE. Compliance of the oxidizer with the outlet organic HAP concentration limit is demonstrated either through continuous emission monitoring according to paragraph (c)(4)(ii) of this section or through performance tests according to the requirements of § 63.5160(d) and Table 1 to § 63.5160. If this method is selected, you must meet the requirements of paragraph (c)(4)(i) of this section to demonstrate continuing achievement of 100 percent capture of organic HAP emissions and either paragraph (c)(4)(ii) or paragraph (c)(4)(iii) of this section, respectively, to demonstrate continuous compliance with the oxidizer outlet organic HAP concentration limit through continuous

emission monitoring or continuous operating parameter monitoring:

* * * * *

(e) * * *

(2) *Continuous emission monitoring of control device performance.* Use continuous emission monitors to demonstrate recovery efficiency, conduct performance tests of capture efficiency and volumetric flow rate, and continuously monitor a site specific operating parameter to ensure that capture efficiency and volumetric flow rate are maintained following the procedures in paragraphs (e)(2)(i) through (xi) of this section:

* * * * *

(f) * * *

(1) *Continuous monitoring of capture system and control device operating parameters.* Demonstrate compliance through performance tests of capture efficiency and control device efficiency and continuous monitoring of capture system and control device operating parameters as specified in paragraphs (f)(1)(i) through (xi) of this section:

* * * * *

(2) *Continuous emission monitoring of control device performance.* Use continuous emission monitors, conduct performance tests of capture efficiency, and continuously monitor a site specific operating parameter to ensure that capture efficiency is maintained. Compliance must be demonstrated in accordance with paragraph (e)(2) of this section.

(g) * * *

(2) *Solvent recovery system using performance test and continuous monitoring compliance demonstration.* For each solvent recovery system used to control one or more coil coating stations for which you choose to comply by means of performance testing of capture efficiency, continuous emission monitoring of the control device, and continuous monitoring of a capture system operating parameter, each month of the 12-month compliance period you must meet the requirements of paragraphs (g)(2)(i) and (ii) of this section:

* * * * *

(3) *Oxidizer using performance tests and continuous monitoring of operating parameters compliance demonstration.* For each oxidizer used to control emissions from one or more work stations for which you choose to demonstrate compliance through performance tests of capture efficiency, control device efficiency, and continuous monitoring of capture system and control device operating parameters, each month of the 12-month compliance period you must meet the requirements of paragraphs (g)(3)(i) through (iii) of this section:

* * * * *

(4) *Oxidizer using continuous emission monitoring compliance demonstration.* For each oxidizer used to control emissions from one or more work stations for which you choose to demonstrate compliance through capture efficiency testing, continuous emission monitoring of the control device, and continuous monitoring of a capture system operating parameter, each month of the 12-month compliance period you must meet the requirements in paragraphs (g)(4)(i) and (ii) of this section:

* * * * *

(h) * * *

(6) * * *

$$He = \sum_{A=1}^{w_i}\left[\left(\sum_{i=1}^{p} M_{ci}C_{hi} + \sum_{j=1}^{q} M_{cj}C_{hj}\right)(1 - DRE_k CE_A)\right] + \left[\sum_{i=1}^{p} M_{Bi}C_{hi} + \sum_{j=1}^{q} M_{Bj}C_{hj}\right] \quad \text{(Eq. 11)}$$

* * * * *

(i) *Capture and control system compliance demonstration procedures using a CPMS for a coil coating line.* If you use an add-on control device, to demonstrate compliance for each capture system and each control device through performance tests and continuous monitoring of capture system and control device operating parameters, you must meet the requirements in paragraphs (i)(1) through (3) of this section.

(1) Conduct performance tests according to the schedule in Table 1 to § 63.5160 to determine the control device destruction or removal efficiency, DRE, according to § 63.5160(d) and Table 1 to § 63.5160.

* * * * *

■ 36. Section 63.5180 is amended by:

■ a. Revising paragraphs (f) introductory text and (f)(1);

■ b. Removing and reserving paragraph (f)(2);

■ c. Revising paragraphs (g)(2)(v), (h) introductory text, (h)(2) and (3);

■ d. Adding paragraph (h)(4); and

■ e. Revising paragraphs (i) introductory text, (i)(1) through (4), (i)(6), and (i)(9).

The revisions and addition read as follows:

**§ 63.5180 What reports must I submit?**

* * * * *

(f) Before August 24, 2020, you must submit start-up, shutdown, and malfunction reports as specified in § 63.10(d)(5) if you use a control device to comply with this subpart.

(1) Before August 24, 2020, if your actions during a start-up, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are not completely consistent with the procedures specified in the source's start-up, shutdown, and malfunction plan specified in § 63.6(e)(3) and required before August 24, 2020, you must state such information in the report. The start-up, shutdown, or malfunction report will consist of a letter containing the name, title, and signature of the responsible official who is certifying its accuracy, that will be submitted to the Administrator. Separate start-up, shutdown, or malfunction reports are not required if the information is included in the report specified in paragraph (g) of this section. The start-up, shutdown, and malfunction plan and start-up, shutdown, and malfunction report are no longer required on and after August 24, 2020.

* * * * *

(g) * * *

(2) * * *

(v) A statement that there were no deviations from the applicable emission limit in § 63.5120 or the applicable operating limit(s) established according to § 63.5121 during the reporting period, and that no CEMS were inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.

(h) You must submit, for each deviation occurring at an affected source where you are not using CEMS to comply with the standards in this subpart, the semi-annual compliance report containing the information in paragraphs (g)(2)(i) through (iv) of this section and the information in paragraphs (h)(1) through (4) of this section:

* * * * *

(2) Before August 24, 2020, you must provide information on the number, duration, and cause of deviations

(including unknown cause, if applicable) as applicable, and the corrective action taken. On and after August 24, 2020, you must provide information on the number, date, time, duration, and cause of deviations from an emission limit in § 63.5120 or any applicable operating limit established according to § 63.5121 (including unknown cause, if applicable) as applicable, and the corrective action taken.

(3) Before August 24, 2020, you must provide information on the number, duration, and cause for continuous parameter monitoring system downtime incidents (including unknown cause other than downtime associated with zero and span and other daily calibration checks, if applicable). On and after August 24, 2020, you must provide the information specified in paragraphs (h)(3)(i) and (ii) of this section.

(i) Number, date, time, duration, cause (including unknown cause), and descriptions of corrective actions taken for continuous parameter monitoring systems that are inoperative (except for zero (low-level) and high-level checks).

(ii) Number, date, time, duration, cause (including unknown cause), and descriptions of corrective actions taken for continuous parameter monitoring systems that are out of control as specified in § 63.8(c)(7).

(4) On and after August 24, 2020, for each deviation from an emission limit in § 63.5120 or any applicable operating limit established according to § 63.5121, you must provide a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.5120, a description of the method used to estimate the emissions, and the actions you took to minimize emissions in accordance with § 63.5140(b).

(i) You must submit, for each deviation from the applicable emission limit in § 63.5120 or the applicable operation limit(s) established according to § 63.5121 occurring at an affected source where you are using CEMS to comply with the standards in this subpart, the semi-annual compliance report containing the information in paragraphs (g)(2)(i) through (iv) of this section, and the information in paragraphs (i)(1) through (12) of this section:

(1) The date and time that each malfunction of the capture system or add-on control devices started and stopped.

(2) Before August 24, 2020, the date and time that each CEMS was inoperative, except for zero (low-level) and high-level checks. On and after August 24, 2020, for each instance that the CEMS was inoperative, except for zero (low-level) and high-level checks, the date, time, and duration that the CEMS was inoperative; the cause (including unknown cause) for the CEMS being inoperative; and a description of corrective actions taken.

(3) Before August 24, 2020, the date and time that each CEMS was out-of-control, including the information in § 63.8(c)(8). On and after August 24, 2020, for each instance that the CEMS was out-of-control, as specified in § 63.8(c)(7), the date, time, and duration that the CEMS was out-of-control; the cause (including unknown cause) for the CEMS being out-of-control; and descriptions of corrective actions taken.

(4) Before August 24, 2020, the date and time that each deviation started and stopped, and whether each deviation occurred during a period of start-up, shutdown, or malfunction or during another period. On and after August 24, 2020, the date, time, and duration of each deviation from an emission limit in § 63.5120. For each deviation, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.5120 to this subpart, and a description of the method used to estimate the emissions.

* * * * *

(6) Before August 24, 2020, a breakdown of the total duration of the deviations during the reporting period into those that are due to start-up, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after August 24, 2020, a breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(9) Before August 24, 2020, a brief description of the metal coil coating line. On and after August 24, 2020, a list of the affected source or equipment, including a brief description of the metal coil coating line.

* * * * *

■ 37. Section 63.5181 is added to read as follows:

**§ 63.5181 What are my electronic reporting requirements?**

(a) Beginning no later than August 24, 2020, you must submit the results of each performance test as required in § 63.5180(e) following the procedure specified in paragraphs (a)(1) through (3) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). The CEDRI interface can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test, you must submit the results of the performance test in portable document format (PDF) using the attachment module of the ERT.

(3) If you claim that some of the performance test information being submitted under paragraph (a)(1) of this section is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage medium to the EPA. The electronic medium must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (a)(1) of this section.

(b) Beginning on August 24, 2020, the owner or operator shall submit the initial notifications required in § 63.9(b) and the notification of compliance status required in §§ 63.9(h) and 63.5180(d) to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov*). The owner or operator must upload to CEDRI an electronic copy of each applicable notification in PDF. The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI or an

alternate electronic file consistent with the XML schema listed on the EPA's CEDRI website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(c) Beginning on March 25, 2021, or once the reporting template has been available on the CEDRI website for 1 year, whichever date is later, the owner or operator shall submit the semiannual compliance report required in § 63.5180(g) through (i), as applicable, to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov*). The owner or operator must use the appropriate electronic template on the CEDRI website for this subpart (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*). The date on which the report templates become available will be listed on the CEDRI website. If the reporting form for the semiannual compliance report specific to this subpart is not available in CEDRI at the time that the report is due, you must submit the report to the Administrator at the appropriate addresses listed in § 63.13. Once the form has been available in CEDRI for 1 year, you must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(d) If you are required to electronically submit a report through the CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (g)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(e) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (h)(1) through (5) of this section.

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

■ 38. Section 63.5190 is amended by adding paragraphs (a)(5) and (c) to read as follows:

**§ 63.5190 What records must I maintain?**

(a) * * *

(5) On and after August 24, 2020, for each deviation from an emission limitation reported under § 63.5180(h) or (i), a record of the information specified in paragraphs (a)(5)(i) through (iv) of this section, as applicable.

(i) The date, time, and duration of the deviation, as reported under § 63.5180(h) and (i).

(ii) A list of the affected sources or equipment for which the deviation occurred and the cause of the deviation, as reported under § 63.5180(h) and (i).

(iii) An estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.5120 to this subpart or any applicable operating limit established according to § 63.5121 to this subpart, and a description of the method used to calculate the estimate, as reported under § 63.5180(h) and (i).

(iv) A record of actions taken to minimize emissions in accordance with § 63.5140(b) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

* * * * *

(c) Any records required to be maintained by this subpart that are in reports that were submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

■ 39. Table 2 to subpart SSSS of part 63 is revised to read as follows:

Table 2 to Subpart SSSS of Part 63—Applicability of General Provisions to Subpart SSSS

You must comply with the applicable General Provisions requirements according to the following table:

| General provisions reference | Subject | Applicable to subpart SSSS | Explanation |
|---|---|---|---|
| § 63.1(a)(1)–(4) | General Applicability | Yes. | |
| § 63.1(a)(6) | Source Category Listing | Yes. | |
| § 63.1(a)(10)–(12) | Timing and Overlap Clarifications | Yes. | |
| § 63.1(b)(1) | Initial Applicability Determination | Yes | Applicability to Subpart SSSS is also specified in § 63.5090. |
| § 63.1(b)(3) | Applicability Determination Recordkeeping. | Yes. | |
| § 63.1(c)(1) | Applicability after Standard Established. | Yes. | |
| § 63.1(c)(2) | Applicability of Permit Program for Area Sources. | Yes. | |
| § 63.1(c)(5) | Extensions and Notifications | Yes. | |
| § 63.1(e) | Applicability of Permit Program Before Relevant Standard is Set. | Yes. | |
| § 63.2 | Definitions | Yes | Additional definitions are specified in § 63.5110. |
| § 63.3 | Units and Abbreviations | Yes. | |
| § 63.4(a)(1)–(2) | Prohibited Activities | Yes. | |
| § 63.4(b)–(c) | Circumvention/Fragmentation | Yes. | |
| § 63.5(a) | Construction/Reconstruction | Yes. | |
| § 63.5(b)(1), (3), (4), (6) | Requirements for Existing, Newly Constructed, and Reconstructed Sources. | Yes. | |
| § 63.5(d)(1)(i)–(ii)(F), (d)(1)(ii)(H), (d)(1)(ii)(J), (d)(1)(iii), (d)(2)–(4). | Application for Approval of Construction/Reconstruction. | Yes | Only total HAP emissions in terms of tons per year are required for § 63.5(d)(1)(ii)(H). |
| § 63.5(e) | Approval of Construction/Reconstruction. | Yes. | |
| § 63.5(f) | Approval of Construction/Reconstruction Based on Prior State Review. | Yes. | |
| § 63.6(a) | Compliance with Standards and Maintenance Requirements-Applicability. | Yes. | |
| § 63.6(b)(1)–(5), (b)(7) | Compliance Dates for New and Reconstructed Sources. | Yes | Section 63.5130 specifies the compliance dates. |
| § 63.6(c)(1), (2), (5) | Compliance Dates for Existing Sources. | Yes | Section 63.5130 specifies the compliance dates. |
| § 63.6(e)(1)(i)–(ii) | General Duty to Minimize Emissions and Requirement to Correct Malfunctions As Soon As Possible. | Yes before August 24, 2020, No on and after August 24, 2020. | See § 63.5140(b) for general duty requirement. |
| § 63.6(e)(1)(iii) | Operation and Maintenance Requirements. | Yes. | |
| § 63.6(e)(3)(i), (e)(3)(iii)–(ix) | SSMP Requirements | Yes before August 24, 2020, No on and after August 24, 2020. | |
| § 63.6(f)(1) | SSM Exemption | Yes before August 24, 2020, No on and after August 24, 2020. | See § 63.5140(b) for general duty requirement. |
| § 63.6(f)(2)–(3) | Compliance with Non-Opacity Emission Standards. | Yes. | |
| § 63.6(g) | Alternative Non-Opacity Emission Standard. | Yes. | |
| § 63.6(h) | Compliance with Opacity/Visible Emission Standards. | No | Subpart SSSS does not establish opacity standards or visible emission standards. |
| § 63.6(i)(1)–(14), (i)(16) | Extension of Compliance and Administrator's Authority. | Yes. | |
| § 63.6(j) | Presidential Compliance Exemption. | Yes. | |
| § 63.7(a)–(d) except (a)(2)(i)–(viii) | Performance Test Requirements | Yes. | |
| § 63.7(e)(1) | Performance Testing | Yes before August 24, 2020, No on and after August 24, 2020. | See § 63.5160(d)(2). |
| § 63.7(e)(2)–(4) | Conduct of Performance Tests | Yes. | |
| § 63.7(f) | Alternative Test Method | Yes | EPA retains approval authority. |

| General provisions reference | Subject | Applicable to subpart SSSS | Explanation |
|---|---|---|---|
| § 63.7(g)–(h) | Data Analysis and Waiver of Tests. | Yes. | |
| § 63.8(a)(1)–(2) | Monitoring Requirements—Applicability. | Yes | Additional requirements for monitoring are specified in § 63.5150(a). |
| § 63.8(a)(4) | Additional Monitoring Requirements. | No | Subpart SSSS does not have monitoring requirements for flares. |
| § 63.8(b) | Conduct of Monitoring | Yes. | |
| § 63.8(c)(1) | Operation and Maintenance of Continuous Monitoring System (CMS). | Yes before August 24, 2020, No on and after August 24, 2020. | Section 63.5150(a) specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply. |
| § 63.8(c)(2)–(3) | CMS Operation and Maintenance | Yes | Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for CMS operations and maintenance are specified in § 63.5170. |
| § 63.8(c)(4)–(5) | CMS Continuous Operation Procedures. | No | Subpart SSSS does not require COMS. |
| § 63.8(c)(6)–(8) | CMS Requirements | Yes | Provisions only apply if CEMS are used. |
| § 63.8(d)–(e) | CMS Quality Control, Written Procedures, and Performance Evaluation. | Yes | Provisions only apply if CEMS are used. |
| § 63.8(f)(1)–(5) | Use of an Alternative Monitoring Method. | Yes | EPA retains approval authority. |
| § 63.8(f)(6) | Alternative to Relative Accuracy Test. | No | Section 63.8(f)(6) provisions are not applicable because subpart SSSS does not require CEMS. |
| § 63.8(g) | Data Reduction | No | Sections 63.5170, 63.5140, 63.5150, and 63.5150 specify monitoring data reduction. |
| § 63.9(a) | Notification of Applicability | Yes. | |
| § 63.9(b)(1) | Initial Notifications | Yes. | |
| § 63.9(b)(2) | Initial Notifications | Yes | With the exception that § 63.5180(b)(1) provides 2 years after the proposal date for submittal of the initial notification for existing sources. |
| § 63.9(b)(4)(i), (b)(4)(v), (b)(5) | Application for Approval of Construction or Reconstruction. | Yes. | |
| § 63.9(c)–(e) | Request for Extension of Compliance, New Source Notification for Special Compliance Requirements, and Notification of Performance Test. | Yes | Notification of performance test requirement applies only to capture system and add-on control device performance tests at sources using these to comply with the standards. |
| § 63.9(f) | Notification of Visible Emissions/Opacity Test. | No | Subpart SSSS does not require opacity and visible emissions observations. |
| § 63.9(g) | Additional Notifications When Using CMS. | No | Provisions for COMS are not applicable. |
| § 63.9(h)(1)–(3) | Notification of Compliance Status | Yes | Section 63.5130 specifies the dates for submitting the notification of compliance status. |
| § 63.9(h)(5)–(6) | Clarifications | Yes. | |
| § 63.9(i) | Adjustment of Submittal Deadlines. | Yes. | |
| § 63.9(j) | Change in Previous Information | Yes. | |
| § 63.10(a) | Recordkeeping/Reporting—Applicability and General Information. | Yes. | |
| § 63.10(b)(1) | General Recordkeeping Requirements. | Yes | Additional requirements are specified in § 63.5190. |
| § 63.10(b)(2)(i)–(ii) | Recordkeeping of Occurrence and Duration of Startups and Shutdowns and Recordkeeping of Failures to Meet Standards. | Yes before August 24, 2020, No on and after August 24, 2020. | See § 63.5190(a)(5). |
| § 63.10(b)(2)(iii) | Maintenance Records | Yes. | |

| General provisions reference | Subject | Applicable to subpart SSSS | Explanation |
|---|---|---|---|
| § 63.10(b)(2)(iv)–(v) | Actions Taken to Minimize Emissions During Startup, Shutdown, and Malfunction. | Yes before August 24, 2020, No on and after August 24, 2020. | See § 63.5190(a)(5). |
| § 63.10(b)(2)(vi) | Recordkeeping for CMS Malfunctions. | Yes before August 24, 2020, No on and after August 24, 2020. | See § 63.5190(a)(5). |
| § 63.10(b)(2)(vii)–(xiv) | Other CMS Requirements | Yes. | |
| § 63.10(b)(3) | Recordkeeping Requirements for Applicability Determinations. | Yes. | |
| § 63.10(c) | Additional CMS Recordkeeping Requirements. | No | See § 63.5190(a)(5). |
| § 63.10(d)(1)–(2) | General Reporting Requirements and Report of Performance Test Results. | Yes | Additional requirements are specified in § 63.5180(e). |
| § 63.10(d)(3) | Reporting Opacity or Visible Emissions Observations. | No | Subpart SSSS does not require opacity and visible emissions observations. |
| § 63.10(d)(4) | Progress Reports for Sources with Compliance Extensions. | Yes. | |
| § 63.10(d)(5) | Startup, Shutdown, Malfunction Reports. | Yes before August 24, 2020, No on and after August 24, 2020. | |
| § 63.10(e) | Additional Reporting Requirements for Sources with CMS. | No. | |
| § 63.10(f) | Recordkeeping/Reporting Waiver | Yes. | |
| § 63.11 | Control Device Requirements/ Flares. | No | Subpart SSSS does not specify use of flares for compliance. |
| § 63.12 | State Authority and Delegations | Yes. | |
| § 63.13(a) | Addresses | Yes before August 24, 2020, No on and after August 24, 2020. | |
| § 63.13(b) | Submittal to State Agencies | Yes. | |
| § 63.13(c) | Submittal to State Agencies | Yes before August 24, 2020, No unless the state requires the submittal via CEDRI, on and after August 24, 2020. | |
| § 63.14 | Incorporation by Reference | Yes | Subpart SSSS includes provisions for alternative ASTM and ASME test methods that are incorporated by reference. |
| § 63.15 | Availability of Information/Confidentiality. | Yes. | |

■ 40. Table 3 to subpart SSSS of part 63 is added to read as follows:

TABLE 3 TO SUBPART SSSS OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

| Chemical name | CAS No. |
|---|---|
| 1,1,2,2-Tetrachloroethane | 79–34–5 |
| 1,1,2-Trichloroethane | 79–00–5 |
| 1,1-Dimethylhydrazine | 57–14–7 |
| 1,2-Dibromo-3-chloropropane | 96–12–8 |
| 1,2-Diphenylhydrazine | 122–66–7 |
| 1,3-Butadiene | 106–99–0 |
| 1,3-Dichloropropene | 542–75–6 |
| 1,4-Dioxane | 123–91–1 |
| 2,4,6-Trichlorophenol | 88–06–2 |
| 2,4/2,6-Dinitrotoluene (mixture) | 25321–14–6 |
| 2,4-Dinitrotoluene | 121–14–2 |
| 2,4-Toluene diamine | 95–80–7 |
| 2-Nitropropane | 79–46–9 |
| 3,3′-Dichlorobenzidine | 91–94–1 |
| 3,3′-Dimethoxybenzidine | 119–90–4 |
| 3,3′-Dimethylbenzidine | 119–93–7 |
| 4,4′-Methylene bis(2-chloroaniline) | 101–14–4 |
| Acetaldehyde | 75–07–0 |
| Acrylamide | 79–06–1 |
| Acrylonitrile | 107–13–1 |
| Allyl chloride | 107–05–1 |
| alpha-Hexachlorocyclohexane (a-HCH) | 319–84–6 |
| Aniline | 62–53–3 |
| Benzene | 71–43–2 |

TABLE 3 TO SUBPART SSSS OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

| Chemical name | CAS No. |
|---|---|
| Benzidine | 92–87–5 |
| Benzotrichloride | 98–07–7 |
| Benzyl chloride | 100–44–7 |
| beta-Hexachlorocyclohexane (b-HCH) | 319–85–7 |
| Bis(2-ethylhexyl)phthalate | 117–81–7 |
| Bis(chloromethyl)ether | 542–88–1 |
| Bromoform | 75–25–2 |
| Captan | 133–06–2 |
| Carbon tetrachloride | 56–23–5 |
| Chlordane | 57–74–9 |
| Chlorobenzilate | 510–15–6 |
| Chloroform | 67–66–3 |
| Chloroprene | 126–99–8 |
| Cresols (mixed) | 1319–77–3 |
| DDE | 3547–04–4 |
| Dichloroethyl ether | 111–44–4 |
| Dichlorvos | 62–73–7 |
| Epichlorohydrin | 106–89–8 |
| Ethyl acrylate | 140–88–5 |
| Ethylene dibromide | 106–93–4 |
| Ethylene dichloride | 107–06–2 |
| Ethylene oxide | 75–21–8 |
| Ethylene thiourea | 96–45–7 |
| Ethylidene dichloride (1,1-Dichloroethane) | 75–34–3 |
| Formaldehyde | 50–00–0 |
| Heptachlor | 76–44–8 |
| Hexachlorobenzene | 118–74–1 |
| Hexachlorobutadiene | 87–68–3 |
| Hexachloroethane | 67–72–1 |
| Hydrazine | 302–01–2 |
| Isophorone | 78–59–1 |
| Lindane (hexachlorocyclohexane, all isomers) | 58–89–9 |
| m-Cresol | 108–39–4 |
| Methylene chloride | 75–09–2 |
| Naphthalene | 91–20–3 |
| Nitrobenzene | 98–95–3 |
| Nitrosodimethylamine | 62–75–9 |
| o-Cresol | 95–48–7 |
| o-Toluidine | 95–53–4 |
| Parathion | 56–38–2 |
| p-Cresol | 106–44–5 |
| p-Dichlorobenzene | 106–46–7 |
| Pentachloronitrobenzene | 82–68–8 |
| Pentachlorophenol | 87–86–5 |
| Propoxur | 114–26–1 |
| Propylene dichloride | 78–87–5 |
| Propylene oxide | 75–56–9 |
| Quinoline | 91–22–5 |
| Tetrachloroethene | 127–18–4 |
| Toxaphene | 8001–35–2 |
| Trichloroethylene | 79–01–6 |
| Trifluralin | 1582–09–8 |
| Vinyl bromide | 593–60–2 |
| Vinyl chloride | 75–01–4 |
| Vinylidene chloride | 75–35–4 |

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Part III

## Department of State

Office of the Chief of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2018; Notice

## DEPARTMENT OF STATE

**[Public Notice 11050]**

### Office of the Chief of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2018

The Office of the Chief of Protocol, Department of State, submits the following comprehensive listing of the statements which, as required by law, federal employees filed with their employing agencies during calendar year 2018 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by the statute. Also included are gifts received in previous years including one in 2010, one in 2012, 17 in 2013, two in 2014, two in 2015, and 34 in 2017. These latter gifts are being reported in this year's report for calendar year 2018 because the Office of the Chief of Protocol, Department of State, did not receive the relevant information to include them in earlier reports. Agencies not listed in this report either did not receive relevant gifts during the calendar year or did not respond to the State Department's Office of the Chief of Protocol's request for data.

Publication of this listing in the **Federal Register** is required by Section 7342(f) of Title 5, United States Code, as added by Section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95–105, August 17, 1977, 91 Stat. 865).

Dated: February 6, 2020.

**William E. Todd,**

*Deputy Under Secretary for Management, U.S. Department of State.*

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT

[Report of Tangible Gifts Furnished by the White House—Executive Office of the President]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable Donald J. Trump, President of the United States. | Medal, gold tone metal disk. Rec'd—1/1/2018. Est. value—$625.00. Disposition—Transferred to National Archives Records Administration (NARA). | Gul Nabi Tribal Leader, Logar Province, Afghanistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Donald J. Trump, President of the United States. | Hickory golf wooden putter with engravings. Rec'd—1/25/2018. Est. value—$450.00. Disposition—Transferred to NARA. | Tarzisius Caviezel, Mayor of Davos, Switzerland. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Donald J. Trump, President of the United States. | Black leather Chelsea boots from R.M. Williams. Rec'd—2/23/2018. Est. value—$545.00. Disposition—Transferred to NARA. | The Honorable Malcolm Turnbull, Prime Minister of Australia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Donald J. Trump, President of the United States. | Statue, ''The Mother'' depicting a female with a headdress and holding an infant. Rec'd—3/1/2018. Est. value—$1,660.00. Disposition—Transferred to NARA. | His Excellency Vu Tien Loc, President of the Vietnam Chamber of Commerce and Industry. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Donald J. Trump, President of the United States. | Stone block, quasi rectangular, recognizing Jerusalem as the capital of Israel. Rec'd—3/5/2018. Est. value—$600.00. Disposition—Transferred to NARA. | His Excellency Benjamin Netanyahu, Prime Minister of Israel. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Donald J. Trump, President of the United States. | Footed bowl, clear crystal, with American/Irish flags. Rec'd—3/15/2018. Est. value—$3,800.00. Disposition—Transferred to NARA. | His Excellency Leo Varadkar, Prime Minister of Ireland. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Donald J. Trump, President of the United States. | Portrait of President Trump with golden frame and gold tone inner edge. Rec'd—4/23/2018. Est. value—$3,100.00. Disposition—Transferred to NARA. | His Excellency Nguyen Xuan Phuc, Prime Minister of Vietnam. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Donald J. Trump, President of the United States. | Golf bag, Louis Vuitton, vinyl, brown with beige letters and Photographs, black and white on metal, 7 soldiers standing before U.S. flag. Rec'd—4/24/2018. Est. value—$8,275.00. Disposition—Transferred to NARA. | His Excellency Emmanuel Macron, President of France. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Donald J. Trump, President of the United States. | Eating ground mat plus three cushions and leather panels. Rec'd—4/30/2018. Est. value—$450.00. Disposition—Transferred to NARA. | His Excellency Muhammadu Buhari, President of Nigeria. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Donald J. Trump, President of the United States. | Miniature replica in silver of the Registan Ensemble. Rec'd—5/16/2018. Est. value—$2,950.00. Disposition—Transferred to NARA. | His Excellency Shavkat Mirziyoyev, President of Uzbekistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Donald J. Trump, President of the United States. | Print, limited edition, by Joon-Kwan Kim, depicting white sky over a range of hills. Rec'd—5/22/2018. Est. value—$1,890.00. Disposition—Transferred to NARA. | His Excellency Moon Jae-In, President of the Republic of Korea. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Donald J. Trump, President of the United States. | White marble sculpture of a beluga whale. Rec'd—6/8/2018. Est. value—$470.00. Disposition—Transferred to NARA. | The Right Honorable Justin Trudeau P.C. M.P., Prime Minister of Canada. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by the White House—Executive Office of the President]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable Donald J. Trump, President of the United States. | Document, facsimile, two printed pages issued 1783 by Queen Mary of Portugal, in mat with molded gold tone frame and Vases, Vista Alegre of Portugal, porcelain. Rec'd—6/27/2018. Est. value—$2,270.00. Disposition—Transferred to NARA. | His Excellency Marcelo Rebelo de Sousa, President of Portugal. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Donald J. Trump, President of the United States. | Sterling cufflinks with a purple ruby within a presentation box. Rec'd—7/30/2018. Est. value—$465.00. Disposition—Transferred to NARA. | His Excellency Giuseppe Conte, Prime Minister of Italy. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Donald J. Trump, President of the United States. | FIFA World Cup collector's box with 12 round silver medallions. Rec'd—8/19/2018. Est. value—$1,500.00. Disposition—Transferred to NARA. | His Excellency Vladimir Putin, President of Russia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Donald J. Trump, President of the United States. | Artwork, gold-plated camel standing near a watering hole with palm trees. Rec'd—10/3/2018. Est. value—$2,650.00. Disposition—Transferred to NARA. | Salman bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of Saudi Arabia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Donald J. Trump, President of the United States. | Vase, ''Cloisonne Moon Flask,'' made in Beijing. Rec'd—12/2/2018. Est. value—$2,100.00. Disposition—Transferred to NARA. | His Excellency Xi Jinping, President of China. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mrs. Melania Trump, First Lady of the United States. | Jewelry set, gilt silver and carnelian with 2 cuff bracelets, rings, pair of earrings, and a necklace. Rec'd—1/16/2018. Est. value—$780.00. Disposition—Transferred to NARA. | His Excellency Nursultan Nazarbayev, President of Kazakhstan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mrs. Melania Trump, First Lady of the United States. | Tunic over-garment by Mouftah el Chark Fashion. Rec'd—1/23/2018 Est. value—$450.00. Disposition—Transferred to NARA. | His Excellency, Gabriel Issa, Ambassador of Lebanon to the United States. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mrs. Melania Trump, First Lady of the United States. | Clutch, Givenchy of Paris, made in Italy, beige silk in glossy silver tone frame. Rec'd—4/24/2018. Est. value—$850.00. Disposition—Transferred to NARA. | Mrs. Brigitte Macron, Spouse of the President of France. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mrs. Melania Trump, First Lady of the United States. | Chair, Shosha Kamal Design House, with a scarab beetle design on the back made from polished brass and Chair, Shosha Kamal Design House, with a papyrus flower design made from polished brass. Rec'd—10/6/2018. Est. value—$10,000.00. Disposition—Transferred to NARA. | His Excellency Abdel Fattah Al Sisi, President of Egypt. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mrs. Melania Trump, First Lady of the United States. | Artwork, bowl and frame ensemble, by Jay Strongwater. Rec'd—5/29/2018. Est. value—$2,000.00. Disposition—Transferred to NARA. | His Highness Prince Khalid bin Abdullah, Crown Prince of Saudi Arabia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mrs. Melania Trump, First Lady of the United States. | Candle prickets with a brass saucer. Rec'd—6/26/2018. Est. value—$1,010.00. Disposition—Transferred to NARA. | Her Majesty Rania Al Abdullah, Queen of Jordan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mrs. Melania Trump, First Lady of the United States. | Clutch by Delvaux of Belgium. Rec'd—7/11/2018. Est. value—$1,280.00. Disposition—Transferred to NARA. | Ms. Amélie Derbaudrenghien, Partner of the Prime Minister of Belgium. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mrs. Melania Trump, First Lady of the United States. | Nymphenburg design plates, 6, each bearing green Nymphenburg crowned shield emblem. Rec'd—5/4/2018. Est. value—$23,500.00. Disposition—Transferred to NARA. | His Highness Sheikh Tamim bin Hamad Al Thani, Amir of Qatar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mrs. Melania Trump, First Lady of the United States. | Bed cover, ''suzani,'' displaying a floral pattern. Rec'd—5/16/2018. Est. value—$4,200.00. Disposition—Transferred to NARA. | His Excellency Shavkat Mirziyoyev, President of Uzbekistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mrs. Melania Trump, First Lady of the United States. | Earrings, Leitao & Irmao of Portugal. Rec'd—6/28/2018. Est. value—$1,070.00. Disposition—Transferred to NARA. | His Excellency Marcelo Rebelo de Sousa, President of Portugal. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mrs. Melania Trump, First Lady of the United States. | Statue, cold cast bronze, depicting a walking elephant with a tree. Rec'd—8/27/2018. Est. value—$1,300.00. Disposition—Transferred to NARA. | Her Excellency Margaret Kenyatta, First Lady of Kenya. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

## AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by the White House—Executive Office of the President]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Mrs. Melania Trump, First Lady of the United States. | Boxes, 2, ebony engraved with African animals. Rec'd—10/4/2018. Est. value—$605.00. Disposition—Transferred to NARA. | The Honorable Gertrude Mutharika, First Lady of Malawi. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mrs. Melania Trump, First Lady of the United States. | Kente cloth, featuring bands of geometrics in several colors. Rec'd—10/11/2018. Est. value—$540.00. Disposition—Transferred to NARA. | Osabarimba Kwesi Atta II, Paramount Chief of Ghana. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Jared Kushner, Assistant to the President and Senior Advisor. | Painting, oil on canvas, depicting 3 major snow-covered mountain peaks. Rec'd—1/16/2018. Est. value—$3,400.00. Disposition—Transferred to NARA. | His Excellency Nursultan Nazarbayev, President of Kazakhstan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Jared Kushner, Assistant to the President and Senior Advisor. | Box, rectangular with hinged lid, decorated with 90% silver patterns. Rec'd—8/1/2018. Est. value—$450.00. Disposition—Transferred to NARA. | The Honorable Kamal Abbas, General Coordinator of the Center for Trade Unions & Workers' Service, Egypt. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Jared Kushner, Assistant to the President and Senior Advisor. | Bracelets, 2, within a box displaying the cipher of the King of Jordan. Rec'd—9/25/2018. Est. value—$1,500.00. Disposition—Purchased. | Her Majesty Rania Al Abdullah, Queen of Jordan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Ivanka Trump, Assistant to the President and Advisor. | Bracelets, 2, within a box displaying the cipher of the King of Jordan. Rec'd—9/25/2018. Est. value—$1,685.00. Disposition—Purchased. | Her Majesty Rania Al Abdullah, Queen of Jordan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable John Kelly, Assistant to the President and Chief of Staff. | Painting of 4 horseman with bows hunting deer. Rec'd—5/16/2018. Est. value—$600.00. Disposition—Pending Transfer to General Services. | His Excellency Shavkat Mirziyoyev, President of Uzbekistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Lawrence Kudlow, Assistant to the President for Economic Policy. | Vase, silver-plate, with six-lobed scalloped flaring rim over waisted neck. Rec'd—5/16/2018. Est. value—$430.00. Disposition—Unknown, pending decision in the Gift Office. | His Excellency Shavkat Mirziyoyev, President of Uzbekistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

## AGENCY: THE EXECUTIVE OFFICE OF THE VICE PRESIDENT

[Report of Tangible Gifts Furnished by the Executive Office of the Vice President]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable Michael R. Pence, Vice President of the United States. | Rug, Uzbek, silk pile, repeating field pattern of diamonds against ivory-color field between rows of hexagons joined by bars, surrounded by 7 borders of which the fourth predominates, 1.76 x 1.20 meters, in presentation box. Rec'd—5/16/2018. Est. value—$1,900.00. Disposition—Transferred to NARA. | Mrs. Ziroat Mirziyoyeva, Spouse of the President of Uzbekistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pence, Vice President of the United States. | Hat, Panama style, ''Montecristi,'' with black ribbon band, made in Ecuador by Signes, in locking carrying case with silver plaque stating ''Lenin Moreno Garces/Presidente Constitucional de la Republica de Ecuador/Rocio Gonzalez de Moreno.'' Rec'd—6/28/2018. Est. value—$960.00. Disposition—Transferred to NARA. | His Excellency Lenin Moreno, President of Ecuador. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pence, Vice President of the United States. | Vase, cobalt blue porcelain cylinder with gilt rim, tapering at bottom to shallow collar, 9⅛″ high x 5⅝″ diameter, bottom incised ''310416PN,'' tagged as gilded at Sevres and marked as a gift of the French President, in presentation box. Rec'd—4/25/2018. Est. value—$680.00. Disposition—Transferred to NARA. | His Excellency Emmanuel Macron, President of France. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: THE EXECUTIVE OFFICE OF THE VICE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by the Executive Office of the Vice President]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable Michael R. Pence, Vice President of the United States. | Menorah, made of blackened steel, consisting of three graduated "C" curves on medial post enveloped in spiral twisting vines plus 14 ellipsoid leaves, 3 bifurcated roots emanating from bottom of post spreading out over round base, tagged "Created from a rocket that landed in Israel July 2014" and tagged to Pence from Isaac Herzog, dated "Mar. 2018." Rec'd—3/5/2018. Est. value—$465.00. Disposition—Transferred to NARA. | His Excellency Isaac Herzog, Chairman of the Labour Party of Israel. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pence, Vice President of the United States. | Desk clock, by William & Son of London, rectangular sterling silver case with zigzag near top and bottom, copying the flag of Bahrain, bordering radiant lines and concentric gold circles surrounding round clock face having mother-of-pearl panels plus gold diamond shapes indicating hours, in bespoke William & Son presentation case. Rec'd—11/20/2017. Est. value—$5,730.00. Disposition—Destroyed per USSS Policy. | His Royal Highness, Crown Prince Salman Bin Hamad Al Khalifa, First Deputy Prime Minister and Deputy Supreme Commander of the Bahrain Defense Force. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pence, Vice President of the United States. | Embroidery, silk on gray textile, depicting male and female seated on a carpet, male playing a stringed musical instrument, a baby in a bed in left foreground, in molded silver tone frame, in zippered nylon carrying bag. Accompanying brochure states title as "Family" by Gulnazym Omirzak of Kazakhstan. Rec'd—1/16/2018. Est. value—$570.00. Disposition—Transferred to NARA. | His Excellency Nursultan Nazarbayev, President of Kazakhstan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pence, Vice President of the United States. | Box, Egyptian, silver, stamped in Arabic as 900 grade silver, hexagonal, beveled hinged lid displaying centered blank roundel rounded surrounded by 6 four-lobed cartouches of foliage, bordered by 6 trapezoids of foliate engraving, 3-lobed tab finger grip, similar engraved designs on outside walls and feet, interior lined in light-color wood, 2¼′h x 5′w x 4½′d, in presentation box. Rec'd—1/20/2018. Est. value—$430.00. Disposition—Transferred to NARA. | His Excellency Abdel Fattah el-Sisi, President of Egypt. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pence, Vice President of the United States. | Box, silver-plate, square, removable lid displaying applied repeating silver calligraphy, reportedly initials of Jordanian king, interior lined in black walnut, lid underside with affixed gold tone crown over king's cipher, in presentation box, tied with gray ribbon securing a polished pierce cut copper calligraphic symbol. Rec'd—1/20/2018. Est. value—$440.00. Disposition—Transferred to NARA. | His Majesty Abdullah II ibn Al Hussein, King of Jordan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pence, Vice President of the United States. | Menorah, having 9 beige stone quasi-quadrate sockets with chamfered design of varying sizes, one on left being higher than the others, on brass tone rods secured in quasi-rectangular beige stone block having polished contoured top, set into plinth of apparent olive wood with navy blue velveteen-like top, front tagged to Michael Pence from the Western Wall Heritage Foundation, overall 11½″ h x 16″ w x 5⅛″ d, plus clear plastic cover fitting onto plinth, in box. Rec'd—1/28/2018. Est. value—$550.00. Disposition—Transferred to NARA. | Rabbi Shmuel Rabinovitch, Rabbi of the Western Wall, Israel. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pence, Vice President of the United States. | Ink/paint brushes, grouping of 2 in shadowbox frame of walnut-type hard wood, 29½″ x 13¾″, one brush 21″ long of white hairs secured in turned hardwood knop on light-color wood handle displaying inked tree branch near end with ring knop and triple-graduated knops at end, plus black silk loop, other brush 16″ long of brown hairs, secured in tapered hardwood "collar," on light-color wood handle displaying undulating spirals, handle end of 4 graduated knops, one in red, one in green, plus blue silk loop, in brown suede-type presentation box. Rec'd—2/09/2018. Est. value—$980.00. Disposition—Displayed in the Second Lady's Office. | His Excellency Moon Jae-in, President of the Republic of Korea. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: THE EXECUTIVE OFFICE OF THE VICE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by the Executive Office of the Vice President]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable Michael R. Pence, Vice President of the United States. | Sculpture, Kazakh, bronze, depicting ''kokpar'' game with five men on encircling horses pulling at a headless goat skin, mounted on a quasi-round polished jasper slab, overall 6″ high x 10–11″ wide, in bespoke presentation box clad in leather, including three triangles of scrollwork. Rec'd—1/16/2018. Est. value—$2,950.00. Disposition—Transferred to NARA. | His Excellency Nursultan Nazarbayev, President of Kazakhstan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mrs. Karen Pence, Second Lady of the United States. | Bed cover, silk on silk hand-embroidered, displaying bursting red pomegranates on green leafy vines against ivory-color background, 78″ x 54″, in silk-clad presentation box. Rec'd—5/16/2018. Est. value—$440.00. Disposition—Transferred to NARA. | Mrs. Ziroat Mirziyoyeva, Spouse of the President of Uzbekistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mrs. Karen Pence, Second Lady of the United States. | Hat, Panama style, ''Montecristi,'' with tan leather band, made in Ecuador by Signes, in locking carrying case with silver plaque stating ''Lenin Moreno Garces/Presidente Constitucional de la Republica de Ecuador/Rocio Gonzalea de Moreno.'' Rec'd—6/28/2018. Est. value—$940.00. Disposition—Transferred to NARA. | Mrs. Rocio Gonzalez de Moreno, First Lady of Ecuador. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: THE DEPARTMENT OF STATE

[Report of Tangible Gifts Furnished by the Department of State]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable Michael R. Pompeo, Secretary of State of the United States. | Pilot Pen. Rec'd—4/30/2018. Est. value—$1,400.00. Disposition—Transferred to the General Services Administration (GSA). | His Excellency Taro Kono, Minister of Foreign Affairs of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pompeo, Secretary of State of the United States. | Bronze and Silver Coins. Rec'd—4/30/2018. Est. value—$490.00. Disposition—Transferred to GSA. | His Majesty Abdullah II ibn Al Hussein, King of Jordan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pompeo, Secretary of State of the United States. | Custom Sculpture of Rock Masses by Emirati Artist Mattar Bin Lahej. Rec'd—5/14/2018. Est. value—$490. Disposition—Transferred to GSA. | His Highness Sheikh Abdullah bin Zayed Al Nahyan, Minister of Foreign Affairs of the United Arab Emirates. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pompeo, Secretary of State of the United States. | Waldmann Sterling Silver Pen. Rec'd—5/14/2018. Est. value—$420.00. Disposition—Transferred to GSA. | His Excellency Jacek Czaputowicz, Minister of Foreign Affairs of Poland. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pompeo, Secretary of State of the United States. | Carved Wooden Table with Matching Set of Chairs. Rec'd—5/24/2018. Est. value—$1,580.00. Disposition—Pending transfer to GSA. | His Excellency Shavkat Mirziyoyev, President of Uzbekistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pompeo, Secretary of State of the United States. | Painting by Moldovan Artist and Bottle of Moldovan Cognac. Rec'd—6/25/2018. Est. value—$1,060.00. Disposition—Transferred to GSA. | His Excellency Pavel Filip, Prime Minister of Moldova. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pompeo, Secretary of State of the United States. | Bronze Seal Statue on Marble Base. Rec'd—7/9/2018. Est. value—$1,300.00. Disposition—Transferred to GSA. | His Highness Mohammed bin Zayed Al Nahyan, Crown Prince of the United Arab Emirates. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pompeo, Secretary of State of the United States. | A.R.E. Crystal Commemorative Statue, Mother of Pearl Backgammon Set, and two books: *The Crimes of the Brotherhood Terrorist Organization* (one in English and the other in Arabic) Rec'd—7/25/2018, 2018. Est. value—$520.00. Disposition—Pending. | General Abbas Kamil, Director of Egyptian General Intelligence Service. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pompeo, Secretary of State of the United States. | 8′x10′ Wool Carpet. Rec'd—8/1/2018. Est. value—$2,700. Disposition—Transferred to GSA. | His Excellency Ashraf Ghani, President of Afghanistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: THE DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts Furnished by the Department of State]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable Michael R. Pompeo, Secretary of State of the United States. | Traditional Indonesian Dagger. Rec'd—8/6/2018. Est. value—$1,560.00. Disposition—Transferred to GSA. | His Excellency Joko Widodo, President of Indonesia. | Non-acceptance would cause embarrassment to donor and U.S. Government |
| The Honorable Michael R. Pompeo, Secretary of State of the United States. | Gold-plated Replica Mausoleum, Rec'd—9/17/2018. Est. value—$685.00. Disposition—Transferred to GSA. | His Excellency Nasser Bourita, Minister of Foreign Affairs and International Cooperation of Morocco. | Non-acceptance would cause embarrassment to donor and U.S. Government |
| The Honorable Michael R. Pompeo, Secretary of State of the United States. | Statue of a Woman in Glass Case and Cartier Ballpoint Pen. Rec'd—10/16/2018. Est. value—$730.00. Disposition—Transferred to GSA. | His Excellency Adel al-Jubeir, Minister of State for Foreign Affairs of Saudi Arabia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pompeo, Secretary of State of the United States. | Tie box and Talarico Tie, and Model of Bell Tower. Rec'd—6/26/2018. Est. value—$495.00. Disposition—Transferred to GSA. | His Excellency Sheikh Mohammed bin Abd al-Rahman Al Thani, Deputy Prime Minister and Minister of Foreign Affairs of Qatar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pompeo, Secretary of State of the United States. | Black Body Cartier Ball Point Pen With Blue Sapphire Tip In Red Leather Presentation Box. Rec'd—10/16/2018. Est. value—$440.00. Disposition—Transferred to GSA. | His Excellency Abdel Al-Jubeir, Minister of State for Foreign Affairs of Saudi Arabia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable John D. Sullivan, Deputy Secretary of State of the United States. | Black Lacquer Pen with Golden Geese Design. Rec'd—03/16/2018. Est. value—$2,389.00. Disposition—Transferred to GSA. | His Excellency Taro Kono, Minister of Foreign Affairs of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Alice Wells, Assistant Secretary of State for South and Central Asian Affairs. | Soukhin Pearls 2 Strands of 49 Pearls Each 9.5–10.5 Mm. Rec'd—12/01/2018. Est. value—$490. Disposition—Transferred to GSA. | The Honorable Mohammad Ziauddin, Ambassador of Bangladesh to the United States. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Kirsten D. Madison, Assistant Secretary of State for International Narcotics and Law Enforcement Affairs. | Traditional Bian Embroidered Hand-made Silk Scroll. Rec'd 9/13/2018. Est. value—$450.00. Disposition—Transferred to GSA. | Xu Lingyi, Deputy Secretary of the Central Commission for Discipline Inspection of China. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Steven Fagin, Consul General of Iraq. | Persian Silk Carpet 2′x3′ Center Medallion Rug. Rec'd—10/29/2018. Est. value—$500.00. Disposition—Transferred to GSA. | Sheik Jafar, 70th Unit Peshmerga Commander. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Sean P. Lawler, Chief of Protocol of the United States. | Omega Watch in White Box. Rec'd 10/11/2018. Est. value—$780.00. Disposition—Transferred to GSA. | His Majesty Abdullah II ibn Al Hussein, King of Jordan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Ms. Mary-Kathryn Fisher, Assistant Chief of Protocol for Visits. | Round Faced Personalized Tissot Watch. Rec'd—10/11/2018. Est. value—$1,270.00. Disposition—Transferred to GSA. | His Majesty Abdullah II Ibn Al Hussein, King of Jordan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Ms. Anny Vu, Political Officer. | Tissot Swiss Watch. Rec'd—10/11/2018. Est. value—$770.00. Disposition—Transferred to GSA. | His Majesty Abdullah II ibn Al Hussein King of Jordan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Brian Phelps, Political Officer. | Conquest Round Black Face Longiness Watch. Rec'd—11/20/2018. Est. value—$1,780.00. Disposition—Transferred to GSA. | Ahmad Al-Habashneh, Third Secretary, Embassy of Jordan to the United States. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Ms. Asel Roberts, Deputy Assistant Chief of Protocol for Visits. | Cuff Bracelet With Three Rings and Earrings. Rec'd—3/6/2018. Est. value—$690.00. Disposition—Transferred to GSA. | The Honorable Erzan Kazykhanos, Ambassador of Kazakhstan to the United States. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| State Department Employee | 18k Gold DuPont Fountain Pen. Rec'd—10/01/2018. Est. value—$780.00. Disposition—Transferred to GSA. | The Embassy of Moldova to the United States. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

## AGENCY: THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

[Report of Gifts of Travel Furnished by the Administrative Office of the United States Courts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable John G. Roberts, Jr., Chief Justice of the United States. | Mother of Pearl Jewelry Box. Rec'd—12/10/2018. Est. value—$443.00. Disposition—On official display. | Supreme Court of Korea, Republic of Korea. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

## AGENCY: THE FEDERAL COMMUNICATIONS COMMISSION

[Report of Travel Gifts Furnished by the Federal Communications Commission]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Mr. Martin Doczkat, Chief, Technical Analysis Branch. | TRAVEL: Local transportation, meals, and hotel accommodation in connection with participation as a speaker at the GERoNiMO Consortium Meeting. Rec'd—2/5/2018. Est. value—$500.00. Disposition—N/A. | Dr. Elisabeth Cardis, ISGlobal, GERoNiMO, Barcelona, Spain. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Matthew Berry, Chief of Staff, Office of Chairman Pai. | TRAVEL: Local transportation, meals, and hotel accommodation in connection with participation as a speaker at the CRC 13th International Regulatory Workshop. Rec'd—7/17/2018. Est. value—$700.00. Disposition—N/A. | Alejandro Delgado, Adviser, Commission for Communications Regulation of Colombia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

## AGENCY: CENTRAL INTELLIGENCE AGENCY

[Report of Tangible Gifts Furnished by the Central Intelligence Agency]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable Michael R. Pompeo, Director of the CIA. | Leather table cover, rug and pillow covers. Rec'd—2/4/2018. Est. value—$500.00. Disposition—Pending transfer to GSA. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pompeo, Director of the CIA. | Gold and ivory dagger in leather case. Rec'd—3/27/2018. Est. value—$500.00. Disposition—Pending transfer to GSA. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pompeo, Director of the CIA. | Chopard pen. Rec'd—4/3/2018. Est. value—$500.00. Disposition—Pending transfer to GSA. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Michael R. Pompeo, Director of the CIA. | Five silver coins in red case. Rec'd—4/3/2018. Est. value—$500.00. Disposition—Pending transfer to GSA. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Gina Haspel, Director of the CIA. | Tan and red oriental rug. Rec'd—6/13/2018. Est. value—$505.00. Disposition—Pending transfer to GSA. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Gina Haspel, Director of the CIA. | Silver ship, cufflinks. incense holder, and frankincense. Rec'd—7/12/2018. Est. value—$575.00. Disposition—Pending transfer to GSA. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Gina Haspel, Director of the CIA. | Engraved tan fossil on glass. Rec'd—7/12/2018. Est. value—$500.00. Disposition—Pending transfer to GSA. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Gina Haspel, Director of the CIA. | Mounted, inert pistol and 2 coins. Rec'd—9/14/2018. Est. value—$500.00. Disposition—Pending transfer to GSA. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Gina Haspel, Director of the CIA. | Dead sea mud gift set. Rec'd—9/19/2018. Est. value—$590.00. Disposition—Pending transfer to GSA. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts Furnished by the Central Intelligence Agency]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| An Agency Employee ..... | Two bottles of red wine. Rec'd—1/16/2018. Est. value—$512.00. Disposition—Pending purchase by employee. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Purple silk rug. Rec'd—1/27/2018. Est. value—$400.00. Disposition—Pending purchase by employee. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Four silver coins. Rec'd—1/29/2018. Est. value—$3,000.00. Disposition—On official display. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Givenchy purse. Rec'd—2/9/2018. Est. value—$990.00. Disposition—Pending transfer to GSA. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | 1 man's and 1 woman's Movado watch. Rec'd—3/16/2018. Est. value—$400.00. Disposition—Pending destruction. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Louis Vuitton scarf. Rec'd—3/22/2018. Est. value—$450.00. Disposition—Pending purchase by employee. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Two carpets. Rec'd—4/9/2018. Est. value—$500.00. Disposition—Pending purchase by employee. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Movado sport edition watch. Rec'd—4/13/2018. Est. value—$450.00. Disposition—Pending transfer to GSA. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | John Walker King George V whisky. Rec'd—5/25/2018. Est. value—$542.00. Disposition—On official display. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Rolex Datejust watch 41mm. Rec'd—5/26/2018. Est. value—$8,000.00. Disposition—Official display. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Woman's Rolex Datejust watch 41mm. Rec'd—5/26/2018. Est. value—$8,000.00. Disposition—Official use. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Rolex Datejust watch 36mm. Rec'd—5/30/2018. Est. value—$8,600.00. Disposition—Official use. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | 1 man's and 1 woman's Rado Watches. Rec'd—5/30/2018. Est. value—$3,500.00. Disposition—Pending destruction. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Gold necklace and pendant. Rec'd—6/11/2018. Est. value—$550.00. Disposition—Pending purchase by employee. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Omega Seamaster watch. Rec'd—6/20/2018. Est. value—$3,800.00. Disposition—Pending destruction. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | 1 man's and 1 woman's Rado watch. Rec'd—7/1/2018. Est. value—$1,000.00. Disposition—Pending destruction. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Ball man's watch. Rec'd—7/7/2018. Est. value—$2,000.00. Disposition—Pending destruction. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts Furnished by the Central Intelligence Agency]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| An Agency Employee ..... | Necklace, bracelet, and earrings set in box, and statue. Rec'd—7/11/2018. Est. value—$1,155.00. Disposition—Pending transfer to GSA. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Diamond earrings. Rec'd—7/23/2018. Est. value—$1,200.00. Disposition—Pending transfer to GSA. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Desert Falcon X watch. Rec'd—7/25/2018. Est. value—$10,000.00. Disposition—On official display. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | 2′x3′ silk rug. Rec'd—7/25/2018. Est. value—$5,000.00. Disposition—On official display. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Glock 19 pistol. Rec'd—8/8/2018. Est. value—$476.00. Disposition—On official display. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Two pearl necklaces, bracelet, and earrings. Rec'd—8/18/2018. Est. value—$500.00. Disposition—On official display. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Maurice Lacroix women's watch. Rec'd—8/30/2018. Est. value—$880.00. Disposition—Pending purchase by employee. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Necklace, ring, and earrings set. Rec'd—11/7/2018. Est. value—$500.00. Disposition—Pending transfer to GSA. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Gold necklace, ring, earrings, and bracelet. Rec'd—11/7/2018. Est. value—$2,000.00. Disposition—Pending transfer to GSA. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Silver and gold Ebel watch. Rec'd—11/13/2018. Est. value—$1,500.00. Disposition—On official display. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Necklace, bracelet, watch, and corsage. Rec'd—11/18/2018. Est. value—$500.00. Disposition—Pending destruction. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Oil painting. Rec'd—11/19/2018. Est. value—$700.00. Disposition—Pending purchase by employee. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| An Agency Employee ..... | Tudor women's watch. Rec'd—12/18/2018. Est. value—$5,000.00. Disposition—Official use. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: THE DEPARTMENT OF ARMY

[Report of Tangible Gifts Furnished by the Department of Army]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| General James Mattis, Commander of CENTCOM. | Montblanc Pen. Rec'd—9/12/2012. Est. value—$935.00. Disposition—Transferred to GSA on 2/14/2018. | Brigadier General Adullah, Qatar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: THE DEPARTMENT OF ARMY—Continued

[Report of Tangible Gifts Furnished by the Department of Army]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| General Joseph Votel, Commanding General, U.S. Army Central Command. | Baron Philippe Men's Watch. Rec'd—1/17/2017. Est. value—$750.00. Disposition—Transferred to GSA on 2/14/2018. | Major General Hamad Bin-Ali, Chief of Staff of the Armed Forces of Qatar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| General Joseph Votel, Commanding General, U.S. Army Central Command. | Cartouche Pendant, 18K. Rec'd—03/17/2017. Est. Value—$550.00. Disposition—Transferred to GSA on 2/14/2018. | Major General Saeed, Mabkhoot Louteya Al Ameri, Commander, United Arab Emirates Land Forces. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| General Terrence McKenrick, Deputy Commanding General, U.S. Army Central Command. | Jambiya Dagger, Silver. Rec'd—9/13/2017. Est. value—$188.97. Disposition—Purchased by recipient. | Major General Saeed, Mabkhoot Louteya Al Ameri, Commander, United Arab Emirates Land Forces. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| General John W. Nicholson, Commanding General, U.S. Army Central Command. | Brass Cowbells. Rec'd—8/11/2018. Est. value—$70.00. Disposition—Purchased by recipient. | Indian Foundation, India .... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| General Charles Constanza, Deputy Commanding General, 1st Armory Division. | Watch, Omega DeVille. Rec'd—3/1/2018. Est. value—$3,775.00. Disposition—Transferred to GSA on 2/14/2018. | Masrour Barzani, Chancellor, Kurdistan Regional Government. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| General Terrence McKenrick, Deputy Commanding General, U.S. Army Central Command. | Black Armin Watch. Rec'd—8/9/2017. Est. value—$5,946.00. Disposition—Transferred to GSA on 2/14/2018. | General Dhafer Ashehri, Northwest Commander, Saudi Arabia Land Forces. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| General Lloyd Austin III, Commanding General, U.S. Army Central Command. | Jorg Hysek Men's Watch, Jorg Hysek Women's Watch, 18k Gold Diamond Ring. Murex Women's Watch. Jorg Hysek pen. Luxury Wooden Jewelry Presentation Box. Cerruti Silk Tie. Charriol Paris Royal White Perfume. Aigner Debut Perfume. J.T. DuPont Paris Perfume. Cargo Men's Wallet. Joseph H. Clissod Fabric (4 Yards). Dunhill Pen. Rec'd—8/1/2013. Est. value—$4,398.80. Disposition—Transferred to GSA on 2/14/2018. | Lieutenant General Ghanem Bin Shaheen Al-Ghanim, Chief of Staff, Armed Forces of Qatar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| General Joseph Votel, Commanding General, U.S. Army Central Command. | Apple iPhone 7. Rec'd—1/17/2017. Est. value—$649.00. Disposition—Transferred to GSA on 2/14/2018. | Major General Hamad bin Ali Attiyah, Advisor to the Amir for Defense Affairs of Qatar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| General Lloyd Austin III, Commanding General, U.S. Army Central Command. | Delsey Chatelet Hard Plus 77 CM Large 4-Wheel Spinner Suitcase. Rec'd—8/1/2013. Est. value—$330.00. Disposition—Transferred to GSA on 12/21/2017. | Major General Saeed, Mabkhoot Louteya Al Ameri, Commander, United Arab Emirates Land Forces. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| General Lloyd Austin III, Commanding General U.S. Army Central Command. | Longines: Master Collection Rose Gold Men's watch. Rec'd—5/13/2013. Est. value—$3,550.00. Disposition—Transferred to GSA on 2/14/2018. | Major General Hamad bin Ali Attiyah, Advisor to the Amir for Defense Affairs of Qatar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| General Lloyd Austin III, Commanding General U.S. Army Central Command. | Longines: Primaluna Diamond Face Women's Watch. Rec'd—5/14/2013. Est. value—$1,895.00. Disposition—Transferred to GSA on 2/14/2018. | Major General Hamad bin Ali Attiyah, Advisor to the Amir for Defense Affairs of Qatar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Major General Mitchell Kilgo | Concord Saratog Watch. Rec'd—11/20/2017. Est. value—$2,117.00. Disposition—Transferred to GSA on 2/14/2018. | Unknown ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Major General William B. Hickman, Deputy Commanding General, U.S. Army Central Command. | Johann Strauss Edition Montblanc Pen and Ink Set. Rec'd—5/22/2017. Est. value—$816.50. Disposition—Transferred to GSA on 2/14/2018. | Indian Foundation, India .... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Major General William B. Hickman, Deputy Commanding General, U.S. Army Central Command. | 800 Series Movado Men's Watch, Stainless Steel. Rec'd—5/24/2017. Est. value—$1,195.00. Disposition—Transferred to GSA on 2/14/2018. | Major General Khaled, Saleh Al-Sabah, Commander, Kuwait Land Forces. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: THE DEPARTMENT OF ARMY—Continued

[Report of Tangible Gifts Furnished by the Department of Army]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Major General William B. Hickman, Deputy Commanding General, U.S. Army Central Command. | Knife/Bayonet Set. Rec'd—5/24/2017. Est. value—$518.99. Disposition—Transferred to GSA on 2/14/2018. | Major General Saeed, Mabkhoot Louteya Al Ameri, Commander, United Arab Emirates Land Forces. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Brigadier General Joseph W. Rank, Senior Defense Official and Defense Attaché. | Cartier Messenger Bag. Rec'd—4/19/2017. Est. value—$2,660.00. Disposition—Transferred to GSA on 2/14/2018. | Matar Al Dhaheri, Deputy Minister of Defense, United Arab Emirates. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Brigadier General Scott Efflandt. | Omega DeVille Watch. Rec'd—7/7/2017. Est. value—$2,925.00. Disposition—Purchased by recipient. | Masrour Barzani, Chancellor, Kurdistan Regional Government. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Captain Eric Anderson ..... | Genevoski Men's Watch. Rec'd—6/25/2015. Est. value—$500.00. Disposition—Transferred to GSA on 2/14/2018. | RADM al-Qahtani, Saudi Arabia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Captain Zachary Harnish, Aide to the Deputy Commanding General, 1st Armory Division. | Tissot T-Touch Expert Titanium Watch. Rec'd—3/6/2018. Est. value—$606.00. Disposition—Transferred to GSA on 2/14/2018. | Masrour Barzani, Chancellor, Kurdistan Regional Government. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Uli Calvo ..... | Longines Prima Luna Women's Watch. Rec'd—11/26/2014. Est. value—$1,100.00. Disposition—Transferred to GSA on 2/14/2018. | His Excellency Salem Alshamsi, Consul General of the United Arab Emirates. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. James Renna ..... | Apple iPhone 6. Rec'd—7/9/2015. Est. value—$549.00. Disposition—Transferred to GSA on 2/14/2018. | Major General Al M. Al-Wahebi. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Unknown ..... | Versace Men's Watch. Rec'd—Unknown. Est. value—$740.00. Disposition—Transferred to GSA on 2/14/2018. | Major General Hamad bin Ali Attiyah, Advisor to the Amir for Defense Affairs of Qatar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Unknown ..... | Lamborghini Wallet. Rec'd—5/13/2013. Est. value—$270.00. Disposition—Transferred to GSA on 12/21/2018. | Major General Hamad bin Ali Attiyah, Advisor to the Amir for Defense Affairs of Qatar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Unknown ..... | Apple iPad Mini 2, 16GB. Rec'd—7/16/2018. Est. value—$399.00. Disposition—Transferred to GSA on 2/14/2018. | Unknown ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: THE DEPARTMENT OF DEFENSE

[Report of Tangible Gifts Furnished by the Department of Defense]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable James Mattis, Secretary of Defense. | Acrylic painting on canvas depicting 5 sailboats and seagulls in foreground light green water, shoreline of buildings in mid-plane under light blue/pink/greenish blue sky. Rec'd—12/20/2017. Est. value—$450.00. Disposition—Pending transfer to GSA. | His Excellency Elin Suleymanov, Ambassador of Azerbaijan to the United States. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable James Mattis, Secretary of Defense. | Curved Sword, polished blade numbered 3003 on the top edge near hilt, displaying adhesive sticker "Albidaa" secured in gold-plated handle with 2-prong hilt from Qatar. Rec'd—4/22/2017. Est. value—$1,850.00. Disposition—Pending transfer to GSA. | Major General Hamad bin Ali Attiya, Advisor to the Amir for Defense Affairs of Qatar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable James Mattis, Secretary of Defense. | Silver and copper colored eagle statue. Rec'd—4/23/2017. Est. value—$5,750.00. Disposition—Pending transfer to GSA. | Major General Hamad bin Ali Attiya, Advisor to the Amir for Defense Affairs of Qatar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: THE DEPARTMENT OF DEFENSE—Continued

[Report of Tangible Gifts Furnished by the Department of Defense]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable James Mattis, Secretary of Defense. | Bowl, round, brass clad in lapis lazuli panels of fairly uniform color and pyrite flecks, scalloped rim and root. Rec'd—4/24/2017. Est. value—$785.00. Disposition—Pending transfer to GSA. | His Excellency Ashraf Ghani, President of Afghanistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable James Mattis, Secretary of Defense. | Sword, steel blade inscribed ''Presented by Egyptian Armed Forces,'' Silver tone hilt and handle displaying Chinese-style cartouches of serpents and flowers. Rec'd—4/24/2017. Est. value—$950.00. Disposition—Pending transfer to GSA. | General Sedky Sobhy, Minister of Defense of Egypt. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable James Mattis, Secretary of Defense. | White engraved Corian w/brass inlay wall hanging. Rec'd—5/16/2017. Est. value—$1,650.00. Disposition—Pending transfer to GSA. | His Highness Mohamed bin Zayed Al Nahyan, Crown Prince of Dubai, United Arab Emirates. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable James Mattis, Secretary of Defense. | White marble box, rectangular, 8″x6″, detachable lid and outside walls displaying marquetry flowers in lapis lazuli with malachite. Rec'd—6/26/2017. Est. value—$1,000.00. Disposition—Pending transfer to GSA. | His Excellency Narendra Modi, Prime Minister of India. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable James Mattis, Secretary of Defense. | Pistol, replica flint lock with walnut stock, metal parts blackened and ornamented with brass floral inlay, in walnut presentation box, hinged lid with brass tag from Levan Izoria, Georgian MOD to James Mattis. Rec'd—11/13/2017. Est. value—$470.00. Disposition—Pending transfer to GSA. | His Excellency Levan Izoria, Minister of Defense of Georgia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable James Mattis, Secretary of Defense. | Encased peacock artwork. Rec'd—10/20/2017. Est. value—$430.00. Disposition—Pending transfer to GSA. | Her Excellency Nirmala Sitharaman, Minister of Defense of India. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable James Mattis, Secretary of Defense. | Korean sword, polished steel blade marked to Secretary Mattis, dated ''27 October 2017'' in black carrying case. Rec'd—10/27/2017. Est. value—$1,900.00. Disposition—Pending transfer to GSA. | The Honorable Song Young-moo, Minister of Defense of the Republic of Korea. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable James Mattis, Secretary of Defense. | Rug, wool, hand-woven, 118″x154″ pile area excluding fringe, 195 knots sq. in. Rec'd—9/7/2018. Est. value—$2,100.00. Disposition—Pending transfer to GSA. | His Excellency Ashraf Ghani, President of Afghanistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable James Mattis, Secretary of Defense. | Vase, cloisonné, 10″x5½″. Gilt rim plus 3 more gilt bands, flanking waisted neck, bulbous body, flaring foot. Rec'd—11/8/2018. Est. value—$890.00. Disposition—Pending transfer to GSA. | General Wei Fenghe, Minister of Defense of China. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable James Mattis, Secretary of Defense. | Afghani rug, wool pile, hand-woven, black candelabrum motif on ivory color background plus other geometric forms in black/pink/red, surrounded by 3 chief borders and additional band of inches at top, 46″x66″ pile area. Rec'd—9/7/2018. Est. value—$400.00. Disposition—Pending transfer to GSA. | His Excellency Dr. Hadullah Mohib, National Security Advisor of Afghanistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable James Mattis, Secretary of Defense. | Five items: (1) Frog drum, miniature in a gold tone cast resin having 4 frogs on rim, mounted on block tagged from South Vietnam, (2) Yardage printed silk displaying assorted flowers against black, approximately 60″ x 192″, (3) Lacquer box, removable lid displaying Coppertone/silver/black mottling, (4) Book, *Vietnam: Mosaic of Contrasts,* (5) Artwork, half-length portrait of Mattis, made with crushed natural gemstones and minerals having a fine sand consistency in molded gemstone frame. Rec'd—1/26/2018. Est. value—$1,245.00. Disposition—Pending transfer to GSA. | His Excellency Ngo Xuan Lich, Minister of Defense of Vietnam. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: THE DEPARTMENT OF DEFENSE—Continued

[Report of Tangible Gifts Furnished by the Department of Defense]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable James Mattis, Secretary of Defense. | (1) Model horse-drawn coach in silver filigree, the coach topped by a crown, a bird in each top corner, footman standing on back holding up a parasol, 4 harnessed horses preceded by rider on horseback, tagged Indonesian MOD, inside glass display case, (2) Photograph of 2 rows of people standing over tag ''The Visit of U.S. Secretary of Defense The H.E. James Mattis to Indonesia/Jakarta 22nd–24th 2018'' in molded gold tone frame, (3) Photo album, hardcover, front cover with inset photo print stating same as in item 2, containing ten cardboard sheets with photographic pages adhered to both sides, in cardboard sleeve printed with same photograph and statement as album cover. Rec'd—1/23/2018. Est. value—$480.00. Disposition—Pending transfer to GSA. | His Excellency Ryamizard Ryacudu, Minister of Defense of Indonesia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable James Mattis, Secretary of Defense. | (1) Plaque stating ''Bahrain Defense Force'' over colored roundels, over ''Field Marshal Khalifa Bin Ahmed Al-Khalifa/Commander in chief of Bahrain Defense Force, (2) Curved sword, 39″ long, having polished non-fluted blade secured in a 3-prong silver tone hilt and bracket shape handle with 2 blade panels ornamented with six 8-point stars, accompanied by black leather clad sheath having engraved silver tone black scrollwork, end inscribed #4445, also gilt Bahraini sheik emblem on one side, plus white/black cord and 2 tassels. Rec'd—3/14/2018. Est. value—$640.00. Disposition—Pending transfer to GSA. | His Excellency Shaikh Khalifa bin Ahmed Al Khalifa, Commander-in-Chief of Bahrain Defense Force (Field Marshal). | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable James Mattis, Secretary of Defense. | Mini statue of the Bradenburg Gate, bisque porcelain, roofed colonnade surmounted by 4 horses pulling chariot with winged victory, in presentation box. Rec'd—6/20/2018. Est. value—$640.00. Disposition—Pending transfer to GSA. | Her Excellency Ursula von der Leyen, Minister of Defense of Germany. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable James Mattis, Secretary of Defense. | Set of wooden table and chairs (1 table and 2 stools, ornate and wooden with carved flowers), Set of 3 hexagonal wood tables, in 2 sizes, displaying carved anthemions and foliate scrollwork surrounding centered rosette in top as well as all 6 leg panels, in bespoke leatherette presentation boxes. Rec'd—6/13/2018. Est. value—$830.00. Disposition—Pending transfer to GSA. | His Excellency Shavkat M. Mirziyoyev, President of Uzbekistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Lt. Colonel Mafwa Kuvbidila, J5 DDME. | Wristwatch, by Concord, man's, #0320247, Saratoga model, having round black face with silver tone Roman numerals depicting II/IV/VI/VIII/X/XII, silver tone bars denoting other hours, date window at 3 o'clock position, both octagonal back and flex band of black and silver tone in presentation box. Rec'd—10/24/2017. Est. value—$2,600.00. Disposition—Pending transfer to GSA. | General Abdul Rahman al-Banyan, Chief of Defense of Saudi Arabia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Ms. Laura Cooper, Deputy Assistant Secretary of Defense. | (1) Medallion, polished brass rounded obverse stating ''The Republic of Azerbaijan/State Border Service surrounding image of quadrate post fronting map of Azerbaijan, (2) Rug, silk, 18x22=396 knots per sq. in, depicting centered asterisk within burgundy octagon with blue-gray octagon containing red/yellow/white hooks, plus red bracket arms and crosses on ivory-colored field, footed bowl plus stepped outlines in corners, surrounded by 4 borders of which the third dominates, marked ''Azarbaycan'', (3) Kilim, machine woven cotton reversible displaying abstracted flower on leafy stems plus leaves/trees in red/tan/black/white, approximately 29″ x 46″ woven area, (D) Magazine, ''Azerbaijan Carpets'' volume 7, No. 22,2017. Rec'd—10/25/2017. Est. value—$1,055.00. Disposition—Retained by DOD on Official Display. | Gazanafar Ahmadov, Director of the Azerbaijani National Mine Action Agency, Azerbaijan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: THE DEPARTMENT OF DEFENSE—Continued

[Report of Tangible Gifts Furnished by the Department of Defense]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Ms. Kari Bingen, Principal Deputy Under Secretary for Intelligence. | (1) Watch—Maurice Lacroix—Fabo Style, tagged FA1004–PVP06–1/PVD pink 4N 1 001003342, having white face of 12 engine-turned sections surrounded by black Arabic numerals, date window with gold tone aperture ring at 3 o'clock position, blue cabochon on adjustment pin, polished gold tone flex band, (2) Plaque, green/gold tone enameled bird with wings flanking 8 stars, in turn flanked by laurel leaves beneath gold tone ribbon form and over a second ribbon form stating ''Military Intelligence Directorate,'' all mounted against matte gray background within gold tone archway, adhered to pressboard rectangle painted medium brown, with incorporated foot. Rec'd—12/7/2017. Est. value—$1,245.00. Disposition—Pending transfer to GSA. | Lt. Gen. Ruthaithy, United Arab Emirates. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Ms. Elisa Hensz, Chief Partner, Engagement for Middle East and Africa. | Wrist watch by Gianfranco Ferre, women's #TTGF203861, round silver tone face with concentric rings overlapped by 4 diamonds within gold tone squares denoting 12/3/6/9 o'clock, gold tone bar for other hours, bevel of faux diamonds, glossy silver tone base plus band having medial gold tone line. Rec'd—4/2/2018. Est. value—$650.00. Disposition—Pending transfer to GSA. | Brigadier General Abdullah Hamoudi, United Arab Emirates. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Inspector General, Department of Defense. | Rug, wool pile, hand woven, displaying 3 complete and 2 partial rows of hexagons containing double red diamond shapes, connected by bands, alternating with diamond shapes on tan, surrounded by 8 borders of which the fourth predominates in floral lappets flanking red zigzag, 48″x63″ pile. Rec'd—1/11/2010. Est. value—$450.00. Disposition—Pending transfer to GSA. | General Abdul Rahim Wardak, Minister of Defense of Afghanistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Inspector General, Department of Defense. | Rug, wool pile, hand woven, 58″x48″ pile area, field displaying 3 rows of 16 hexagonal each in burgundy/mustard/green on beige surrounding by 4 primary borders, the second of burgundy rosettes on beige, the outer of zigzag on diagonals. Rec'd—6/6/2018. Est. value—$425.00. Disposition—Pending transfer to GSA. | Unknown | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Inspector General, Department of Defense. | Three sets of coins, (1) 7 sets of 3 sizes of sterling silver coins relating to Euro 1996 sports championships in soccer, XXVI Olympic Games in Atlanta sailing, boating, swimming, crew in black presentation boxes. (2) Gold 24k, one ounce, Romanian coat of arms dated 2000, 500 lei face value. (3) 90% gold, 8.64 grams, 500 lei face value, issued 1998, in plastic cases. (4) Gold 100 lei face value in plastic cases. Rec'd—6/6/2018. Est. value—$2,950.00. Disposition—Pending transfer to GSA. | Unknown | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. David Trachtenberg, Deputy Under Secretary of Defense (Policy). | Kavalan Whisky (Single Malt, Sherry Cask No. S100127028A, Bottle No. 005–5456, Soloist Single Cask Strength, Red Label, 700ml, accompanied by clear goblet, in red leatherette presentation box). Rec'd—10/31/2017. Est. value—$400.00. Disposition—Pending transfer to GSA. | Pao-ku Wu, Director General of the Department of Strategic Planning, Ministry of National Defense of Taiwan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

## AGENCY: THE DEPARTMENT OF AGRICULTURE

[Report of Tangible Gifts Furnished by the Department of Agriculture]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable George E. Perdue III, Secretary of Agriculture. | Kazakhstani chess board. Rec'd—5/1/2018. Est. value—$646.00. Disposition—On official display. | His Excellency Umirzak Shukeyev, Deputy Prime Minister and Minister of Agriculture of Kazakhstan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

## AGENCY: THE DEPARTMENT OF HOMELAND SECURITY

[Report of Travel and Report of Tangible Gifts Furnished by the Department of Homeland Security]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable Kirstjen Nielsen, Secretary of Homeland Security. | Burberry Cashmere Scarf. Rec'd—12/12/2017. Est. value—$425.00. Disposition—Pending GSA Transfer. | Brigadier General Mohammed Al Nasser, Security Attaché, Embassy of Qatar to the United States. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Kirstjen Nielsen, Secretary of Homeland Security. | Cartier Mini-pen (Pink Lacquer). Rec'd—5/11/2018. Est. value—$510.00. Disposition—Report of loss. | Brigadier General Mohammed Al Nasser, Security Attaché, Embassy of Qatar to the United States. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Kirstjen Nielsen, Secretary of Homeland Security. | Painting by artist Carmen Parra. Rec'd—9/28/2018. Est. value—$1,560.00. Disposition—Pending recipient purchase. | His Excellency Marcelo Luis Ebrard, Secretary of Foreign Relations of Mexico. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Kirstjen Nielsen, Secretary of Homeland Security. | Fountain Pen with 18K gold nib in wooden presentation box. Rec'd—12/9/2018. Est. value—$700.00. Disposition—Pending official display. | His Majesty Abdullah II bin Al-Hussein, King of Jordan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Kirstjen Nielsen, Secretary of Homeland Security. | 18K gold name pendant ''Kirstjen'' with 18″ 18K gold chain. Rec'd—12/11/2018. Est. value—$460.00. Disposition—Pending GSA transfer. | His Excellency Younis al Masry, Minister of Civil Aviation of the Egyptian Air Forces. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Kirstjen Nielsen, Secretary of Homeland Security. | Cashmere Khaki/Black Giant Checked Burberry Scarf. Rec'd—12/24/2018. Est. value—$430.00. Disposition—Pending GSA transfer. | Brigadier General Mohammed Al Nasser, Security Attaché, Embassy of Qatar to the United States. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Christopher Alexander, Deputy Priority Services, Cybersecurity and Infrastructure Security Agency (CISA). | TRAVEL: Round Trip Flight up to $2805.64 and hotel accommodations near NATO HQ at $160 per night. Rec'd—9/25/2018. Est. value—$3,445.64. Disposition—CISA. | North Atlantic Treaty Organization Headquarters, Brussels, Belgium. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

## AGENCY: THE DEPARTMENT OF COMMERCE

[Report of Tangible Gifts Furnished by the Department of Commerce]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable Wilbur L. Ross, Secretary of Commerce. | Handmade ceramic and framed artwork. Rec'd—10/9/2017. Est. value—$600.00. Disposition—purchased by the Secretary from GSA. | His Excellency Somkid Jatusripitak, Deputy Prime Minister of Thailand. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Wilbur L. Ross, Secretary of Commerce. | Samarkand-Bukara Silk Carpet in large green velvet box. Rec'd—6/15/2018. Disposition—Secretary's vault awaiting decision on final disposition. | His Excellency Shavkat Mirziyoyev, President of Uzbekistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: THE DEPARTMENT OF JUSTICE

[Report of Travel and Report of Tangible Gifts Furnished by the Department of Justice]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable Jefferson B. Sessions III, Attorney General. | Iranian hand-knotted silk carpet. Rec'd—1/19/2018. Est. value—$600.00. Disposition—To JMD property for GSA excess 2/23/2018. | His Excellency Dr. Ali Bin Mohsen Bin Fetais Al Marri, Attorney General of Qatar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Jefferson B. Sessions III, Attorney General. | Graf Von Faber Castell Pen w/case. Rec'd—3/14/2018. Est. value—$425.00. Disposition—To JMD property for GSA excess 5/8/2018. | Her Excellency Aurelia Frick, Minister of Justice, and Minister of Foreign Affairs of Liechtenstein. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Ameet Kabrawala, Resident Legal Advisor. | TRAVEL: Presentation by invitation. Rec'd—12/2/2018. Est. value—$800.00. Disposition—N/A. | Mr. Andris Kairis, EU Funds Project Manager, Latvian School of Public Administration, Latvia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Ms. Helen Chrisodoulou, Trial Attorney. | TRAVEL: FBI Training Program. Rec'd—3/1/2018. Est. value—$1,750.00. Disposition—N/A. | La Comisión Federal de Competencia Economica, Mexico. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Benjamin Sirota, Trial Attorney. | TRAVEL: Cartel training. Rec'd—Trip Cancelled. Est. value—$1,350.00. Disposition—N/A. | La Comisión Federal de Competencia Economica, Mexico. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Ms. Katherine Stella, Special Counsel. | TRAVEL: Cartel training. Rec'd—3/3/2018. Est. value—$1,350.00. Disposition—N/A. | La Comisión Federal de Competencia Economica, Mexico. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Eric Meiring, Assistant Section Chief. | TRAVEL: Cartel training. Rec'd—7/5/2018. Est. value—$1,593.43. Disposition—N/A. | Ireland's Competition and Consumer Protection Commission, Ireland. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Jesus Alvarado-Rivera, International Counsel. | TRAVEL: Attorney Client Privilege. Rec'd—7/5/2018. Est. value—$1,496.00. Disposition—N/A. | La Comisión Federal de Competencia Economica, Mexico. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Patrick Greenlee, Trial Attorney. | TRAVEL: Korean Fair Trade Commission. Rec'd—9/25/2018. Est. value—$1,956.00. Disposition—N/A. | 2018 Seoul International Seminar on Economic Analysis of Competition Policy. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: THE DEPARTMENT OF TRANSPORTATION

[Report of Gift of Travel Furnished by the Department of Transportation]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Mr. Brian Hedberg, Director of International Aviation, Office of the Secretary. | TRAVEL: 3 nights of lodging. Rec'd—1/30/2018. Est. value—$3,150.00. Disposition—N/A. | CAPA-Centre of Aviation ... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Dr. Shashi Kumar, Deputy AA for National Coordinator/MET, Maritime Administration. | TRAVEL: Speak on a panel hosted by the Korean government in Busan, Korea. Rec'd—3/1/2018. Est. value—$2,931.00. Disposition—N/A. | The Republic of Korea ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Tony Padilla, Senior Advisor, Office of International Activities, Maritime Administration. | TRAVEL: Speak on a panel hosted by the Korean government in Busan, Korea. Rec'd—3/1/2018. Est. value—$2,931.00. Disposition—N/A. | The Republic of Korea ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Tony Padilla, Senior Advisor, Office of International Activities, Maritime Administration. | TRAVEL: Speak on a panel in Assam, India co-hosted by the Government of India and the World Bank. Rec'd—1/31/2018. Est. value—$2,800.00. Disposition—N/A. | The World Bank ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |

## AGENCY: THE DEPARTMENT OF THE TREASURY

[Report of Tangible Gifts Furnished by the Department of the Treasury]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable Steven T. Mnuchin, Secretary of the Treasury. | Iranian Hand Knotted Carpet. Rec'd—3/5/18. Est. value—$899.00. Disposition—Pending Transfer to GSA. | His Excellency Dr. Ali Bin Mohsen Bin Fetais Al Marri, Attorney General of Qatar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

## AGENCY: ENVIRONMENTAL PROTECTION AGENCY

[Report of Tangible Gifts Furnished by the Environmental Protection Agency]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Dr. Neil Chernoff, Toxicology Assessment Division, Office of Research and Development, Environmental Protection Agency. | TRAVEL: Travel expenses accepted included meals, local transportation, incidental expenses while in Geneva, Switzerland. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC § 7342(c)(1)(B)(ii). Rec'd—01/16/18. Est. value—$1,251.00. Disposition—N/A. | World Health Organization, United Nations. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Dr. Serena Chung, Environmental Engineer, National Center for Environmental Research, Environmental Protection Agency. | TRAVEL: Travel expenses of $672.80 for meals while in Singapore were accepted. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC § 7342(c)(1)(B)(ii). Rec'd—2/17/18. Est. value—$672.80. Disposition—N/A. | United Nations Environment Programme. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Vincent Cogliano, Health Risk Assessment Scientist, Office of Research and Development, Environmental Protection Agency. | TRAVEL: Reimbursement under the Foreign Gifts and Decorations Act (5 USC 7342) in the amount of 170 euros/day to cover hotel, meals, local transportation, and other expenses incidental to participating on an advisory group that met in Lyon, France. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC § 7342(c)(1)(B)(ii). Rec'd—11/12/18. Est. value—$960.00. Disposition—N/A. | World Health Organization, International Agency for Research on Cancer, Lyon, France. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Phillip G. Dickerson, Jr., Group Leader, Office of Air Quality Planning and Standards (OAQPS), Environmental Protection Agency. | TRAVEL: 20% of Daily Subsistence Allowance (DSA) accepted for six days—one travel day and five work days at standard rate for duty station in Singapore. Total received in US dollars was $672.80. The 20% figure is UN policy when hotel and meals are directly covered for all participants, leaving only incidentals. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC § 7342(c)(1)(B)(ii). Rec'd—2/19/18. Est. value—$672.80. Disposition—N/A. | United Nations Environment Programme. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Michael Doherty, Chemist, Office of Pesticide Programs, Environmental Protection Agency. | TRAVEL: Expenses accepted for ground transportation, meals, and daily expenses while in Geneva, Switzerland. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC § 7342(c)(1)(B)(ii). Rec'd—11/20/18. Est. value—$1,030.24. Disposition—N/A. | Food and Agriculture Organization of the United Nations. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Michael Doherty, Chemist, Office of Pesticide Programs, Environmental Protection Agency. | TRAVEL: Expenses accepted for ground transportation, meals, and daily expenses while in Berlin, Germany. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC § 7342(c)(1)(B)(ii). Rec'd—10/24/18. Est. value—$479.00. Disposition—N/A. | Food and Agriculture Organization of the United Nations. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Dr. Jason Fritz, Ph.D., Associate for Chemical Assessment, Toxicity Pathways Branch, Office of Research and Development, Environmental Protection Agency. | TRAVEL: Travel expenses accepted included meals and transportation expenses ($966.10), and lodging ($1050.90), while in Lyon, France. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC § 7342(c)(1)(B)(ii). Rec'd—9/18/18. Est. value—$2,477.04. Disposition—N/A. | International Agency for Research on Cancer/ World Health Organization. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: ENVIRONMENTAL PROTECTION AGENCY—Continued

[Report of Tangible Gifts Furnished by the Environmental Protection Agency]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Dr. Keith Houck, Ph.D., Research Toxicologist, National Center for Computational Toxicology, Environmental Protection Agency. | TRAVEL: Travel expenses accepted included meals, transportation, incidental expenses ($1092.00) and lodging ($817.60) while in Lyon, France. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC §7342(c)(1)(B)(ii). Rec'd—6/4/18. Est. value—$1,909.60. Disposition—N/A. | Dr. Kurt Straif, MD, PhD, Head, International Agency for Research on Cancer (IARC), Monographs Section, World Health Organization, France. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Dr. Terry Keating, Senior Scientist, National Center for Environmental Research, Environmental Protection Agency. | TRAVEL: Travel expenses of $672.80 for meals while in Singapore were accepted. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC §7342(c)(1)(B)(ii). Rec'd—2/16/18. Est. value—$672.80. Disposition—N/A. | United Nations Environment Programme. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Dr. Terry Keating, Senior Scientist, National Center for Environmental Research, Environmental Protection Agency. | TRAVEL: Travel expenses of $499 for daily subsistence allowance while in Cancun, Mexico were accepted. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC §7342(c)(1)(B)(ii). Rec'd—9/25/18. Est. value—$499.00. Disposition—N/A. | United Nations Environment Programme. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Leonid Kopylev, Mathematical Statistician, Office of Research and Development, Environmental Protection Agency. | TRAVEL: Travel expenses accepted included meals, incidental expenses (*e.g.,* laundry) ($1156), transportation ($115) and lodging ($750) while in Lyon, France. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC §7342(c)(1)(B)(ii). Rec'd—10/8/18. Est. value—$2,021.00. Disposition—N/A. | World Health Organization/ International Agency for Research on Cancer. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Dr. Thomas Luben, Senior Epidemiologist, National Center for Environmental Assessment, Office of Research and Development, Environmental Protection Agency. | TRAVEL: Travel expenses accepted included meals, local transportation (while in Germany), incidental expenses ($764.25), and lodging ($535.75) while in Bonn, Germany. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC §7342(c)(1)(B)(ii). Rec'd—3/12/18. Est. value—$1,300.00. Disposition—N/A. | World Health Organization, European Centre for Environment and Health. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Paul Michael Randall, Senior Chemical Engineer, Environmental Protection Agency. | TRAVEL: UNIDO picks up out of pocket expenses such as hotel, and in-country expenses. Travel expenses included: 3 nights lodging ($842) and the ground transportation of $230 dollars. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC §7342(c)(1)(B)(ii). Rec'd—2/5/18. Est. value—$1,072.00. Disposition—N/A. | United Nations Industrial Development Organization. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Jon Richards, Radiation Expert, Region 4, Superfund Division, Environmental Protection Agency. | TRAVEL: Travel expenses accepted included meals [$300], transportation, incidental expenses and lodging [$1200] while in Vienna, Austria. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC §7342(c)(1)(B)(ii). Rec'd—10/21/18. Est. value—$1,500.00. Disposition—N/A. | International Atomic Energy Agency. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Dr. Prakashchandra V. Shah, Chief, IIAB, Registration Division, OPP, OSCPP, Environmental Protection Agency. | TRAVEL: $4,288 direct deposit in the bank account for meals, hotel, local transportations, transportation to/ from airports, and other incidental expenses while in Geneva, Switzerland. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC §7342(c)(1)(B)(ii). Rec'd—9/15/18. Est. value—$4,288.00. Disposition—N/A. | World Health Organization, Geneva, Switzerland. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Anthony Socci, Senior Lead on International Resilience & Adaptation Policy, EPA Office of International & Tribal Affairs, Environmental Protection Agency. | TRAVEL: Travel expenses accepted included meals and incidentals ($555.00) while in Abu Dhabi, UAE. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC §7342(c)(1)(B)(ii). Rec'd—3/18/18. Est. value—$555.00. Disposition—N/A. | United Nations ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |

## AGENCY: ENVIRONMENTAL PROTECTION AGENCY—Continued

[Report of Tangible Gifts Furnished by the Environmental Protection Agency]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Mr. Hugh J. Sullivan, Environmental Protection Specialist, Office of Water, Environmental Protection Agency. | TRAVEL: Travel expenses accepted included meals, and incidental expenses (*e.g.,* internet access) ($541.50), lodging ($247.50) and local transportation (188.00) while in Panama City, Panama. Rec'd—7/15/18. Est. value—$977.00. Disposition—N/A. | Secretariat of the Cartagena Convention, United Nations Environment Programme Caribbean Environment Programme. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Rogelio Tornero-Velez, Research Physical Scientist, Office of Research and Development, Environmental Protection Agency. | TRAVEL: Lodging, meals & incidentals: 1,800 Euro ($2,124 USD) while in Lyon, France. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC §7342(c)(1)(B)(ii). Rec'd—3/18/18. Est. value—$2,124.00. Disposition—N/A. | International Agency for Research on Cancer (IARC). | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mrs. Julie Van Alstine, Chemist, Office of Pesticide Programs, Environmental Protection Agency. | TRAVEL: Expenses accepted for ground transportation, meals, and daily expenses while in Berlin, Germany. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC §7342(c)(1)(B)(ii). Rec'd—8/28/18. Est. value—$2,473.51. Disposition—N/A. | Food and Agriculture Organization of the United Nations. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Timothy J. Wade, Branch Chief, Epidemiology Branch, Office of Research and Development, Environmental Protection Agency. | TRAVEL: Travel expenses included meals, in-country transportation, incidentals ($406.89) and lodging ($836.11) while in Geneva, Switzerland. EPA authorized acceptance of the cash reimbursement pursuant to exception in the Foreign Gifts and Decorations Act at 5 USC §7342(c)(1)(B)(ii). Rec'd—1/22/18. Est. value—$1,243.00. Disposition—N/A. | The World Health Organization. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

## AGENCY: OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

[Report of Tangible Gifts Furnished by the Office of the Director of National Intelligence]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| 5 U.S.C. 7342(f)(4) ..... | Cased porcelain 6-piece coffee/tea set with double head eagle crest; together with 0.5 liter standard vodka in fitted case. Rec'd—1/25/2018. Est. value—$500.00. Disposition—For official use. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 5 U.S.C. 7342(f)(4) ..... | Red ground hand-woven rug, 12 feet by 9 feet; together with a silver mounted polychrome ceramic plate in a leather case, and a red and green gilt metal shield-shaped plaque with engraving, mounted on olive wood. Rec'd—9/14/2019. Est. value—$650.00. Disposition—For official use. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 5 U.S.C. 7342(f)(4) ..... | TRAVEL: Lodging. Rec'd—7/25/2018. Est. value—$2,994.59. Disposition—N/A. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 5 U.S.C. 7342(f)(4) ..... | TRAVEL: Lodging. Rec'd—11/1/2018. Est. value—$898.42. Disposition—N/A. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |

## AGENCY: SMITHSONIAN INSTITUTION

[Report of Tangible Gifts Furnished by the Smithsonian Institution]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Mr. Scott Rosenfeld, Lighting Designer. | TRAVEL: Honorarium for presenting at LMLCS 2018 paper on recent trends in museum lighting. Rec'd—10/19/2018. Est. value—$851.00. Disposition—Deposited in 402–0000–040216–530700. | 2018 Heritage Korea, The Republic of Korea. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: SMITHSONIAN INSTITUTION—Continued

[Report of Tangible Gifts Furnished by the Smithsonian Institution]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Mr. Scott Rosenfeld, Lighting Designer. | TRAVEL: Round trip airfare to Korea and lodging for conference. Rec'd—9/12/2018. Est. value—$1,920.00. Disposition—N/A. | 2018 Heritage Korea, The Republic of Korea. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: UNITED STATES AGENCY OF INTERNATIONAL DEVELOPMENT

[Report of Gifts of Travel Furnished by USAID]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Ms. Julie Hulama, USAID Papua New Guinea. | TRAVEL: USD $390 gift of travel. Rec'd—8/12/2018. Est. value—$390.00. Disposition—N/A. | James Cook University, Australia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: UNITED STATES HOUSE OF REPRESENTATIVES

[Report of Tangible Gifts and Gifts of Travel Furnished by the U.S. House of Representatives]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable Paul Ryan, Speaker of the House. | Set of Cristofle silver plated bookends. Rec'd—4/25/2018. Est. value—$700.00. Disposition—Transferred to the Office of the Clerk. | His Excellency Emmanuel Macron, President of France. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable David Valadao, U.S. House of Representatives. | Decoration identifying Rep. Valadao as an inductee to the Order of Prince Henry. Rec'd—6/11/2018. Est. value—$942.00. Disposition—On official display. | His Excellency Vasco Cordeiro, President of the Regional Government of the Azores, Portugal. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Timothy Huebner, Legislative Assistant, U.S. House of Representatives. | TRAVEL: Lodging, food, and per diem. Rec'd—6/29/2018. Est. value—Unknown. Disposition—N/A. | CBBSX 2018 Hosts, Germany. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Ms. Kelliann Blazek, Counsel, Rep. Chellie Pingree, U.S. House of Representatives. | TRAVEL: 4 night's hotel accommodations in Denmark, meals, and private transportation in country. Rec'd—9/23/2018. Est. value—$1,307.00. Disposition—N/A. | Andrew Kessler, Senior Commercial Advisor, Danish Trade Council, Denmark. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Warren Burke, Counsel, Office of Legislative Counsel, U.S. House of Representatives. | TRAVEL: Lodging, food, and per diem. Rec'd—6/29/2018. Est. value—Unknown. Disposition—N/A. | CBBSX 2018 Hosts, Germany. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Venkatasatya Varum Krovi, Deputy Chief of Staff and Legislative Director, U.S. House of Representatives. | TRAVEL: Lodging, food, and per diem. Rec'd—6/29/2018. Est. value—Unknown. Disposition—N/A. | CBBSX 2018 Hosts, Germany. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Donald Davidson, Legislative Director, Rep. Sam Johnson, U.S. House of Representatives. | TRAVEL: Lodging, food, and per diem. Rec'd—6/29/2018. Est. value—Unknown. Disposition—N/A. | CBBSX 2018 Hosts, Germany. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Angel Nigaglioni, Legislative Director and Counsel, Rep. Jose Serrano, U.S. House of Representatives. | TRAVEL: Lodging, food, and per diem. Rec'd—6/29/2018. Est. value—Unknown. Disposition—N/A. | CBBSX 2018 Hosts, Germany. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Ms. Katherine Schisler, Legislative Assistant, U.S. House of Representatives. | TRAVEL: Lodging, food, and per diem. Rec'd—6/29/2018. Est. value—Unknown. Disposition—N/A. | CBBSX 2018 Hosts, Germany. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: UNITED STATES SENATE

[Report of Tangible Gifts Furnished by the United States Senate]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| The Honorable Cory A. Booker, United States Senator. | Moldovan aged cognac. Rec'd—12/6/2017. Est. value—$177.35. Disposition—Secretary of the Senate. | His Excellency Andrian Candu, Speaker of the Parliament of Moldova. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Christopher A. Coons, United States Senator. | Moldovan scotch, and collection of Moldovan stamps. Rec'd—12/6/2017. Est. value—$277.35. Disposition—Secretary of the Senate. | His Excellency Andrian Candu, Speaker of the Parliament of Moldova. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Lindsey Graham, United States Senator. | Qatari rug. Rec'd—1/18/2018. Est. value—$3,000.00. Disposition—Secretary of the Senate. | His Excellency Dr. Ali Bin Mohsen Bin Fetais Al Marri, Attorney General of Qatar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Catherine Cortez Masto, United States Senator. | W.Kruk silver bracelet with amber. Rec'd—1/18/2018. Est. value—$175.14. Disposition—Secretary of the Senate. | Her Excellency Anna Maria Anders, Senator, Poland. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Tom Cotton, United States Senator. | Cased dagger and photo album of meeting. Rec'd—2/18/2018. Est. value—$150.00. Disposition—Russell Senate Office Building Room 116. | His Excellency Lt. General Janab Al Sayyid Munthir bin Majid Al Said, Head of Communications and Coordination at the Royal Office, Government of Oman. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Jack Reed, United States Senator. | Replica of the Tree of Life in mosaic in Madaba, and Book: *The Mosaics of Jordan.* Rec'd—2/23/2018. Est. value—$337.00. Disposition—Secretary of the Senate. | His Majesty King Abdullah II bin Al-Hussein, King of Jordan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Dan Sullivan, United States Senator. | Stainless steel watch, and gold relief sculpture of eagle. Rec'd—4/26/2018. Est. value—$270.00. Disposition—Secretary of the Senate. | His Excellency Yen Teh-fa, Minister of National Defense of Taiwan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Mitch McConnell, United States Senator. | Silver Tray. Rec'd—6/19/2018. Est. value—$146.00. Disposition—Secretary of the Senate. | His Majesty King Felipe VI, King of Spain. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Joni Ernst, United States Senator. | Customized watch with a silver face and black band. Rec'd—8/31/2018. Est. value—$224.00. Disposition—Secretary of the Senate. | His Excellency Petro Poroshenko, President of Ukraine. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Jack Reed, United States Senator. | Yedameun spoon and chopsticks; Bronze tableware set. Rec'd—10/2/2018. Est. value—$110.28. Disposition—Secretary of the Senate. | Mr. Ihk-pyo Hong, Member of the National Assembly, Republic of Korea. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| The Honorable Edward J. Markey, United States Senator. | Yedameun spoon and chopsticks; Bronze tableware set. Rec'd—12/20/2018. Est. value—$129.00. Disposition—Secretary of the Senate. | His Excellency Cho Yoon-Je, Ambassador of The Republic of Korea to the United States. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mr. Matthew Lampert, Professional Staff Member, Committee on Armed Services. | Four wallets. Key ring, Cufflinks, and Tie clip. Rec'd—1/19/2018. Est. value—$115.00. Disposition—Secretary of the Senate. | Lieutenant General Muhammad Afzal, Pakistan Army. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Ms. Laura Vincent, Scheduler, Office of Senator Mitch McConnell. | Money clip featuring the Raghadan Palace. Rec'd—6/26/2018. Est. value—$50.00. Disposition—Secretary of the Senate. | Their Majesties King Abdullah II bin Al-Hussein and Queen Rania Al Abdullah of Jordan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

[FR Doc. 2020–03722 Filed 2–24–20; 8:45 am]

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# FEDERAL REGISTER

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Part IV

## Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 91, 121, and 135
Pilot Professional Development; Final Rule

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 61, 91, 121, and 135**

**[Docket No.: FAA–2014–0504; Amdt. Nos.: 61–144; 91–356; 121–382; and 135–142]**

**RIN 2120–AJ87**

## Pilot Professional Development

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends the requirements primarily applicable to air carriers conducting domestic, flag, and supplemental operations to enhance the professional development of pilots in those operations. This action requires air carriers conducting domestic, flag, and supplemental operations to provide new-hire pilots with an opportunity to observe flight operations and become familiar with procedures before serving as a flightcrew member in operations; to revise the upgrade curriculum; and to provide leadership and command and mentoring training for all pilots in command. This final rule will mitigate incidents of unprofessional pilot behavior and reduce pilot errors that can lead to a catastrophic event.

**DATES:** Effective April 27, 2020. The compliance date for the requirements in §§ 91.1063(b)(2), 121.419(c) and (g), 121.420, 121.424(b) and (g), 121.426, 121.435, and 135.3(d)(1) is April 27, 2022. The compliance date for the requirements in § 121.429 is April 27, 2023.

**ADDRESSES:** For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Sheri Pippin, Air Transportation Division (AFS–200), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8166; email: *sheri.pippin@faa.gov.*

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### List of Abbreviations and Acronyms Frequently Used in This Document

AC Advisory Circular
ACSPT ARC Air Carrier Safety and Pilot Training Aviation Rulemaking Committee
AQP Advanced Qualification Program
ARC Aviation Rulemaking Committee
ATP Airline Transport Pilot
ATP–CTP Airline Transport Pilot Certification Training Program
CFR Code of Federal Regulations
CRM Crew Resource Management
FFS Full Flight Simulator
FSTD Flight Simulation Training Device
FTD Flight Training Device
InFO Information for Operators
LOFT Line-Oriented Flight Training
MLP ARC Flight Crewmember Mentoring, Leadership, and Professional Development Aviation Rulemaking Committee
NPRM Notice of Proposed Rulemaking
OF Operations Familiarization
PIC Pilot in Command
PDSC Professional Development Steering Committee
PPDC Pilot Professional Development Committee
SAFO Safety Alert for Operators
SIC Second in Command
SOP Standard Operating Procedures
THRR ARC Flightcrew Member Training Hours Requirement Review Aviation Rulemaking Committee
91K Part 91, subpart K of 14 CFR.

### I. Executive Summary

On October 7, 2016, the Federal Aviation Administration (FAA) published a notice of proposed rulemaking (NPRM) to propose amendments to requirements for air carriers and pilots operating under part 121 to enhance the professional development of part 121 pilots.[1] The proposed amendments included additional air carrier training for pilots in command (PIC), additional air carrier qualification for newly hired pilots, and a requirement for air carriers to establish and maintain a pilot professional development committee to develop, administer, and oversee formal pilot mentoring programs. The comment period for the NPRM closed on January 5, 2017, and the FAA received 44 unique comments. Only two of the comments opposed the rule, and 22 comments supported the rule without change. Twelve comments supported the rule generally but suggested changes. After review of the comments, the FAA is issuing this final rule, which contains a number of changes from the NPRM, to enhance the professional development of part 121 pilots. Table 1, Summary of Final Rule Provisions, provides additional detail regarding the final rule provisions incorporated into part 121.

[1] 81 FR 69908.

TABLE 1—SUMMARY OF FINAL RULE PROVISIONS

| Provision | Summary of NPRM provision | Major changes from NPRM |
|---|---|---|
| Operations familiarization for new-hire pilots (§ 121.435). | • Operations familiarization must include a minimum of 2 operating cycles. A new-hire pilot completing operations familiarization must occupy the flight deck observer seat. | • Adds requirement that operations familiarization may be completed during or after basic indoctrination training, but must be completed before beginning operating experience. |
| Upgrade training curriculum requirements (§§ 121.420 and 121.426). | • Upgrade ground and flight training requirements have been updated based on the qualification and experience that all upgrading pilots now have as a result of the Pilot Certification and Qualification Requirements for Air Carrier Operations rule requirements. | • No changes. |
| | • Leadership and command and mentoring training must be included in the upgrade curriculum. Leadership and command and mentoring training are required subjects for upgrade ground training. Leadership and command training must also be incorporated into flight training through scenario-based training. (Note: For those air carriers that use an initial curriculum to qualify pilots to serve as PICs, leadership and command and mentoring training must be provided as part of that initial curriculum (§§ 121.419 and 121.424)). Leadership and command and mentoring ground training for pilots currently serving as PIC (§ 121.429). | |
| | • All pilots currently serving as PIC must complete ground training on leadership and command and mentoring. | • Adds limitation that the FAA will only allow credit for previous training completed within 36 calendar months prior to the effective date of the final rule. |
| | • The Administrator may credit previous training completed by the pilot at that air carrier. | |
| Recurrent PIC leadership and command and mentoring training (§§ 121.409(b) and 121.427). | • PICs must complete recurrent leadership and command and mentoring ground training every 36 months. | • No changes. |
| | • Recurrent Line-Oriented Flight Training (LOFT) must provide an opportunity for PICs to demonstrate leadership and command. | |
| Leadership and command training for SICs serving in an operation that requires 3 or more pilots (§ 121.432). | • SICs required to be fully qualified to act as PIC, due to serving in an operation that requires 3 or more pilots, are not required to complete leadership and command and mentoring training. | • Adds requirement for these SICs to complete leadership and command training. (These SICs are not required to complete mentoring training). |
| Pilot recurrent ground training content and programmed hours (§ 121.427). | • Pilot recurrent ground training has been aligned with the pilot initial ground training requirements for pilots who have completed the Airline Transport Pilot Certification Training Program (ATP–CTP). As a result, the existing content and corresponding programmed hours for recurrent ground training have been reduced. | • No changes. |
| Part 135 Operators and Part 91 Subpart K Program Managers Complying with Part 121, Subparts N and O (§§ 91.1063 and 135.3). | • Part 135 operators and part 91 subpart K (91K) program managers complying with part 121 subparts N and O would continue to use the existing upgrade curriculum requirements and the proposed leadership and command and mentoring training would only apply to PICs serving in operations that use two or more pilots. | • Adds exception for part 135 operators and part 91K program managers, that choose to comply with part 121 subparts N and O, are not required to comply with the operations familiarization required in § 121.435. |
| Flight Simulation Training Device (FSTD) Conforming Changes (Part 121, subparts N and O and appendices E, F, and H). | • Part 121, subparts N and O and appendices E, F, and H are updated as follows:<br>(1) Reflect the terminology currently used to identify FSTDs approved for use in part 121 training programs;<br>(2) Remove references to simulation technology that no longer exists; and<br>(3) Remove requirement for FAA certification of training and remove pilot experience prerequisites for using a Level C full flight simulator (FFS) to reflect advances in current FSTD technology. | No changes. |

TABLE 1—SUMMARY OF FINAL RULE PROVISIONS—Continued

| Provision | Summary of NPRM provision | Major changes from NPRM |
|---|---|---|
| SIC Training and Checking Conforming Changes (Part 121 appendices E and F). | • Part 121 appendices E and F are updated to align with the current 14 CFR 61.71 requirements for SICs to obtain a type rating in a part 121 training program. Initial, conversion, and transition SIC training and checking must include the few training and checking maneuvers and procedures formerly designated in appendices E and F as PIC-only. | • No changes. |
| Pilot professional development committee (PPDC) (§ 121.17). | • Air carriers must establish and maintain a PPDC to develop, administer, and oversee formal pilot mentoring programs. The PPDC must consist of at least one management representative and one pilot representative. The PPDC must meet on a regular basis. The frequency of such meetings would be determined by the air carrier, but must occur at least annually. | • Not adopted in the final rule. |
| Other Conforming and Miscellaneous Changes. | • Pilot transition ground training has been aligned with the pilot initial ground training for pilots who have completed the ATP–CTP.<br>• The term used to identify the training provided to flight engineers qualifying as SICs on the same airplane type has been changed from ''upgrade'' to ''conversion''.<br>• Conversion ground training for flight engineers who have completed the ATP–CTP has been aligned with the pilot initial ground training for pilots who have completed the ATP–CTP.<br>• Part 121 appendices E and F and § 121.434 are amended to allow for pictorial means for the training and checking of preflight visual inspections of the exterior and interior of the airplane. | • No changes. |

The cost of the rule is attributed to training requirements that will reduce the risk of unprofessional pilot behavior and help avoid situations that can lead to a catastrophic event. The estimated cost of the rule to the impacted entities is $90.0 million over a 10-year period. When discounted using a 7-percent discount rate, the rule is estimated to result in costs of $62.2 million over the same period. The rule will also generate cost savings to operators of $95.5 million over a 10-year period. When discounted using a 7-percent discount rate, the rule will result in savings of $61.2 million over the same period. The total cost and cost savings are shown in the table below.

TABLE 2—COMPARISON OF COSTS AND COST SAVINGS

[Millions of 2016 dollars]

| | Present value at 7% | Annualized at 7% | Present value at 3% | Annualized at 3% |
|---|---|---|---|---|
| Total Costs | $62.17 | $8.29 | $76.25 | $8.24 |
| Total Cost Savings | 61.22 | 8.16 | 78.32 | 8.46 |
| Net Costs | 0.94 | 0.13 | −2.07 | −0.22 |

## II. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the FAA's authority. This rulemaking is promulgated under the general authority described in 49 U.S.C. 106(f) and 44701(a) and the specific authority found in section 206 of Public Law 111–216, the Airline Safety and Federal Aviation Administration Extension Act of 2010 (Aug. 1, 2010) (49 U.S.C. 44701 note), which directed the FAA to convene an aviation rulemaking committee (ARC) and conduct a rulemaking proceeding based on the ARC's recommendations pertaining to mentoring, professional development, and leadership and command training for pilots serving in part 121 operations. Section 206 further required that the FAA include in leadership and command training instruction on compliance with flightcrew member duties under 14 CFR 121.542 (sterile flight deck rule).

## III. Background

### *A. Statement of the Problem*

As recognized by the National Transportation Safety Board (NTSB), the overall safety and reliability of the national airspace system demonstrates that most pilots conduct operations with a high degree of professionalism.[2]

[2] *See* Crash of Pinnacle Airlines Flight 3701, Bombardier CL–600–2B19, N8396A, Jefferson City, Missouri, October 14, 2004, Aircraft Accident Report NTSB/AAR–07/01 (Washington, DC: NTSB, 2007) (hereinafter ''Aircraft Accident Report NTSB/AAR–07/01'') available at *https://www.ntsb.gov/investigations/AccidentReports/Pages/AAR0701.aspx.*

Nevertheless, a problem still exists in the aviation industry with some pilots acting unprofessionally and not adhering to standard operating procedures (''SOP''), including the sterile flight deck rule.[3] The NTSB has continued to cite inadequate leadership in the flight deck, pilots' unprofessional behavior, and pilots' failure to comply with the sterile flight deck rule as factors in multiple accidents and incidents, including Pinnacle Airlines flight 3701 and Colgan Air,[4] Inc., flight 3407.[5]

On October 14, 2004, a Pinnacle Airlines Bombardier CL–600–2B19, operating as Northwest Airlink flight 3701, crashed into a residential area about 2.5 miles from the Jefferson City Memorial Airport, Jefferson City, Missouri. During the flight, both engines flamed out after a pilot-induced aerodynamic stall and were unable to be restarted. Both pilots were killed, and the airplane was destroyed. The NTSB determined the probable causes of this accident were (1) the pilots' unprofessional behavior, deviation from SOP, and poor airmanship, which resulted in an in-flight emergency from which the pilots were unable to recover, in part because of their inadequate training; (2) the pilots' failure to prepare for an emergency landing in a timely manner; and (3) the pilots' improper management of the double engine failure checklist.

The NTSB noted that at the time of the accident, Pinnacle Airlines provided 2 hours of leadership training during second in command (SIC) to pilot in command (PIC) upgrade training with topics covering leadership authority, responsibility, and leadership styles. The NTSB also noted that after the accident and as a result of a high initial failure rate for pilots upgrading to PIC (22% failure rate in July 2004), Pinnacle revised the leadership training to 8 hours with modules on leadership, authority, and responsibility; briefing and debriefing scenarios; decision-making processes, including those during an emergency; dry run line-oriented flight training scenarios; and risk management and resource utilization. In October 2006, Pinnacle reported to the NTSB that the pass rate for pilots upgrading to PIC had improved to 92% first attempt and 95% overall.

On the evening of February 12, 2009, a Colgan Air, Inc., Bombardier DHC–8–400, operating as Continental Connection flight 3407, was on approach to Buffalo-Niagara International Airport, Buffalo, New York, when it crashed into a residence in Clarence Center, New York, about five nautical miles northeast of the airport. The two pilots, two flight attendants, all 45 passengers aboard the airplane, and one person on the ground were killed, and the airplane was destroyed by impact forces and a post-crash fire. The NTSB determined that the probable cause of this accident was the PIC's inappropriate response to the stall warning which eventually led to a stall from which the airplane did not recover. Contributing to the accident were (1) the pilots' failure to monitor airspeed; (2) the pilots' failure to adhere to sterile flight deck procedures; (3) the PIC's failure to effectively manage the flight; and (4) Colgan Air's inadequate procedures for airspeed selection and management during approaches in icing conditions.

The NTSB noted that at the time of the accident the Colgan Air crew resource management (CRM) training was consistent with Advisory Circular (AC) 120–51E, Crew Resource Management Training and addressed command, leadership and leadership styles, communication, and decision-making. The NTSB also noted that the Colgan Air SIC to PIC upgrade training included a one-day course on leadership; however, the training focused on the administrative duties associated with becoming a PIC and did not contain significant content applicable to developing leadership skills, management oversight, and command authority. The NTSB concluded that specific leadership training for pilots upgrading to PIC would help standardize and reinforce the critical command authority skills needed by a PIC during air carrier operations.

The Airline Safety and Federal Aviation Administration Extension Act of 2010 (Pub. L. 111–216), enacted August 1, 2010, includes a number of requirements to convene advisory groups and conduct rulemakings related to the results of the NTSB investigation of the Colgan Air accident. Section 206 directs the FAA to convene an ARC to develop procedures for each part 121 air carrier pertaining to mentoring, professional development, and leadership and command training for pilots serving in part 121 operations and to issue an NPRM and final rule based on the ARC recommendations.

In accordance with sections 204, 206, and 209 of Public Law 111–216, the FAA chartered the Air Carrier Safety and Pilot Training (ACSPT) ARC, the Flight Crewmember Mentoring, Leadership, and Professional Development (MLP) ARC and the Flightcrew Member Training Hours Requirement Review (THRR) ARC, respectively, in September 2010. The MLP ARC provided recommendations in November 2010. At the same time as the MLP ARC worked to develop its recommendations, a number of related rulemakings required by Public Law 111–216 were already underway, including the Pilot Certification and Qualification Requirements for Air Carrier Operations rulemaking and the Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers rulemaking.

This final rule is the culmination of the FAA's analysis of (1) the rulemaking requirements of section 206 of Public Law 111–216; (2) the recommendations provided by the MLP ARC, the THRR ARC, and the ACSPT ARC; (3) the part 121 pilot qualification and experience requirements provided in the Pilot Certification and Qualification Requirements for Air Carrier Operations final rule (78 FR 42324, July 15, 2013);[6] (4) the Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers final rule (78 FR 67800, November 12, 2013);[7] (5) the current part 121 PIC role and responsibilities; and (6) the comments received in response to the NPRM. This final rule furthers the

[3] *See* Loss of Control on Approach, Colgan Air, Inc., Operating as Continental Connection Flight 3407, Bombardier DHC–8–400, N200WQ, Clarence Center, New York, February 12, 2009, Aircraft Accident Report NTSB/AAR–10/01 (Washington, DC: NTSB, 2010) (hereinafter ''Aircraft Accident Report NTSB/AAR–10/01'') available at *https://www.ntsb.gov/investigations/AccidentReports/Pages/AAR1001.aspx.*

[4] Some contributing factors to this accident were also mitigated by the following rules: Flightcrew Member Duty and Rest Requirements (77 FR 330, January 4, 2012, RIN 2120–AJ58) with a 0.5 effective mitigation; Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers (78 FR 67800, November 12, 2013, RIN 2120–AJ00) with a 0.2 effective mitigation; Pilot Certification and Qualification Requirements for Air Carrier Operations (78 FR 42324, July 15, 2013, RIN 2120–AJ67) with a 0.2 effective mitigation; and Safety Management Systems for Domestic, Flag, and Supplemental Operations Certificate Holders (80 FR 1307, January 8, 2015, RIN 2120–AJ86) with a 0.05 effective mitigation.

[5] More recently, on October 27, 2016 Eastern Airlines flight 3452, a Boeing 737–700, ran off runway 22 during the landing roll at LaGuardia Airport, Flushing, Queens, New York. The NTSB determined the probable cause of this incident was the SIC's failure to attain the proper touchdown point and the flight crew's failure to call for a go-around, which resulted in the airplane landing more than halfway down the runway. Contributing to the incident was the PIC's lack of command authority. See the NTSB Aviation Incident Final Report, Incident Number DCA17IA020, available at *https://www.ntsb.gov/investigations/Pages/2016_queens_ny.aspx.* While this incident does not form a basis for the issuance of this rule, it illustrates that leadership and command training remains an important component of an effective pilot training program.

[6] RIN 2120–AJ67.

[7] RIN 2120–AJ00.

FAA's safety mission, satisfies the requirement for rulemaking in section 206 of Public Law 111–216, and accounts for the recent changes to pilot certification and qualifications to serve as a PIC in part 121 operations. The FAA has determined that this final rule can be effectively implemented by air carriers and will reduce the risk of unprofessional pilot behavior and help avoid situations that can lead to a catastrophic event.[8]

*B. Related FAA Actions*

To promote pilot professionalism and standardization, the FAA has taken a number of actions through rulemakings and guidance. The FAA first issued the sterile flight deck rule (§ 121.542) to prohibit the performance of nonessential duties by flightcrew members during critical phases of flight, including all ground operations involving taxi, take-off and landing, and other flight operations conducted below 10,000 feet, except cruise flight (46 FR 5500, January 19, 1981). On February 12, 2014, the FAA amended the sterile flight deck rule to prohibit flightcrew members from using a personal wireless communications device or laptop computer for personal use while at their duty station while the aircraft is being operated (Prohibition on Personal Use of Electronic Devices on the Flight Deck final rule, 79 FR 8257).[9]

On January 10, 2017, the FAA issued revised AC 120–71B, Standard Operating Procedures and Pilot Monitoring Duties for Flight Deck Crewmembers, which stresses that safety in commercial operations depends on good crew performance founded on clear, comprehensive, and readily available SOP.[10] The AC provides guidance for the design, development, implementation, evaluation, and updating of SOP, as well as guidance for training of pilot monitoring duties and integration of pilot monitoring duties into SOP.

In response to NTSB Safety Recommendation A–06–7, the FAA issued Safety Alert for Operators (SAFO) 06004 on April 28, 2006, to emphasize the importance of sterile flight deck discipline and fatigue countermeasures, especially during approach and landing.[11]

On July 3, 2007, the FAA issued Safety Alert for Operators (SAFO) 07006, to address procedural intentional non-compliance (PINC) because multiple accidents revealed pilots not adhering to established procedures and airplane limitations when conducting positioning flights.[12]

On April 26, 2010, the FAA issued Information for Operators (InFO) 10003, to address flight deck distractions because recent incidents and accidents revealed pilots using laptop computers and mobile telephones for personal activities unrelated to the duties and responsibilities required for conduct of a safe flight.[13]

To address the significance of human performance factors such as communication, decision-making, and leadership, the FAA issued the Air Carrier and Commercial Operator Training Programs final rule requiring crew resource management (CRM) training for flightcrew members and flight attendants as well as dispatcher resource management (DRM) training for aircraft dispatchers (60 FR 65940, December 20, 1995).[14] The FAA also published AC 120–51B Crew Resource Management Training and AC 121–32 Dispatch Resource Management Training to provide guidance on establishing CRM and DRM training under the broad requirement established by the final rule. The current version, AC 120–51E,[15] stresses that CRM training should focus on the functioning of crewmembers as teams and should include all operational personnel. During the time since publication of the CRM final rule, the agency has revised AC 120–51 three times to address evolving research and concepts of CRM.

The FAA recognizes the need to continue to review air carrier training and qualification regulations, policies, and guidance to ensure they are current and relevant and address new technology and research. Therefore, in January 2014, the FAA chartered the Air Carrier Training ARC to provide a forum for the U.S. aviation community to continue to discuss, prioritize, and provide recommendations to the FAA concerning air carrier training.

*C. National Transportation Safety Board Recommendations*

This final rule addresses the following NTSB recommendations from Aircraft Accident Report NTSB/AAR–07/01 and Aircraft Accident Report NTSB/AAR–10/01 for air carriers operating under part 121:

- A–07–6: Require regional air carriers operating under 14 CFR part 121 to provide specific guidance on expectations for professional conduct to pilots who operate nonrevenue flights.
- A–10–13: Issue an advisory circular with guidance on leadership training for upgrading captains at 14 CFR part 121, 135, and 91K operators, including methods and techniques for effective leadership; professional standards of conduct; strategies for briefing and debriefing; reinforcement and correction skills; and other knowledge, skills, and abilities that are critical for air carrier operations.[16]
- A–10–14: Require all 14 CFR part 121, 135, and 91K operators to provide a specific course on leadership training to their upgrading captains that is consistent with the advisory circular requested in Safety Recommendation A–10–13.

## IV. Discussion of Public Comments and Final Rule

*A. General*

Airbus, the Air Line Pilots Association (ALPA), NetJets Aviation (NetJets), and 16 individuals generally agreed with the proposal. Airlines for America (A4A) generally supported the proposal but provided comments on and suggested changes to specific provisions, which are discussed in more detail in the section-by-section analysis below. The International Air Transport Association generally agreed with the comments submitted by A4A except for the comments related to training of SICs serving in augmented operations, stating that A4A's position is inconsistent with existing European requirements.

The NTSB largely concurred with the overall intent of the proposal. However,

[8] The FAA notes that section 206 of Public Law 111–216 references both ''flight crewmembers'' and ''pilots.'' Section 201 of Public Law 111–216 states, ''The term 'flight crewmember' has the meaning given the term 'flightcrew member' in part 1 of title 14, Code of Federal Regulations.'' Part 1 defines ''flightcrew member'' as ''a pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time.'' However, because section 206 uses the terms ''flight crewmember'' and ''pilot'' interchangeably, the FAA assumes that Congress intended the rulemaking requirements of this section to apply to pilots only. Further, because no accidents have been attributed to flight engineer performance and the FAA has not identified any issues related to flight engineer training or professionalism, this final rule applies to pilots only.

[9] RIN 2120–AJ17.

[10] *http://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/1030486.*

[11] *http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/safo/all_safos/media/2006/safo06004.pdf.*

[12] Positioning flights include nonrevenue flights, flights to pick up passengers, and ferry flights for maintenance. See *http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/safo/all_safos/media/2007/SAFO07006.pdf.*

[13] *http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/info/all_infos/media/2010/info10003.pdf.*

[14] RIN 2120–AC79.

[15] *http://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/22879.*

[16] ''Captain'' is an industry term that refers to the PIC.

the NTSB noted that neither the proposed rule nor the draft AC Leadership and Command Training for Pilots in Command addresses the content or intent of NTSB Safety Recommendation A–10–15, which recommended the development and distribution of multimedia guidance materials.[17]

At this time, the FAA is not developing and distributing new multimedia guidance materials on professionalism in aircraft operations. As explained in the NPRM, a prerequisite eligibility requirement for an airline transport pilot (ATP) certificate is the completion of an airline transport pilot certification training program (ATP–CTP). The ATP–CTP provides foundational knowledge in many subject areas, including professionalism. In addition to the draft ACs published in the docket, the FAA previously published AC 61–138 Airline Transport Pilot Certification Training Program. These ACs all contain references to other useful documents for the development of training. Additionally, the FAA posted these ACs for public comment and considered those comments before final publication. Therefore, the FAA believes the intent of NTSB recommendation A–10–15 has been met and that sufficient resources are already available for training on these topics. The FAA has removed NTSB recommendation A–10–15 from preamble section III.C. discussing the NTSB recommendations.

Jet Blue Airways (Jet Blue) commented that there is great value in promoting leadership, command, and mentoring training for all air carrier pilots. However, Jet Blue stated that the proposal failed to recognize other qualitative advancements such as the Advanced Qualification Program (AQP), the utilization of advanced simulation opportunities, and alternative vehicles to obtain command and leadership knowledge through operational experience. Jet Blue strongly recommended that rather than directing additional resources toward implementing regulations that duplicate existing programs and efforts, the FAA re-direct its efforts toward developing guidance for inclusion within existing AQPs and other approved programs.

As described in the NPRM, the proposal was responsive to a statutory requirement for the FAA to convene an ARC to develop procedures for air carriers pertaining to pilot mentoring, professional development, and leadership and command training and to issue an NPRM and final rule based on those recommendations. Therefore, Jet Blue's recommendation would not be consistent with the statutory requirement. However, the FAA proposed to allow credit toward all or part of the requirements for leadership and command and mentoring training previously completed by a PIC at that air carrier. The FAA is maintaining this allowance, with modification, in the final rule. Since each air carrier's training program is unique, the FAA will evaluate each specific request for credit, including the supporting documentation, to determine if the previously provided training meets the intent of some or all of the leadership and command and mentoring training.

The Aviation Accreditation Board International (AABI) recommended that the FAA reconsider adopting the MLP ARC recommendation for including professionalism and mentoring as required subjects for new-hire pilot indoctrination training. A4A and American Airlines (American) agreed that amendments to basic indoctrination training are not needed and are appropriately addressed by recent regulatory changes.

ALPA stated that guidance should exist ensuring new hire training includes exposure to the operations of other airline departments such as dispatch, maintenance, and scheduling. ALPA stated that for leadership and command training to be effective in the flight deck, new-hires must receive training on their role in the context of the leadership and command training that PICs receive.

The FAA is not making any amendments to basic indoctrination training. As explained in the NPRM, ATP applicants must complete an ATP–CTP, which provides the foundational knowledge in several subject areas including leadership and command and professional development. The recommendation that new-hire training should include exposure to the operations of other airline departments such as dispatch, maintenance, and scheduling is outside the scope of this rulemaking. The FAA expects each individual air carrier will determine if exposure to other airline departments is beneficial to its operation.

An individual commenter did not agree that air carriers should have to train crewmembers on professionalism and safety because this individual believed these skills should be taught before the pilot applies for an air carrier. Another individual did not agree that pilots need to be trained on how to be more professional. One individual identified as a college student opined that this proposal could be seen as an unnecessary mandate in an already extensive training curriculum. In contrast, an individual identified as an associate college professor stated that the proposal could be successful in inculcating and reinforcing the highest standards of technical performance, airmanship, and professionalism. Another individual wrote that the proposal would result in safety benefits and address the NTSB recommendations and statutory requirement for rulemaking.

As described in the NPRM, most pilots conduct operations with a high degree of professionalism. However, the NTSB has continued to cite inadequate leadership in the flight deck, pilots' unprofessional behavior, and pilots' failure to comply with the sterile flight deck rule as factors in multiple accidents and incidents. The FAA concurs with the NTSB recommendation to require leadership training for air carrier pilots and has concluded that the proposed training is warranted. With regard to a comment that the proposal should be focused on interpersonal skills and attitude management training, the FAA notes that the AC PIC Leadership and Command Training and AC 120–51 Crew Resource Management Training address these topics.

One individual commented that there should be a shorter version of training for senior pilots and that pilots from this pool can be chosen to help conduct the additional training. The FAA does not agree that there should be a shorter version of the training for senior pilots. As discussed further below, the FAA will allow credit toward all or part of the requirements for initial leadership and command and mentoring training previously completed by a PIC at that air carrier. In general, this credit will allow more senior pilots to more quickly meet new initial training requirements.

*B. Applicability*

In the NPRM, the FAA stated that the proposal would affect certificate holders that train and qualify pilots in accordance with part 121, including air carriers that train and qualify pilots in accordance with the provisions of current subparts N and O or under an

[17] NTSB Recommendation A–10–15: Develop and distribute to all pilots, multimedia guidance materials on professionalism in aircraft operations that contain standards of performance for professionalism; best practices for sterile cockpit adherence; techniques for assessing and correcting pilot deviations; examples and scenarios; and a detailed review of accidents involving breakdowns in sterile cockpit and other procedures, including the Colgan Air, Inc. flight 3407 accident. Obtain the input of operators and air carrier and general aviation pilot groups in the development and distribution of these guidance materials.

AQP in accordance with subpart Y of part 121. Additionally, the FAA explained that the proposal affects some certificate holders conducting part 135 commuter operations [18] and part 91K program managers or part 135 operators authorized to voluntarily comply with subparts N and O of part 121.

The NTSB commented that the FAA should consider expanding the scope to include additional part 135 and 91K operators. An individual identified as a private pilot suggested the proposal would be more relevant to smaller carriers, particularly part 135 carriers.

The recommendation to include additional part 135 operators and 91K program managers would exceed the scope of this rulemaking. Therefore, applicability of the final rule is as proposed.

*C. Effective Date and Compliance Date*

In the NPRM the FAA proposed an effective date of 60 days after publication of a final rule in the **Federal Register**. However, the FAA proposed a delayed compliance date of 24 months after the effective date for the proposals pertaining to operations familiarization, leadership and command training, mentoring training, the revised upgrade curriculum, and the Pilot Professional Development Committee.

A4A and American recommended a delayed compliance date of 36 months, and UPS Airlines (UPS) recommended a delayed compliance date of 48 months after the effective date for the leadership and command and mentoring training for current PICs proposed in § 121.429. A4A and American stated that training modules will need to be developed and approved, instructors trained, and committees formed within the proposed 24-month timeframe. UPS stated that it would require 24 months for training modules to be developed and approved. A4A and UPS noted that there may be several thousand PICs who will require training, which can be completed only after courseware is approved and the trainers trained. American stated that it will have over six thousand pilots who must complete training. UPS also identified other recently mandated training requirements (*e.g.,* upset recovery) under development in part 121 operations.

The FAA concurs with the recommendation to extend the compliance date to 36 months for the leadership and command and mentoring ground training for current PICs. As indicated by commenters, there are several thousand PICs who must complete the training by the compliance date. Additionally, the FAA understands that carriers are in various stages of compliance with training all pilots in accordance with the enhanced pilot training requirements of the Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers final rule.

The FAA agrees that extending the compliance date by 12 months will provide sufficient time for carriers to develop the training, have the training approved by the FAA, train the instructors, and then complete training of all the current PICs. Further, a 36-month timeframe is consistent with the recurrent training frequency for these topics.

The compliance date for the other proposals pertaining to operations familiarization, leadership and command training, mentoring training, and the revised upgrade curriculum remains 24 months after the effective date. The effective date remains 60 days after publication in the **Federal Register**.

*D. Operations Familiarization (§ 121.435)*

The FAA proposed to require newly hired pilots to complete operations familiarization (OF) before beginning operating experience and serving as a pilot in part 121 operations for the air carrier. A newly hired pilot is a person who has no previous experience with the air carrier.[19] The FAA proposed that the OF must include at least two operating cycles [20] during part 121 operations conducted by the air carrier while the newly hired pilot occupies the flight deck observer seat and uses a headset to listen to the communications between the required flightcrew members and air traffic control. The FAA proposed that the OF may occur in any airplane type operated by the air carrier in part 121 operations. In recognition that certain airplanes used in part 121 operations do not have an observer seat in the flight deck, the FAA proposed a process for an air carrier to request a deviation from the OF requirements to meet the learning objectives through another means.

A4A, AABI, American, Jet Blue, the NTSB, one individual identified as an associate college professor, and several individuals identified as college students or pilots agreed with the proposed OF. The individuals believed the OF would provide benefits such as allowing new-hires to observe SOP and real life situations.

A4A, American, and Jet Blue agreed with a minimum of two cycles. However, the NTSB believed the minimum number of operating cycles should be increased to provide the new-hire pilot with an increased opportunity to observe different operational events and crew interactions.

A4A, American, and Jet Blue agreed that that the OF can be performed in any aircraft because the processes on all fleet types are similar. However, ALPA stated that OF should be required in the aircraft type the new-hire will be scheduled to fly to enhance the benefits of the experience.

The NTSB believed some consideration should be given to the minimum experience of the crew being observed to provide increased value of the observational opportunity to new-hire pilots.

As explained in the NPRM, the objective of OF is to provide the pilot an introduction to an air carrier's operations and company procedures. Therefore, the FAA expects that this objective can be met with a minimum of two operating cycles on any airplane type operated by the air carrier in part 121 operations. The FAA also trusts that the objective of OF can be met by observation of any crew at that air carrier because all crews conducting line operations must have satisfactorily met the training and qualification standards at that air carrier. The FAA also expects that all air carrier crews follow the air carrier's SOP and conduct operations professionally regardless of whether or not they are being observed. Additionally, as explained in the NPRM, the FAA has determined this final rule will mitigate unprofessional pilot behavior.

AABI recommended that proposed § 121.432 specify that the OF should occur during or after basic indoctrination training and before operating experience. Jet Blue requested clarification in the final rule that OF can occur at any time prior to commencement of operating experience to include any point before or after aircraft qualification is obtained.

As described in the NPRM, the FAA expects OF to be completed during or soon after the completion of basic

[18] In accordance with 14 CFR 135.3, a certificate holder that conducts commuter operations under part 135 with airplanes in which two pilots are required by the type certification rules must comply with subparts N and O of part 121 instead of the requirements of subparts E, G, and H of part 135.

[19] The FAA clarifies that a person completing conversion training after serving as a flight engineer for the air carrier is not a ''newly hired pilot.'' This person is completing training to serve in a new flightcrew member duty position but is not ''newly hired'' by the air carrier.

[20] Section 121.431(b) defines operating cycle as ''a complete flight segment consisting of a takeoff, climb, enroute portion, descent, and a landing.''

indoctrination training. The FAA did not intend that OF could be completed by college students or other pilots who are not newly hired pilots at that air carrier. The FAA is clarifying the OF requirements in a new § 121.435 to provide flexibility for OF to be completed during or after basic indoctrination training, but before beginning operating experience.

*E. PIC Leadership and Command Training*

1. General

In the NPRM, the FAA proposed to require all PICs serving in part 121 operations to complete leadership and command training. Specifically, the FAA proposed that this training be included during ground and flight training in the PIC upgrade curriculum (or the initial curriculum for the limited circumstance of a new-hire PIC), as well as the PIC recurrent curriculum. The FAA further proposed that all pilots qualified to serve as PIC prior to the compliance date must complete the PIC upgrade ground training on leadership and command.

The NTSB stated that the proposals for leadership training ''would likely satisfy the intent'' of NTSB recommendations A–10–13 and A–10–14 as they related to part 121 operations. The NTSB strongly supported the proposed requirements for leadership and command training to be included in PIC upgrade ground and flight training, as well as the proposed requirement for all current PICs to complete leadership and command training and for the training to be included in the recurrent curriculum. The NTSB also strongly supported the emphasis on scenario-based instruction during ground and flight training.

AABI and one individual generally agreed with leadership and command training for all PICs. One individual identified as a college student stated that leadership and command training conducted before future PICs enter the real flight crew environment could result in fewer accidents based on pilot decision-making errors.

A4A and American agreed that the proposal for leadership and command training should not be overly prescriptive. UPS supported the FAA's position in not requiring the leadership and command training to be separate from the upgrade syllabus.

Jet Blue strongly recommended that the FAA allow each carrier to develop leadership and command training within the existing framework of their approved training programs. Jet Blue also stated that final determination of the curriculum scope, form, and content should remain with management as approved by the FAA.

A4A and American suggested that leadership and command training for pilots upgrading from SIC to PIC should be completed ''on or around the time of upgrade'' instead of being required to be included in the upgrade curriculum. A4A, American, and UPS noted that under an AQP there may be a few items that are accomplished a short time after PIC upgrade/assignment in order to review and discuss lessons learned during some of the first flights as PIC.

As explained in the NPRM, the purpose of leadership and command training is to provide PICs with the leadership and command skills necessary to manage the crew (including flight attendants, if applicable), communications, workload, and decision-making in a manner that promotes professionalism and adherence to SOP. Therefore, the FAA maintains that this training must be included in the upgrade curriculum prior to a pilot serving as a PIC. However, the FAA notes that in accordance with part 121 subpart Y, air carriers using an AQP may submit for FAA approval an upgrade curriculum that includes an alternative method to conduct leadership and command training that provides an equivalent level of safety.

Ameristar believed that leadership and command training should only be required during initial PIC and upgrade training.

As explained in the NPRM, the purpose of recurrent training is to ensure that flightcrew members remain competent in the performance of their assigned duties. Therefore, the FAA maintains that recurrent leadership and command training is necessary to ensure PICs remain competent in the performance of their duties. Additionally, Public Law 111–216 specifically directed that recurrent training for PICs include leadership and command training.

Ameristar believed CRM and leadership training are closely tied together. Ameristar suggested that rather than having two or more regulations added, leadership and command training should be combined with CRM in § 121.404.

As described in the NPRM, the FAA agrees that leadership and command and CRM are related ''soft skills.'' To ensure leadership and command training is included in ground training and flight training for all appropriate curriculums, the structure of part 121 subpart N requires leadership and command training requirements to be included in multiple regulations. Therefore, the FAA does not agree that leadership and command training should be combined with CRM in § 121.404. However, the FAA agrees that leadership and command and CRM are closely related and notes that that some carriers may choose to comply with this rule by including robust leadership and command training in their CRM curricula.

Ameristar also commented that proposed §§ 121.419(c), 121.420(a)(3) and 121.427(d)(1) should not include references to § 121.542, which addresses activities that may interfere with flight crewmember duties. Ameristar believed the inclusion of § 121.542 implies that leadership and command are only geared or weighted toward that regulation, lowering the perceived importance of other regulations. The FAA confirms that leadership and command training is not geared toward or weighted toward only § 121.542, and the reference to § 121.542 in §§ 121.419(c)(1), 121.420(b)(1) and 121.427(d)(1) results from Public Law 111–216, which specifically directed PIC leadership and command training to include instruction on compliance with § 121.542.

AABI recommended that the final rule state that facilitation is the preferred method for leadership and command ground training.

As described in the draft AC Leadership and Command Training for Pilots in Command published in the docket, the FAA agrees that an instructor-led facilitated discussion is an important component of leadership and command ground training. Therefore, as further explained in the section regarding PIC Leadership and Command Training—Distance Instruction, the FAA is revising proposed §§ 121.419(c)(1), 121.420(a)(3) (now, 121.420(b)(1)), and 121.427(d)(1) to specifically require facilitated discussion during leadership and command ground training.

ALPA and the NTSB encouraged minimum qualification, pilot line experience, and training requirements for the instructors who conduct leadership and command training.

The FAA does not agree that the final rule should include specific training or qualification requirements for instructors who conduct leadership and command training. Air carriers are required to provide properly qualified ground instructors to conduct the training required by part 121 subpart N. *See* § 121.401(a)(2). Additionally, air carriers are required to provide comprehensive training of flight instructors. *See* § 121.414. Further, in

accordance with § 121.401(a)(1), air carriers are required to have a training program that ensures each flight instructor is adequately trained to perform the assigned duties. Therefore, the FAA expects that each air carrier can best determine the training and qualifications necessary for its instructors to effectively conduct training under the carrier's program. However, in the associated AC Leadership and Command Training for Pilots in Command accompanying this final rule, the FAA will include suggested training topics for instructors who will conduct leadership and command training.

ALPA stated that for leadership and command training to be effective in the flight deck, new-hires must receive training on their role in the context of the leadership and command training that PICs receive.

The FAA does not agree that it is necessary to include a specific requirement for new-hires to receive training in the context of the leadership and command training that PICs receive. As explained in the NPRM, a prerequisite eligibility requirement for an ATP certificate is the completion of an ATP–CTP. The ATP–CTP provides foundational knowledge in many subject areas, including leadership and command. Additionally, basic indoctrination training is currently required to include duties and responsibilities of crewmembers and applicable portions of the carrier's manual. *See* § 121.415(a)(1). Therefore, the FAA has determined the combination of the ATP–CTP and the basic indoctrination training at the air carrier sufficiently encompasses training on leadership and command for new-hires.

ALPA contended that grading pilots based upon soft skills such as leadership and command would pose issues as pilots and their instructors come from diverse backgrounds and experiences. Therefore, ALPA stated that pass/fail grading should not be based solely on leadership and command skills unless clear, unambiguous, objective, measurable standards exist at that airline for those skills.

The FAA did not propose to evaluate leadership and command skills during a proficiency check. In accordance with § 121.401, air carriers are required to have a training program that ensures each PIC is adequately trained to perform the assigned duties. The FAA expects that air carriers will use their current processes to develop the necessary method(s) to ensure that PICs are adequately trained in leadership and command skills. The FAA will include suggested training topics in the AC Leadership and Command Training for Pilots in Command, accompanying this final rule.

2. Distance Instruction

In the NPRM, the FAA did not propose placing restrictions on distance instruction as long as the leadership and command training objectives could be satisfied. However, the FAA sought comment on whether restrictions on distance instruction are necessary to ensure the effectiveness of the leadership and command components of PIC training. The FAA also sought comment on whether the curriculum in which leadership and command training is required (*e.g.,* PIC initial, upgrade, recurrent) constitutes a basis for differentiating any restrictions on distance instruction.

A4A, AABI, American, Jet Blue, and UPS agreed that there should not be restrictions on distance instruction. A4A, American, Jet Blue, and UPS stated that the types and methods of training used by air carriers continue to evolve with additional software and hardware improvements. They also stated that the evolution in technology coupled with the goals of the specific training and the level/type of pilot experience at a specific airline will dictate the appropriate training format.

NetJets concurred that a major portion of the leadership and command ground instruction modules can be accomplished via distance instruction. However, NetJets believed that the decision-making exercises and discussions of positive and negative learning experiences need to be accomplished in facilitated instructor-led training sessions.

ALPA recommended limiting the leadership and command ground training administered through distance instruction methods to 50% of the total training. ALPA believed that leadership and command training would be far more effective in a classroom setting and should have an active, vibrant, hands-on training process with appropriate role-playing scenarios and having facilitated group discussions.

The NTSB believed that because of the importance of this training and its inherently interpersonal topic that the training should only be done in-person through facilitated discussion and interaction. An individual identified as an associate college professor stated that limitations on distance instruction are necessary to guarantee the success of the leadership and command training.

As described in the draft AC Leadership and Command Training for Pilots in Command published in the docket, the FAA agrees that an instructor-led facilitated discussion including practical decision-making exercises and discussion of positive and negative leadership experiences is an important component of leadership and command ground training. The FAA has determined that a facilitated discussion can be accomplished with existing technology. With current technology, there are various systems that can be used for distance instruction: From simple presentations reviewed individually by a student to fully interactive video conferencing with instructors and students in multiple locations. There are several universities that have developed the necessary technology for students to effectively complete entire degree programs using distance instruction. However, not all distance instruction systems would be effective in conducting a facilitated discussion and meet the objectives of the leadership and command ground training. Additionally, as noted by commenters, technology continues to evolve. Therefore, the FAA does not want to impose unnecessary restrictions on the use of evolving technology which could provide enhanced capabilities in the future. Thus, the final rule does not restrict the use of distance instruction for leadership and command ground training. However, to ensure the objectives of the training are met, the FAA is specifically requiring facilitated discussion during leadership and command ground training in §§ 121.419(c), 121.420(b), and 121.427(d)(1).

*F. PIC Mentoring Training*

In the NPRM, the FAA proposed to require training on mentoring skills for all PICs serving in part 121 operations to establish the mentoring environment recommended by the MLP ARC. The proposed mentoring training would include techniques for instilling and reinforcing the highest standards of technical performance, airmanship, and professionalism in newly hired pilots. The FAA proposed that this training would be included in the PIC upgrade curriculum (or the initial curriculum for the limited circumstance of a new-hire PIC) and PIC recurrent ground training. The FAA further proposed that all pilots qualified to serve as PIC prior to the compliance date must complete the PIC upgrade ground training on mentoring skills to create a comprehensive and consistent mentoring environment.

AABI, the NTSB, and one individual generally agreed with the mentoring training for all PICs. Jet Blue stated it has had a mentoring program for all new

hire pilots for several years and further believed that all PICs should undergo formal training in mentoring skills.

ALPA encouraged minimum qualification, pilot line experience, and training required for instructors who conduct mentoring training.

The FAA does not agree that the final rule should include specific training or qualification requirements for instructors who will conduct mentoring training. As discussed earlier, the FAA expects that each air carrier can best determine the training and qualifications necessary for their ground instructors to effectively conduct training under the carrier's program. However, in the associated AC Air Carrier Pilot Mentoring, the FAA will include suggested training topics for instructors who conduct mentoring training.

ALPA asserted that for PIC mentoring training to be effective, new-hires must also receive training on the role of mentoring and what is expected of them.

The FAA does not agree that a specific requirement for new-hires to receive training on the role of mentoring is necessary. As discussed earlier, the FAA has determined the combination of the ATP–CTP and the basic indoctrination training at the air carrier sufficiently incorporates any necessary training on mentoring for new-hires.

ALPA stated that pass/fail grading should not be based solely on mentoring skills unless clear, unambiguous, objective, measurable standards exist at that airline for those skills.

As discussed earlier, the FAA expects that air carriers will use their current processes to develop the necessary method(s) to ensure that PICs are adequately trained in mentoring skills. The FAA will include suggested training topics in the AC Air Carrier Pilot Mentoring, accompanying this final rule.

ALPA recommended limiting the mentoring ground training administered through distance instruction methods to 25% of the total training. ALPA stated that PIC mentoring training must use group discussion and interactive role-playing scenarios, actual examples of effective and ineffective mentoring, and the incorporation of CRM. AABI recommended that the final rule should state that facilitation is the preferred method for mentoring ground training.

As described in the draft AC Air Carrier Pilot Mentoring published in the docket, the FAA agrees that role-playing exercises are an important component of mentoring training. The FAA also agrees that a facilitated discussion is the most appropriate method to conduct the role-playing exercises. However, as further explained in the section regarding PIC Leadership and Command Training—Distance Instruction, the FAA believes that a facilitated discussion can be accomplished with existing technology. Additionally, the FAA does not want to impose unnecessary restrictions on the use of evolving technology which could provide enhanced capabilities in the future. Thus, the final rule does not restrict the use of distance instruction for mentoring training. However, to ensure the objectives of the training are met the FAA is specifically requiring facilitated discussion during mentoring ground training in §§ 121.419(c), 121.420, and 121.427(d)(1).

ALPA further suggested including a definition of long-term mentoring. ALPA also suggested that mentor programs should have clearly defined boundaries, rules, and understandings between the mentor and protégé.

As described in the NPRM, the FAA did not propose long term mentoring as recommended by the MLP ARC. Therefore, the FAA is not including a definition of long-term mentoring.

*G. SIC to PIC Upgrade (§§ 121.420 and 121.426)*

In the NPRM, the FAA proposed to revise upgrade training requirements to account for the evolution in SIC qualification and experience requirements. *See* 81 FR at 69919. The proposed upgrade training would ensure technical knowledge and skills while focusing on the decision-making and leadership skills required of a PIC serving in part 121 operations.

Ameristar suggested the following text be added: ''completed initial SIC training and has served as SIC'' or similar language to avoid potential confusion in proposed § 121.400.

The FAA does not agree with the suggested revision to the definition of upgrade training in § 121.400 and is adopting the language as proposed. A pilot that has only completed initial PIC training is not eligible to complete SIC operating experience or serve as an SIC. A person cannot serve as an SIC unless that person has satisfactorily completed for that type airplane and SIC crewmember position, approved ground and flight training, a proficiency check, operating experience, and consolidation of knowledge and skills. *See* §§ 121.433, 121.434, and 121.441. Therefore, as proposed, a pilot is only eligible for upgrade training if the pilot has qualified and served as an SIC on that type airplane.

1. Performance-Based Curriculum

The FAA proposed a performance-based upgrade curriculum. The proposal removed the requirement to include all existing upgrade ground training subjects required by § 121.419(a) and the § 121.424 requirement to include all appendix E maneuvers and procedures during upgrade flight training. Instead, the proposal refocused upgrade ground and flight training to include subjects, maneuvers, and procedures specific to the duties and responsibilities the pilot will have as PIC at that air carrier. However, consistent with existing upgrade curriculum requirements, the proposed upgrade flight training continued to include rare, but high-risk scenarios. Because the FAA proposed to remove the requirement to train the entire range of § 121.419 subjects and appendix E maneuvers and procedures in upgrade training, the FAA believed that the revised upgrade ground training could be completed in less time than the programmed hours currently identified in each air carrier's approved training program, and the upgrade flight training could be completed within the same or less time than currently identified in each air carrier's approved training program.

One individual stated that the proposed upgrade training will ensure technical skills and knowledge are facilitated while concentrating on the leadership and decision-making skills required for a professional pilot.

ALPA suggested requiring all the PIC upgrade ground and flight training that had been required before the Pilot Certification rule. ALPA opposed the FAA approving any reduction in the current upgrade flight training footprints based on the Pilot Certification rule and/or this final rule.

The FAA does not agree that upgrade training should include all the ground and flight training that had been required before the Pilot Certification rule. As explained in the NPRM, the current role served by an SIC in part 121 operations as well as the current SIC qualification requirements no longer support the foundation for upgrade training requirements in current subpart N. As further explained in the NPRM, the FAA has determined that the revised upgrade ground training can be completed in less time than the programmed hours currently identified in each air carrier's approved training program, and the upgrade flight training can be completed within the same or less time than currently identified in each air carrier's approved training program. *See* 81 FR at 69919.

ALPA recommended requiring PIC initial and upgrade ground training to include all the requirements in § 121.419(a) and (b) because that material may have been learned many years earlier.

The FAA does not agree with the suggested revision to § 121.419(c) to require PIC initial ground training to include all the requirements in § 121.419(a) and (b). As explained in the NPRM, in the Pilot Certification rule, the FAA recognized that a number of the general knowledge elements that are included in pilot initial ground training in § 121.419(a)(1) are now addressed by the ATP–CTP academic requirements. Therefore, in § 121.419(b), the Pilot Certification rule revised the part 121 initial ground training requirements by removing the generic elements for pilots who have completed the ATP–CTP. *See* 81 FR at 69923. The FAA's position has not changed; the general knowledge elements that are addressed by an ATP–CTP do not need to be repeated by a pilot during initial ground training with an air carrier.

The FAA does not agree with the suggested revision to § 121.420 to require upgrade ground training to include all the requirements in § 121.419(a) and (b). As explained in the NPRM, to serve as a pilot in part 121 operations, a pilot must satisfactorily complete recurrent ground training within 12 calendar months preceding service as a pilot. *See* §§ 121.427 and 121.433(c). Further, as explained in the NPRM, § 121.427 requires recurrent ground training to include instruction in the subjects required for initial ground training. *See* 81 FR at 69923. Therefore, the FAA does not agree that review of all the material in § 121.419(a) and (b) is warranted during upgrade training because these subjects would have been routinely reviewed during recurrent ground training.

ALPA suggested requiring all maneuvers and procedures in Appendix E to be completed during upgrade flight training.

The FAA does not agree that upgrade flight training should require all maneuvers and procedures in Appendix E to be completed. As explained in the NPRM, with the changes to SIC qualification requirements as a result of the Pilot Certification rule, an SIC will have already demonstrated technical mastery of that airplane type at the ATP certificate level when he or she begins upgrade training. The FAA does not agree that upgrading pilots would need to complete all maneuvers and procedures in Appendix E in order to demonstrate that they can meet the performance standards while simultaneously applying leadership and command skills. The final rule maintains the proposed performance-based upgrade curriculum. Among other requirements, upgrade flight training must include sufficient training to ensure the pilot has attained the knowledge and skills to proficiently operate the airplane as a PIC. As explained in the NPRM, the air carrier must determine the specific maneuvers and procedures for each airplane type considering its operational factors and authorizations and identified risks. *See* 81 FR at 69919.

ALPA suggested requiring additional/supplemental facilitated ground school and Line-Oriented Flight Training (LOFT) for leadership and command training and mentoring training when a new hire is hired directly as a PIC or upgrades to PIC within a new hire probation period. ALPA stated that this training should place emphasis on the culture of the carrier, challenges of being a new PIC at that carrier while flying with experienced SICs, resources of the carrier and union (if applicable), making the best use of being mentored by experienced PICs at that carrier, etc.

The FAA does not agree that requiring additional ground school and LOFT is warranted when a new hire is hired directly as a PIC or upgrades to PIC within a new hire probation period. In accordance with § 121.401(a)(1), an air carrier's training program must ensure that each PIC is adequately trained to perform his or her assigned duties. Therefore, the FAA expects the training program of air carriers who hire PICs or upgrade pilots to PIC within their new hire probationary periods to include any additional training determined necessary by the air carrier to ensure the pilots are adequately trained to perform PIC duties. Additionally, § 121.436 requires a pilot to have 1,000 hours of air carrier experience before serving as a PIC in part 121 operations.

ALPA stated that guidance should exist ensuring upgrade training includes exposure to the operations of other airline departments such as dispatch, maintenance, and scheduling.

The recommendation that upgrade training should include exposure to the operations of other airline departments such as dispatch, maintenance, and scheduling is outside the scope of this rulemaking. The FAA expects each individual air carrier will determine if exposure to other airline departments is beneficial to its operation.

2. Revised Upgrade Curriculum Requirements

i. Seat Dependent and Duty Position Maneuvers and Procedures

The FAA proposed that the upgrade ground and flight training must include seat dependent maneuvers and procedures as well as duty position maneuvers and procedures. *See* 81 FR at 69920.

Ameristar questioned why seat dependent training would be required for a pilot upgrading from SIC to PIC. Ameristar recommended combining proposed § 121.420 with proposed § 121.429 without seat dependent training and duty position procedures because these items are redundant and unnecessary. Ameristar also stated that proposed § 121.426(a)(1) and (2) are not necessary because if a pilot is being trained as a PIC, the pilot will get seat dependent training and duty position flight training without prescriptive rules.

The FAA does not agree with these comments. As explained in the NPRM, seat dependent maneuvers and procedures include the use of systems with controls that are not centrally located, or are accessible or operable from only the left or from only the right pilot seat as identified by the airplane manufacturer, air carrier, or the Administrator as seat dependent tasks. Typically, the PIC is assigned to and operates the airplane from the left seat, and the SIC is assigned to and operates the airplane from the right seat. An SIC who has been serving in the right seat of an aircraft would not know the characteristics of the left seat. Therefore, seat dependent training is required during upgrade training. As explained in the NPRM, duty position maneuvers and procedures include tasks specified by the airplane manufacturer, air carrier, or the Administrator, as PIC or SIC only tasks. A pilot serving as SIC would not have been previously trained and qualified on PIC only tasks. Therefore, duty position maneuvers and procedures are required during upgrade training.

The FAA is adopting, as proposed, the requirement that upgrade ground and flight training must include seat dependent maneuvers and procedures as well as duty position maneuvers and procedures.

ii. Leadership and Command and CRM

The FAA proposed that upgrade ground training must include leadership and command, as well as CRM. CRM training includes decision-making, authority and responsibility, and conflict resolution. The FAA also

proposed that upgrade flight training must include scenario-based training structured to incorporate CRM and leadership and command. *See* 81 FR at 69920.

AABI and Jet Blue agreed that leadership and command must be demonstrated during the flight training portion of the upgrade curriculum. AABI also agreed with the requirement to incorporate leadership and command into flight training through scenario-based training.

Ameristar sought clarification on the definition of ''*sufficient scenario* based training incorporating CRM and leadership and command skills,'' as used in proposed §§ 121.424(b) and 121.426(a)(5).

In the final rule, the FAA maintains a performance-based upgrade curriculum, and therefore specifying standards for ''sufficient scenario based training'' is unnecessary in §§ 121.424(b) and 121.426(a)(5). As explained in the NPRM, the FAA has determined this approach will allow air carriers to develop a robust upgrade curriculum specific to their operations, airplane types, and identified risks. As further explained in the NPRM, scenario-based training should address specific training objectives based on technical and soft skills, may consist of full or partial flight segments, and would necessarily vary, depending on the training objectives. Additionally, the FAA has determined this scenario-based training ensures the effective integration of these ''soft skills'' with technical skills. Therefore, an air carrier can combine the maneuvers and procedures in appendix E with the scenario-based training required by §§ 121.424(b) and 121.426(a)(5) as long as the training meets the objectives and requirements of both appendix E and §§ 121.424(b) and 121.426(a)(5).

The FAA recognizes that a carrier may choose to include leadership and command training in its SIC to PIC upgrade CRM curriculum that may satisfy the requirements of this final rule. If a carrier develops and conducts enhanced CRM training that includes additional instruction and facilitated discussion specifically designed to provide PICs with the necessary leadership and command skills, that carrier may meet the requirements under part 121 subpart N related to leadership and command training. The FAA will consider the training aids, devices, methods, and procedures used by the carrier as well as the content of the carrier's enhanced CRM training to determine whether the enhanced CRM training meets the requirements for leadership and command training.

iii. Mentoring

The FAA proposed that upgrade ground training must include mentoring, to include techniques for instilling and reinforcing the highest standards of technical performance, airmanship, and professionalism in newly hired pilots. *See* 81 FR at 69920.

AABI agreed with the requirement for mentoring training for pilots upgrading to PIC. ALPA stated that upgrade flight training should also include mentoring training.

The FAA does not agree that upgrade flight training should include mentoring training because it cannot be incorporated into upgrade flight training effectively. An opportunity for mentoring would have to be artificially introduced during scenario-based flight training, which would reduce the effectiveness of that training because the scenario would no longer be realistic.

iv. Low-Altitude Windshear and Extended Envelope Flight Training

In the NPRM, the FAA proposed that upgrade flight training must continue to include training in the rare, but high risk scenarios specified in § 121.423 as well as the carrier's approved low-altitude windshear flight training program.

The FAA did not receive any comments regarding low-altitude windshear and extended envelope flight training and is adopting those requirements as proposed.

v. Additional Flight Training

The FAA also proposed that the upgrade curriculum must include sufficient flight training to ensure the pilot has attained the knowledge and skills to proficiently operate the airplane as a PIC. Under the proposed upgrade curriculum, the air carrier must determine the specific maneuvers and procedures for each airplane type considering its operational factors and authorizations, risks identified through its safety management system, and other risks identified through programs such as an Aviation Safety Action Program (ASAP), Flight Operational Quality Assurance (FOQA), and Line Operations Safety Audit (LOSA).[21] Additionally, the FAA proposed that the training must ensure the pilot has developed the visual and psychomotor acuity necessary to operate the airplane from the seat position to be occupied while serving as PIC, typically the left pilot seat.

The FAA did not receive any comments on the proposed additional flight training during upgrade and is adopting the requirements as proposed.

3. Upgrade Proficiency Check Requirements

To ensure a proficient PIC, the FAA proposed to revise the waiver provisions for a § 121.441 proficiency check completed after upgrade ground and flight training. *See* 81 FR at 69920.

Ameristar stated that all the events in Appendix E applicable to upgrade training are waivable during the proficiency check, thereby invalidating the rationale for not allowing events to be waived on the proficiency check after upgrade training. Ameristar also commented that because compliance with either proposed § 121.441(d)(3)(i) or (ii) is allowed, compliance with § 121.441(d)(3)(i) would include upgrade training completed six months earlier making § 121.441(d)(3)(ii) unnecessary.

As explained in the NPRM, the proposed upgrade training requirements do not require pilots to complete all maneuvers and procedures in appendix E during training. Appendix E designates the airplane or FSTD, as appropriate, that may be used for maneuvers and procedures required for upgrade training in accordance with proposed § 121.426. Therefore, to ensure a proficient PIC, proficiency must be demonstrated for all maneuvers and procedures in appendix F during the proficiency check completed after upgrade training.

Proposed § 121.441(d)(3)(ii) is necessary because proposed § 121.441(d)(3)(i) does not include upgrade training completed within the previous six months. Section 121.441(d)(3)(i) applies to a pilot currently qualified for part 121 operations in a particular type airplane and flightcrew member position. Proposed § 121.441(d)(3)(ii) applies to a pilot who has satisfactorily completed an approved training curriculum within the preceding six months, except for an upgrade training curriculum in accordance with proposed §§ 121.420 and 121.426. A pilot who has only completed upgrade training is not currently qualified for part 121 operations as PIC in that type airplane because the pilot has not completed the qualification requirements in part 121 subpart O, including the proficiency check, operating experience, consolidation of knowledge and skills and the line check. Therefore, as proposed, waiver authority is not

[21] ASAP, FOQA, and LOSA are voluntary programs implemented by many air carriers. Analysis of the data provided by these voluntary programs has contributed to increased safety including improvements to training and operational procedures.

allowed on a proficiency check for a pilot who has completed the upgrade training curriculum in accordance with proposed §§ 121.420 and 121.426.

The FAA is adopting the revised waiver provisions as proposed.

4. Effect of Revised Upgrade Curriculum on Recurrent Training

In the NPRM, the FAA explained that an air carrier may continue to reset a pilot's ''base'' month for recurrent flight training if the pilot satisfactorily completes the proposed upgrade flight training and proficiency check. An air carrier may only reset a pilot's base month for recurrent ground training based upon completion of upgrade ground training if the air carrier's upgrade curriculum includes all recurrent ground training requirements of § 121.427. *See* 81 FR at 69921.

The FAA did not receive any comments on this explanation.

*H. Training for Pilots Currently Serving as PIC (§ 121.429)*

The FAA proposed that all pilots qualified to serve as PIC prior to the compliance date must complete the PIC upgrade ground training on leadership and command and mentoring. However, the FAA also proposed to allow credit toward all or part of the requirements for leadership and command and mentoring training for current PICs based on leadership and command and mentoring training previously completed by these PICs at that air carrier. The FAA sought comment on the proposal to allow credit, specifically:

(1) Whether and to what extent air carriers were already providing leadership and command training and/or mentoring training for current PICs as described in the draft ACs included in the docket for the rulemaking;

(2) Whether the previous training must have been provided as part of a training program approved by the FAA for that air carrier;

(3) Whether the previous training must have been completed within a certain period of time prior to the effective date of the final rule;

(4) What criteria and documentation the FAA should consider in determining whether all or part of the requirements have been met with previous training; and

(5) What criteria and documentation the FAA should consider in determining whether a PIC completed all or part of the previous training at that air carrier.

Comments from A4A and several air carriers indicated that numerous air carriers provide training in some or all of the items addressed in the draft ACs on leadership and command and mentoring training, and that some airlines have been providing this training for well over 20 years. Portions of the training is part of an FAA-approved training curriculum, but some air carriers may have included this training as part of specialized carrier-specific training that is not FAA-approved.

A4A, American, and Jet Blue did not believe there should be a specific timeframe when this training should have been completed in order to be creditable. In contrast, ALPA believed credit should not be provided if the training occurred more than 24 months prior to the publication of the final rule. The NTSB strongly disagreed with the proposal to allow credit for training completed before the effective date of the final rule because that training may not be equivalent to the final rule requirements. A4A stated that whether or not the training was part of an FAA-approved training program does not negate the fact that the training took place and should not be a factor in determining if credit for the training will be allowed.

A4A, American, and UPS contended that airline records, courseware, and training module outlines are the appropriate criteria to determine the extent and subject matter of previous training and whether a PIC completed training. Jet Blue did not believe that specific criteria or documentation are necessary for the FAA to determine if all or part of the requirements have been met.

American and UPS requested that the FAA leave as much latitude as possible for establishing that training was accomplished for air carriers with long records of voluntarily covering the proposed topics.

ALPA believed that previous mentoring, leadership and command training should only be credited if effective and recent. ALPA suggested using data such as participants' critiques, LOSA, ASAP, line checks, etc. to determine if the training was effective. ALPA also stated that proper record keeping should reflect that the pilot participated in the entire course for which credit is being sought.

An individual identified as an associate college professor stated that the FAA should allow partial credit toward the requirements for leadership and command and mentoring training for current PICs based on leadership and command and mentoring training previously completed at that air carrier.

Ameristar stated that current PICs who have completed an air carrier's CRM should not have to complete initial one-time training.

As explained in the NPRM, the FAA has determined that it is unnecessarily burdensome for PICs to complete the one-time training on leadership and command and mentoring if the PIC has previously completed training that is duplicative of the proposed requirements. As indicated by commenters, several air carriers are already providing some or all of this training. Therefore, the final rule retains the allowance for credit for training previously completed at that air carrier.

However, the FAA will only allow credit for training completed within 36 calendar months prior to the effective date of the final rule. As described in the section on Recurrent PIC Leadership and Command and Mentoring Training, leadership and command are perishable skills that require recurrent training; in the final rule, the frequency for recurrent ground training on leadership and command and mentoring for PICs remains every 36 calendar months, as proposed. Therefore, the FAA has determined it is appropriate to use the same timeframe for credit for training.

Since this training was previously voluntary, the FAA agrees with commenters that credit should be allowed even if the training was not included in the FAA-approved training program, where the air carrier has appropriate records. The FAA also agrees with commenters that curricula, training modules, and lesson plans combined with a record for an individual pilot are the appropriate documentation to allow credit for some or all of the training.

In the draft ACs, the FAA had proposed that the POI for each carrier would evaluate the carrier's request and determine whether to allow credit for some or all of the training. However, to ensure a consistent determination of whether the previous training met some or all of the requirements, the FAA is establishing a focus team, consisting of FAA subject matter experts, to evaluate all requests for credit. This process will be described in the final version of the ACs accompanying this final rule.

The FAA does not agree that if a pilot has completed CRM training at that carrier, one-time training on leadership and command and mentoring should not be required. As described in the NPRM, although CRM contains some elements of the desired leadership training, it is not designed with the express intent of aiding the PIC in assuming a leadership role in the aircraft. *See* 81 FR at 69916. CRM focuses on the use of all resources available to the pilot and the

functioning of crewmembers as teams (addressing team behaviors and effectiveness), whereas the leadership and command training required in this final rule is intended for the development of the individual PIC's leadership skills, management oversight, and command authority prior to overall crewmember-integrated CRM training. CRM is also not designed to provide PICs with mentoring skills. Despite this distinction, the FAA recognizes that a carrier may choose to include leadership and command training in its CRM curriculum that may satisfy the requirements of this final rule. If a carrier develops and conducts enhanced CRM training that includes additional instruction and facilitated discussion specifically designed to provide PICs with the necessary leadership and command skills, that carrier may seek credit for that training. The FAA will consider the training aids, devices, methods, and procedures used by the carrier as well as the content of the carrier's enhanced CRM training to determine whether the enhanced CRM training meets the requirements for leadership and command training.

*I. Recurrent PIC Leadership and Command and Mentoring Training (§§ 121.409(b) and 121.427)*

In the NPRM, the FAA proposed to require recurrent training on leadership and command and mentoring skills for all PICs serving in part 121 operations. The FAA proposed to require recurrent ground training on leadership and command and mentoring for PICs every 36 calendar months. The FAA also proposed to modify the requirements in § 121.409 to require that the recurrent LOFT scenario must provide each PIC an opportunity to demonstrate leadership and command.

AABI and Jet Blue agreed with the requirement for leadership and command and mentoring training for PIC recurrent training. They also agreed with the requirement that leadership and command must be demonstrated during the flight training portion of recurrent training. Several individuals also agreed with the proposal.

ALPA asserted that recurrent leadership and command and mentoring training needs to be conducted every 12 months rather than every 36 months.

As explained in the NPRM, the FAA has previously recognized that the necessary frequency for recurrent training is not the same for all subject areas and tasks. The FAA agrees that mentoring, leadership and command are perishable skills that require recurrent training. However, the FAA has determined that because these skills are used regularly during every flight they are less susceptible to degradation. Therefore, the frequency for recurrent ground training on leadership and command and mentoring for PICs is every 36 calendar months, as proposed.

Ameristar thought that requiring leadership and command training during recurrent LOFT implies that a LOFT would be required during recurrent training. Ameristar believed that distance learning should suffice for recurrent training.

The FAA proposed only to modify the existing recurrent LOFT scenario requirements in § 121.409. The FAA did not intend any implication that a LOFT would be required during recurrent training. As currently allowed, air carriers may choose to substitute LOFT that meets the requirements of § 121.409 for the recurrent proficiency check requirement specified in § 121.441, but air carriers are not required to do so.

The FAA recognizes that a carrier may choose to include leadership and command training in its recurrent CRM curriculum that may satisfy the requirements of this final rule. If a carrier develops and conducts enhanced CRM training that includes additional instruction and facilitated discussion specifically designed to provide PICs with the necessary leadership and command skills, that carrier may meet the requirements under part 121 subpart N related to leadership and command training. The FAA will consider the training aids, devices, methods, and procedures used by the carrier as well as the content of the carrier's enhanced CRM training to determine whether the enhanced CRM training meets the requirements for leadership and command training.

*J. Leadership and Command Training and Mentoring Training for SICs Serving in Operations That Require Three or More Pilots*

In the NPRM, the FAA explained that it was considering requiring leadership and command training and mentoring training for SICs that serve as SIC in an operation that requires three or more pilots who are required by § 121.432(a) to be fully qualified to act as PIC of that operation (except for operating experience). The FAA sought comment on:

(1) Whether the PIC leadership and command training should be included in the qualification requirements for pilots serving as the SIC in an augmented flightcrew; [22]

(2) Whether mentoring training should be included in the qualification requirements for pilots serving as the SIC in an augmented flightcrew;

(3) Whether providing training in only one of the new subject areas (*i.e.,* only leadership and command training or only mentoring training) would reduce the effectiveness of the training for these SICs; and

(4) Whether providing training in only one of the new subject areas (*i.e.,* only leadership and command training or only mentoring training) would reduce the effectiveness of the requirement for the SIC in an augmented flightcrew to be fully qualified to act as PIC.

A4A, American, and UPS argued that there should be no requirement for leadership and command and mentoring training for pilots serving as the SIC in an augmented crew. They stated that the PIC is there as the leader on the flight and is available to deal with requirements associated with leadership and command. They also stated that there should not be an expectation on the flight deck that anyone will mentor other than the PIC. A4A, American, and UPS noted that leadership and command training and mentoring training can be mutually exclusive so that one topic could be taught without any reduction in the SIC's effectiveness if the other topic is not taught.

Delta Air Lines commented that a full PIC command course should not be required for SICs. However, Delta stated that fundamentals of command training within established chain of command may be constructive.

ALPA stated that all SICs performing in augmented operations should receive the PIC leadership and command training and mentoring training. ALPA believed that SICs being trained in only one of the subjects would reduce the effectiveness of the SIC training and potentially their ability to be fully qualified to act as PIC in augmented operations.

Since 1970, § 121.432(a) has stated that a pilot who serves as SIC in an operation that requires three or more pilots must be fully qualified to act as PIC of that operation. In the 1970 Training Programs final rule, the FAA indicated that the qualification requirements for the assigned SIC in a crew of three or more were not limited to one particular aspect of PIC qualification, and that the provision was intended to cover broader PIC qualification requirements.[23] The FAA's

[22] An augmented flightcrew is a flightcrew that consists of more than the minimum number of flightcrew members required by the airplane type certificate to operate the airplane to allow a flightcrew member to be replaced by another qualified flightcrew member for inflight rest.

[23] *See* 35 FR 84, 87 (Jan. 3, 1970).

position has not changed. Therefore, the FAA has determined that SICs who serve in an operation that requires three or more pilots must complete leadership and command training to be fully qualified to act as PIC of that operation. As described in the NPRM, the purpose of leadership and command training is to provide the skills necessary to manage the crew, communications, workload, and decision-making in a manner that promotes adherence to SOP. Since these SICs may be required to act as PIC while the assigned PIC is taking an inflight rest break, the FAA has determined these SICs need the same leadership and command skills. The FAA notes that, in accordance with § 121.401, these SICs will not be required to repeat the leadership and command training when they upgrade to PIC.

The FAA has determined these SICs do not need to complete mentoring training to be fully qualified to act as PIC of an augmented operation under § 121.432(a). As described above, the FAA is requiring mentoring training for all PICs serving in part 121 operations to establish the mentoring environment recommended by the MLP ARC. As further explained in the NPRM, the FAA has determined the increased experience requirements of the Pilot Certification rule together with the mentoring training requirement of this rule ensures every newly hired pilot is paired, on every flight, with an experienced pilot who can serve as a mentor. *See* 81 FR at 69919. Because the PIC of the augmented flight can serve as this mentor, an SIC who serves in an operation that requires three or more pilots would not ordinarily be expected to serve as a mentor to other pilots. Moreover, unlike with leadership and command skills, the PIC's mentoring responsibilities during an augmented operation would not ordinarily be interrupted merely by an inflight rest period.

*K. Pilot Professional Development Committee (Proposed § 121.17)*

In the NPRM, the FAA proposed to add a requirement for certificate holders conducting operations under part 121 to establish and maintain a pilot professional development committee (PPDC) to develop, administer, and oversee a formal pilot mentoring program. Additionally, the FAA proposed to require the PPDC to meet frequently enough to accomplish the objectives of the committee, but at least once a year. Further, the FAA proposed that the PPDC must consist of at least one management representative and at least one representative of the air carrier's pilots. The FAA proposed that the management representative must (1) have at least one year of experience serving as a PIC in part 121 operations, and (2) be qualified through training, experience, and expertise relevant to the PPDC's responsibilities. Along with the NPRM, the FAA drafted an AC that provided attributes for a PPDC to consider to develop, administer, and oversee a formal pilot mentoring program. The FAA included a copy of this document in the docket for this rulemaking and sought comments.

The FAA also sought comment on whether a PPDC and a formal pilot mentoring program are necessary in light of the FAA's proposal to require all PICs to complete mentoring training, including recurrent mentoring training. Although addressed in the ''PIC Mentoring Training'' discussion, by providing training on mentoring to all PICs, all newly hired SICs would be paired with a pilot who is prepared and has been trained to instill and reinforce the professionalism, skill, and knowledge expected of all pilots serving in part 121 operations.

AABI agreed with establishing a PPDC, the minimum committee composition, and the minimum meeting requirements. The NTSB strongly supported the proposed PPDC. Several individuals, many identified as college students, agreed with the mentoring program and believed it would provide benefits such as improving CRM and communications between pilots, aiding the progression of new pilots, and providing good experience for mentors.

A4A, American, Jet Blue, and UPS contended the necessity and role of the PPDC are limited considering mentoring training requirements and processes for reporting issues. A4A, American, and UPS also stated that the need for a PPDC would vary depending on factors at the airline such as size, maturity, pilot hiring parameters, training quality, and management capability.

A4A and Jet Blue stated that some of the items listed for the PPDC to consider may fall under management responsibilities. A4A, UPS, and Jet Blue stated that the draft AC must clearly highlight the difference between the role of the PPDC and that of airline management.

A4A, American, UPS, and Jet Blue also noted that several airlines already have joint committees with union/pilot representation and believed that the limited oversight proposed for the PPDC could readily be performed by these existing committees.

Jet Blue further argued that some of the proposed language may cause conflicts of interest in certain phases of the collective bargaining process as defined by the Railway Labor Act.

ALPA emphasized that it is a statutory mandate for the FAA to require a PPDC and a formal long-term mentoring program as well as mentoring for new hires during every flight. ALPA stated that the proposal did not address many issues regarding the PPDC and a formal long-term pilot mentoring program, including: Selection and deselection of mentors; whether the mentors will be volunteers or will hold paid positions; impact on part 117 duty time due to mentoring; mentor qualifications; mentor initial and recurrent training; frequency and method of communication; how mentors will be assigned to new hires; mentor burn out; uncooperative new hires; length of mentoring; record keeping; minimum topics for discussion; boundaries for mentoring; roles and responsibilities of the pilot union; consequences of a mentor not adhering to the program guidelines and responsibilities; and regular feedback.

The FAA also received several other comments concerning the roles and functions of the proposed PPDC, its composition and meeting requirements, its interplay with existing labor-management structures, and the potential undue burden and costs associated with PPDC development and administration. In addition, the comments included recommendations on requirements for formal mentoring programs, the qualifications of mentors, and the scope of the mentor-mentee relationship.

The FAA agrees with some air carrier commenters that, as proposed, the PPDC could create uncertainty between the role of the PPDC and the regulatory operational and management responsibilities of the air carrier. The FAA has determined that a formal pilot mentoring program cannot function independently from the operation of the air carrier. The development, administration, and oversight of a formal pilot mentoring program would impact many other aspects of the operation of the air carrier, such as pilot duty and rest, training, recordkeeping, ''hiring'' of mentors, and funding for the program. In accordance with U.S.C. 44701(b) and (d), the FAA may prescribe minimum safety standards for air carriers in consideration of the duty of an air carrier to provide service with the highest possible degree of safety in the public interest. Therefore, the responsibility for the safe operation of the air carrier, including the pilot mentoring program, ultimately remains with the air carrier.

Additionally, the FAA agrees that the need for a PPDC is limited because all PICs are required to complete mentoring training.

Lastly, in January 2015, the FAA issued the Safety Management Systems for Domestic, Flag, and Supplemental Operations for Certificate Holders final rule (SMS).[24] The SMS final rule was in response to (1) section 215 of Public Law 111–216 that directed the FAA to require all part 121 air carriers to implement an SMS, (2) NTSB recommendation A–07–10 for the FAA to require all part 121 air carriers to establish an SMS, and (3) International Civil Aviation Organization (ICAO) Annex 6, in which member states agreed to establish SMS requirements for air carriers. SMS is a comprehensive, process-oriented approach to managing safety throughout an organization. An SMS includes an organization-wide safety policy; formal methods for identifying hazards, controlling, and continually assessing risk and safety performance; and promotion of a safety culture. When systematically applied, SMS provides a set of decision-making tools that air carriers can use to improve safety. SMS stresses not only compliance with technical standards but also increased emphasis on the overall safety performance of the organization. In accordance with the SMS final rule, air carriers must have implemented an SMS that meets the requirements of 14 CFR part 5 no later than March 2018.

The FAA has thoroughly considered the MLP ARC recommendations in context with the SMS final rule, the PIC mentoring training required by this final rule, as well as the comments submitted in response to this rulemaking, and the FAA has determined that it would not be feasible or achievable for the PPDC to develop, administer, and oversee an effective formal pilot mentoring program. The FAA has determined that the goals of improving pilot airmanship, decision-making, and professionalism at each air carrier can be achieved through the PIC mentoring training required by this final rule and the use of each air carrier's SMS. The FAA is not adopting the proposal for the establishment of a PPDC.

*L. Pilot Recurrent Ground Training Content and Programmed Hours (§ 121.427)*

The FAA proposed to remove from the pilot recurrent ground training requirements, certain foundational knowledge elements that are no longer necessary in light of the maturity of air carrier training programs and the increase in pilot experience and qualification.[25] The FAA further proposed a one hour reduction in the required minimum programmed hours for pilot recurrent ground training.

The FAA did not receive any comments regarding the proposed changes to pilot recurrent ground training content and programmed hours. Therefore, these changes are adopted as proposed.

*M. Part 135 Operators and Part 91 Subpart K Program Managers Complying With Part 121, Subparts N and O*

In the NPRM, the FAA explained that some part 135 operators and part 91K program managers use pilot training and qualification programs that comply with subparts N and O of part 121. However, the FAA explained that some of the proposed revisions to part 121 in the NPRM were not compatible with all part 135 and 91K operations because of differences between the requirements for minimum flight crew and pilot certification. Therefore, for part 135 operators and fractional ownership program managers who use a part 121 subparts N and O training and qualification program, the FAA proposed to retain the existing upgrade curriculum requirements and to limit the applicability of the leadership and command and mentoring training to PICs serving in operations that require two or more pilots. The FAA further explained that the remaining proposed amendments to subparts N and O of part 121 would apply to these other operators and program managers. *See* 81 FR at 69923.

NetJets requested that the final rule specifically note that the proposed OF requirement not apply to part 135 on-demand certificate holders or part 91, subpart K fractional ownership program managers that choose to comply with part 121 subparts N and O training and testing requirements. NetJets stated that few of its aircraft are equipped with a flight deck observer seat and would qualify for the deviation in proposed § 121.432(d).

The FAA agrees that the requirement for OF should not apply to part 135 operators or part 91K program managers that choose to comply with part 121 subparts N and O because the airplanes used in these operations are generally too small to accommodate a flight deck observer seat. Additionally, Public Law 111–216 and the associated MLP ARC recommendations are specifically directed at part 121 air carriers. Therefore, as adopted in §§ 91.1063(b) and 121.435(a) part 135 operators or part 91K program managers that choose to comply with part 121 subparts N and O are not required to comply with OF.

NetJets stated that in accordance with § 135.3(c), the operating experience required by § 121.434 is not applicable to NetJets because § 135.3(c) provides that certificate holders conducting part 135 operations who comply with part 121 subparts N and O requirements, instead of the part 135 subparts E, G, and H requirements, may choose to comply with the operating experience requirements of § 135.244 instead of the requirements of § 121.434. NetJets believed that, because a proficiency check of a visual inspection using pictorial means is certified by a check pilot, it is unnecessary to certify the pilot's proficiency a second time before the pilot completes operating experience.

As proposed in § 121.434(b)(3), if pictorial means was used to conduct the preflight visual inspection during the proficiency check, the pilot must demonstrate proficiency on at least one complete visual inspection of a static airplane before the completion of the operating experience required by § 121.434. The FAA did not propose any changes to § 135.244. Therefore, that requirement would only apply to a part 135 operator who complies with part 121 subparts N and O and chooses to comply with § 121.434. If the part 135 operator chooses to comply with § 135.244 instead, the requirement for the pilot to conduct the visual inspection of a static airplane during the operating experience does not apply.

The proposals to retain the existing upgrade curriculum requirements and to limit the applicability of the leadership and command and mentoring training to PICs serving in operations that require two or more pilots are adopted in the final rule for part 135 operators and fractional ownership program managers who use a part 121 subparts N and O training and qualification program.

*N. Flight Simulation Training Device (FSTD) Conforming Changes*

In the NPRM, the FAA proposed changes to part 121 subparts N and O and appendices E and F to reflect current terminology with respect to the use of flight simulators and other training devices. Specifically, references to visual simulators (Level A FFS) and

[24] 80 FR 1308 (Jan. 8, 2015).

[25] To implement the proposed amendments to recurrent ground training content for pilots, the FAA proposed revisions to § 121.427(b), that separate the recurrent ground training requirements by training population. Additionally, the FAA proposed to remove from § 121.427(b), the reference to § 121.805 because of the requirement in § 121.415(a)(3) to complete § 121.805 training.

advanced simulators (Level B, C, and D FFS) were proposed to be removed and updated to reflect current terminology and additionally, all references to simulation technology that no longer exists were removed.

American agreed with the proposed FSTD conforming changes, including the proposed change to amend Appendices E and F to allow pictorial means for the conduct of the preflight visual inspection.

Delta Air Lines commented that in both proposed Appendix E and proposed Appendix F, the maneuver/procedure categories and descriptive terminology do not match related categories and description in accordance with 14 CFR part 60, Tables A1B and B1B (Table of Tasks vs. Simulator/FTD Level). Delta also noted that in proposed Appendix E and proposed Appendix F, the ''FTD'' column does not reflect the maneuvers for which Flight Training Devices (FTDs), specifically level 7 FTDs, can be certified for flight training and proficiency checking as qualified in part 60, Tables A1B and B1B.

The FAA agrees with Delta's comment that the maneuvers and procedures in Appendix E and Appendix F do not directly align with the tasks listed in part 60 Tables A1B and B1B and also do not fully address all of the FFS and FTD levels that are currently defined in part 60. Since the time the tables in Appendix E and Appendix F were originally written several years ago, other device levels within the ''FFS'' and ''FTD'' categories have been defined in the simulator qualification standards, and these tables in part 121 no longer reflect the current capabilities of all device levels which may be qualified for use in training under part 60. While the FAA agrees that Appendix E and Appendix F do not capture the capabilities of all of the available FSTD levels as currently defined in part 60, the FAA concludes that conducting extensive changes to these appendices in the final rule would exceed the scope of this rulemaking. The FAA has initiated a separate rulemaking to align the pilot training tasks and authorized FSTD levels used in part 121 training programs to the technical FSTD qualification standards that are defined in part 60.[26]

[26] RIN 2120–AL14 Flight Simulation Training Device Usage in Training Programs. *See* the Department of Transportation semi-annual regulatory agenda at *www.reginfo.gov* for more information on this rulemaking.

*O. SIC Training and Checking Conforming Changes*

The FAA proposed amendments to the SIC training requirements in Appendix E to part 121, amendments to the SIC proficiency check requirements in Appendix F to part 121, and an amendment to § 61.71 to clarify that a pilot obtaining a type rating within a part 121 training program must satisfactorily accomplish the same tasks and maneuvers required by § 121.424 to serve as PIC. *See* 81 FR at 69925.

The FAA did not receive any comments on these proposed amendments and is adopting them as proposed.

*P. Other Conforming and Miscellaneous Changes*

In the NPRM, the FAA proposed amendments to the pilot transition ground training content in § 121.419; a new term in § 121.400 to identify flight engineer to SIC training as ''conversion'' training instead of ''upgrade'' training; amendments to the ground training content in § 121.419 for flight engineer to SIC training; and an amendment to § 121.434, Appendix E to part 121, and Appendix F to part 121 to allow preflight visual inspection using pictorial means during pilot training and checking. *See* 81 FR at 69926.

Ameristar suggested, that because proposed Appendices E and F refer to an ''approved'' pictorial means for completing preflight, proposed § 121.434(b)(3) should include the term ''approved.''

The FAA agrees with the suggestion, and § 121.434(b)(3) clarifies that the pictorial means must be approved. The FAA will continue to provide relief through exemptions for preflight visual inspection using pictorial means until April 27, 2021, to allow sufficient time for certificate holders to obtain approval under the regulations from their Principal Operations Inspector. The FAA did not receive any other comments on these proposed amendments and is adopting them as proposed.

*Q. Costs and Benefits*

The FAA received a few comments concerning the potential costs and benefits of the proposed rule. Jet Blue stated that the proposed OF requirements may delay the training of a class of 30 pilots for up to an entire calendar week, resulting in significant costs to the airline. With Jet Blue's projected pilot hiring of 500 pilots in 2018, this delay represented a potential additional cost of $1,718,640 per year in system staffing costs versus approximately $245,520 for a single-day flexible addition within the existing training footprint.

As further explained in the section regarding Operations Familiarization, the FAA has revised the proposed OF requirements to clarify that OF can be completed during or after basic indoctrination training. This change reduces staffing costs.

An individual commenter stated that the proposed OF requirement would increase operating costs to the airlines, and does not help prevent the pilot shortage in the U.S.

As described in the NPRM, the intent of OF is to provide newly hired pilots with an opportunity to observe from the flight deck in a real world environment, the unique characteristics of the air carrier's operations, and the specialized processes learned during basic indoctrination training.

One individual provided positive comment on the cost savings benefits to operators. This individual further stated that the cost of $72 million over a 10-year period is much more feasible as it balances the expected overall benefits.

Another individual noted that due to economic factors and further unknown variables, air carrier budgets could be impacted on a larger or smaller scale than what was estimated in the NPRM. One individual identified as a pilot suggested that if the savings are higher than or equal to the cost to implement, the NPRM should be implemented. This individual further calculated that even with the 10-year 7% discount rate that if the cost ends up only being about $1 million or less of an expense to air carriers, the NPRM should still be implemented so long as the expenses are not shifted on to the pilots.

The FAA addresses the estimated costs and benefits of the rule in the Regulatory Evaluation section.

*R. Other Out-of-Scope Comments*

Ameristar believed § 121.436 should be amended to allow all flight time acquired in a turbojet aircraft in a part 135 operation to count towards the 1000-hour requirement of § 121.436(a)(3). Referencing proposed § 121.427(b)(4), Ameristar believed that CRM scenarios can be built into recurrent proficiency checks as well as LOFT sessions. The FAA also received several other comments concerning pilots' wages at regional air carriers, stress and fatigue, and optimal working environment. In addition, the comments included recommendations for general aviation pilot training and qualifications, as well as a recommendation to target regulations to

general aviation and other forms of transit.

These comments are out of the scope of this rulemaking. While there are many other factors that contribute to aviation accidents, Public Law 111–216 and this rule specifically address pilot professional development through leadership and command training and pilot mentoring. The new requirements are designed to enhance the professional development of pilots and are therefore not intended as substitutes for pilot qualifications or other pilot training regimes.

## V. Regulatory Notices and Analyses

### *A. Regulatory Evaluation*

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39 as amended) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined this final rule has benefits that justify its costs, and is a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 because it raises novel policy issues contemplated under that executive order. The rule is also ''significant'' as defined in DOT's Regulatory Policies and Procedures. The final rule, if adopted, will not have a significant economic impact on a substantial number of small entities, will not create unnecessary obstacles to international trade, and will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

Total Benefits and Costs of This Rule

The overall safety and reliability of the NAS demonstrates that most pilots conduct operations with a high degree of professionalism. Nevertheless, a problem still exists in the aviation industry with some pilots acting unprofessionally and not adhering to standard operating procedures (''SOP''), including the sterile flight deck rule. This rule requires:

- Operations familiarization for new-hire pilots;
- Revised ground and flight training for upgrading pilots that includes mentoring, leadership, and command training;
- Mentoring, leadership, and command ground training for current PICs;
- Mentoring, leadership, and command recurrent training for PICs; and
- Leadership and command training for certain SICs serving in an operation that requires 3 or more pilots.

The benefits of the training in the final rule include an increased level of safety from mitigation of unprofessional pilot behavior which the FAA has determined reduces pilot error that can lead to a catastrophic event. In addition, the rule responds to NTSB recommendations and satisfies the statutory requirement for a rulemaking in Public Law 111–216.

The estimated cost of the rule to air carriers is $90.0 million over a 10-year period. When discounted using a 7-percent discount rate, the rule is estimated to result in costs of $62.2 million over the same period. The total and annualized costs and cost savings are shown in the table below.

The rule will also generate savings to operators of $95.5 million over a 10-year period. When discounted using a 7-percent discount rate, the rule will result in savings of $61.2 million over the same period.

TOTAL COSTS AND COST SAVINGS

[Millions of 2016 dollars, 2018–2027] *

| | Nominal | Present value at 7% | Annualized at 7% | Present value at 3% | Annualized at 3% |
|---|---|---|---|---|---|
| Total Costs | $90.04 | $62.17 | $8.29 | $76.25 | $8.24 |
| Total Cost Savings | 95.53 | 61.22 | 8.16 | 78.32 | 8.46 |
| Net Costs | −5.49 | 0.94 | 0.13 | −2.07 | −0.22 |

* Table values have been rounded. Totals may not add due to rounding.

More detailed benefit and cost information follows below.

Who is potentially affected by this rule?

The rule applies to all part 121 air carriers (77) and, for some provisions, to part 135 operators conducting commuter operations in airplanes type certificated for two pilots and are required to use pilot training and qualification programs that comply with part 121 subparts N and O (2).[27]

Assumptions

- *Discount Rates:*[28] 7% and 3%
- *Period of Analysis:* 2018–2027
- Monetary values expressed in 2016 dollars
- Discounting calculations use 2016 as the base year

[27] In addition to part 135 operators conducting commuter operations, if authorized by the Administrator, part 91, subpart K (part 91K) program managers, and other part 135 operators may voluntarily comply with the training program requirements in subparts N and O of part 121 instead of the training program requirements of part 91K or part 135. Given that part 121 compliance is voluntary for part 91K program managers and part 135 operators (other than those conducting commuter operations), this pilot segment is not included in this analysis.

[28] Office of Management and Budget, OMB Circular No. A–4, *New Guidelines for the Conduct of Regulatory Analysis,* Mar. 2, 2004.

Other key assumptions used to complete the regulatory evaluation are as follows:

- *Pilot Retirement Rate:* 2.5%
- *Pilot Attrition Rate Due to Medical Reasons:* 0.5%
- *Pilot Growth Rate:* 0.5%
- *Growth rate of SIC Pilots Qualified as PIC:* 3.4% per year [29]
- *Ground Instructors Needed:* 1 instructor for every 200 pilots
- *Class Size:* 20 pilots per class

Changes From the NPRM to the Final Rule

The final rule differs from the proposed rule in the following ways. The FAA is not requiring a pilot professional development committee (PPDC) as suggested in the NPRM. The FAA is also requiring leadership and command training for SICs serving in operations that require three or more pilots.

Benefits of This Rule

The benefits of the required training include an increased level of safety from mitigation of unprofessional pilot behavior which the FAA has determined reduces pilot error that can lead to a catastrophic event. The October 14, 2004, crash of Pinnacle Airlines flight 3701 in Jefferson City, Missouri, and the February 12, 2009, crash of Colgan Air flight 3407 near Buffalo, New York, are examples of past accidents where unprofessional pilot behavior contributed to the accident. In addition, the rule responds to National Transportation Safety Board (NTSB) recommendations and satisfies the statutory requirement for rulemaking in Public Law 111–216.

Costs of This Rule

The costs of the rule are associated with the following requirements:

- Operations familiarization for new-hire pilots;
- Revised ground and flight training for upgrading pilots that includes mentoring, leadership, and command training;
- Mentoring, leadership, and command ground training for current PICs;
- Mentoring, leadership, and command recurrent training for PICs; and
- Leadership and command training for certain SICs serving in an operation that requires 3 or more pilots.

The rule has some additional conforming and miscellaneous changes that do not impact either the costs or benefits of the rule (see Sections N, O, and P of the preamble to the final rule).

COMPLIANCE COSTS FOR THE RULE BY PROVISION (2018–2027)

| Cost | Total compliance costs (millions of 2016 dollars) | | |
|---|---|---|---|
| | Total | Present value | |
| | | 7 percent | 3 percent |
| New-Hire Pilot Operations Familiarization (§ 121.435) | $6.514 | $3.962 | $5.227 |
| Upgrade Training (§§ 121.420 and 121.426) | 13.991 | 8.649 | 11.300 |
| One-Time and Recurrent PIC Training (§ 121.429, § 121.409(b), and § 121.427) | 66.391 | 47.439 | 57.095 |
| One-Time and Recurrent SICs Qualified as PICs Training | 3.133 | 2.108 | 2.623 |
| Recordkeeping | 0.009 | 0.007 | 0.008 |
| Total | 90.039 | 62.165 | 76.254 |

* Table values have been rounded. Totals may not add due to rounding.

Cost Savings of This Rule

The rule also contains cost saving benefits based on changes to ground training that are possible due to changes already implemented in the Pilot Certification Rule. The recent Pilot Certification final rule ensures technical proficiency in those subjects via other means.[30] These changes will lead to a reduction in the time required to complete recurrent and upgrade training and will not compromise safety.

TOTAL AND PRESENT VALUES OF COST SAVINGS (2018–2027) *

| Cost saving benefits | Total costs savings (millions of 2016 dollars) | | |
|---|---|---|---|
| | Total | Present value | |
| | | 7 percent | 3 percent |
| Recurrent Ground Training (§ 121.427) | $67.323 | $44.068 | $55.687 |
| Upgrade Ground Training (§ 121.420) | 28.205 | 17.155 | 22.631 |
| Total | 95.529 | 61.223 | 78.318 |

* Table values have been rounded. Totals may not add due to rounding.

[29] FAA Aerospace Forecast 2017–2037. Table 5: U.S. Commercial Carriers Total Scheduled U.S. Passenger Traffic, 2016–2037. *https://www.faa.gov/data_research/aviation/aerospace_forecasts/*. Accessed April 2017.

[30] The Pilot Certification rule requires all SIC serving in part 121 operations to hold an ATP certificate with a type rating and requires pilots to complete a minimum of 1,000 hours of relevant operational experience prior to serving as a PIC in part 121 operations. Additionally, the Pilot Certification rule requires pilots, who will serve in part 121 operations, to complete the ATP–CTP prior to ATP certification. Thus, the Pilot Certification rule requirements raise the baseline knowledge and experience level for pilots prior to serving at an air carrier. See Pilot Certification and Qualification Requirements for Air Carrier Operations; Final Rule, published by the Federal Aviation Administration on July 15, 2013 (78 FR 42324). *https://www.federalregister.gov/articles/2013/07/15/2013-16849/pilot-certification-and-qualification-requirements-for-air-carrier-operations.*

Alternatives Considered

The FAA considered an alternative proposal representing the MLP ARC recommendations as presented to the FAA. The FAA carefully considered the MLP ARC recommendations when developing the rule, and many of the recommendations are incorporated into the rule albeit with less prescriptive requirements. The main drivers of the cost differences between the MLP ARC recommendations and the final rule are the MLP ARC recommendations for a full-time professional development position, PPDC, and longer amount of time required for leadership and command training during upgrade training and during PIC recurrent training. The FAA adopts the proposed requirements, except the PPDC, as cost of the MLP ARC recommendations are substantially greater than the cost of this final rule.

*B. Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Small Business Administration (SBA) categorizes airlines with 1,500 or fewer employees as small businesses. Of the 77 carriers that operate under part 121, 52 had fewer than 1,500 total employees based on National Vital Information Subsystem (NVIS) data from February and November 2017. Of the two part 135 operators required to use pilot training and qualification programs that comply with part 121 subparts N and O, both have fewer than 1,500 total employees based on NVIS data. The count of pilots for the 52 small part 121 air carriers and the two small part 135 operators are shown in the table below.

TABLE 4—TOTAL NUMBER OF IMPACTED PILOTS, PICS, AND SICS FROM SMALL CARRIERS IN 2017 AND 2027

| Pilot category | Year | | Annual growth (%) |
|---|---|---|---|
| | 2017 | 2027 | |
| PIC | 3,270 | 3,437 | 0.5 |
| SIC qualified as PIC | 115 | 161 | 3.4 |
| SIC—Other | 2,901 | 3,049 | 0.5 |
| Total Pilots | 6,286 | 6,647 | 0.5 |

Based on these pilot counts, the analysis used to conduct the Pilot Professional Development Regulatory Evaluation was recalculated for small air carriers only. A summary of the costs and cost savings of the rule on small air carriers is shown below.

TABLE 5—TOTAL COSTS AND COST SAVINGS OF THE RULE FOR SMALL CARRIERS

[2018–2027]

| Costs and cost savings | Total costs and cost savings (millions of 2016 dollars) | | |
|---|---|---|---|
| | Total | Present value | |
| | | 7 Percent | 3 Percent |
| Total Costs | $6.873 | $4.763 | $5.830 |
| Total Cost Savings | 6.969 | 4.457 | 5.709 |
| Total Net Costs | −0.096 | 0.306 | 0.121 |

The total cost of the rule on small carriers, and the corresponding per small carrier cost, by provision, is shown in the table below.

TABLE 6—TOTAL AND PER CARRIER COSTS OF THE RULE FOR SMALL CARRIERS BY PROVISION
[2018–2027]

| Provisions | Total compliance costs (millions of 2016 dollars) | | |
|---|---|---|---|
| | Total | Carriers impacted | Per carrier total cost |
| New-Hire SIC Operations Familiarization (§ 121.435) | $0.28 | 54 | $0.005 |
| Upgrade Training (Mentoring, Leadership, and Command for SICs or Mentoring Training for SICs qualified as PICs) (§§ 121.420 and 121.426) | 0.61 | 54 | 0.011 |
| One-Time and Recurrent PIC Training (Mentoring, Leadership, and Command) (§ 121.409(b), 121.427, and 121.429) | 3.80 | 54 | 0.002 |
| One-Time and Recurrent Training SICs Qualified as PICs (Leadership and Command) | 0.08 | 54 | 0.002 |
| Recordkeeping | 0.001 | 54 | 0.000 |
| Total | 4.763 | ..... | 0.088 |

The total cost per carrier of $88,000 for the rule, over the 10-year analysis period, implies an annual average per carrier cost of approximately $8,800.

The FAA believes that such an economic cost is not economically significant. BTS Form 41 Financial data is available for 40 small air carriers.[31] Operating revenues, in 2016, for 34 of the 40 carriers is reported as $20 million or more. The remaining 6 carriers have operating revenue ranging from $5 million to $16 million. Based on these figures, the estimated annual average per carrier cost of the rule is less than 1% of the operating revenue where data is available.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the FAA Administrator certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

*C. International Trade Impact Assessment*

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

*D. Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

*E. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This final rule will impose the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these information collection amendments to OMB for its review.

*Summary:* The final rule requires the development and approval of new and revised training curriculums for the following:

- Leadership and command and mentoring ground training for pilots currently serving as PIC (§ 121.429) and recurrent PIC leadership and command and mentoring training (§§ 121.409(b) and 121.427);
- Leadership and command training and recurrent leadership and command training for pilots serving as SIC in operations that require three or more pilots (§ 121.432(a));
- Upgrade training curriculum requirements (§§ 121.420 and 121.426);
- Part 121 appendix H requirements; and
- Approval of Qualification Standards Document for certificate holders using an Advanced Qualification Program (AQP) (§ 121.909).

The final rule also requires some additional recordkeeping related to maintaining records of pilots completing the following:

- Leadership and command and mentoring ground training for pilots currently serving as PIC (§ 121.429);
- Leadership and command training and recurrent leadership and command training for pilots serving as SIC in operations that require three or more pilots (§ 121.432(a));
- Recurrent PIC leadership and command and mentoring ground training (§ 121.427); and
- Operations familiarization for new-hire pilots (§ 121.435).

*Public comments:* The FAA did not receive any comments on the information collection requirements.

*Use:* This information will be used to ensure safety-of-flight by making certain

[31] Bureau of Transportation Statistics Air Carrier Financial Reports (Form 41 Financial Data) Database. Schedules P–1.1 and P–1.2. *https://www.transtats.bts.gov*.

that adequate training is obtained and maintained by those who operate under part 121. The FAA will review the respondents' training programs and training courseware through routine certification, inspection and surveillance of certificate holders using part 121 pilot training and qualification programs to ensure compliance and adherence to regulations and, where necessary, to take enforcement action.

*Respondents (including number of):* The relevant provisions of the rule apply to certificate holders using part 121 pilot training and qualification programs. As of February 2017, there were 79 such certificate holders who collectively employed 39,122 PICs and 42,227 SICs.

*Frequency:* The development and approval of new and revised curriculums will be a one-time occurrence for each certificate holder. The documentation regarding training in leadership and command and mentoring for current PICs will be a one-time occurrence. Similarly, the documentation regarding training in leadership and command for current SICs serving in operations that require three or more pilots will be a one-time occurrence. The documentation of operations familiarization for new-hire pilots will occur once for each new-hire pilot. The documentation of recurrent PIC leadership and command and mentoring training will occur every three years for each PIC. The documentation of recurrent leadership and command training for SICs serving in operations that require three or more pilots will occur every three years for each such SIC.

*Annual Burden Estimate:* These amendments to part 121 set out prerequisites and levy requirements that must be met by certificate holders using part 121 pilot training and qualification programs and by those individuals who serve in given capacities for those certificate holders. The estimates for hours and costs are broken down by development and approval of new and revised training curriculums followed by pilot training recordkeeping.

The FAA anticipates that certificate holders will incur costs for the following groups of provisions:

- Operations familiarization for new-hire pilots (§ 121.435);
- Leadership and command and mentoring ground training for pilots currently serving as PIC (§ 121.429);
- Leadership and command training and recurrent leadership and command training for pilots serving as SIC in operations that require three or more pilots (§ 121.432(a));
- Upgrade training curriculum requirements (§§ 121.420 and 121.426);
- Recurrent PIC leadership and command and mentoring ground training (§§ 121.409(b) and 121.427);
- Part 121, appendix H requirements; and
- Approval of Qualification Standards Document for certificate holders using an AQP (§ 121.909).

1. Development and Approval of New and Revised Training Curriculums

For the development and approval of new and revised training curriculums, the FAA estimated the paperwork costs for these provisions by multiplying the hourly rate of the person responsible by the number of estimated hours to develop and submit the new or revised training curriculum. (In all cases we assume that a ground instructor would develop and submit the new or revised training curriculum, and that the ground instructor fully burdened wage is $53 per hour.[32]) We then multiplied these costs by the number of certificate holders affected by the provision.

a. Leadership and Command and Mentoring Ground Training for Pilots Currently Serving as PIC (§ 121.429) and Recurrent PIC Leadership and Command and Mentoring Training (§§ 121.409(b) and 121.427)

Section 121.429 requires one-time development of a training course for leadership and command and mentoring for current PICs. This course must be submitted to the FAA for approval.

Revisions to §§ 121.409(b) and 121.427 require one-time revision to the certificate holder's approved recurrent PIC training curriculum. This revised curriculum must be submitted to the FAA for approval.

The FAA estimates a total of 40 hours of ground instructor time for development and submission of both the curriculum for current PICs and the revision to the recurrent PIC training curriculum.

Assuming 79 affected certificate holders, the FAA estimates that these provisions result in a one-time total cost of $167,480 for all affected certificate holders.

[32] Training instructor hourly wage rate of $36.60 multiplied by 1.435 to account for costs of employer provided benefits. Wage based on 2016 Bureau of Labor Statistics (BLS) Occupational Employment Statistics for Air Transportation Industry. (*http://www.bls.gov/oes/current/naics4_481100.htm*): Training and Development Specialists (13–1151). Wage multiplier from BLS, Employer costs for Employee compensation—December 2016, Table 5, Private Industry. (*https://www.bls.gov/news.release/archives/ecec_03172017.pdf*).

b. Leadership and Command Training and Recurrent Leadership and Command Training for Pilots Serving as SIC in Operations That Require Three or More Pilots (§ 121.432(a)

SICs serving in operations that require three or more pilots complete the same one-time training and recurrent training in leadership and command as PICs. Therefore, no additional revisions are necessary to the training curriculums. The FAA expects that the program updates to reflect this change are minimal and are subsumed in the paperwork costs for the collective amendments made to the training provisions in this final rule.

The FAA estimates there are no costs for this provision.

c. Upgrade Training Curriculum Requirements (§§ 121.420 and 121.426)

Sections 121.420 and 121.426 require one-time revision to the certificate holder's approved SIC to PIC upgrade training curriculum. This revised curriculum must be submitted to the FAA for approval.

The FAA estimates a total of 80 hours of ground instructor time for development and submission of the revised SIC to PIC upgrade training curriculum.

Assuming 79 affected certificate holders, the FAA estimates that these provisions result in a one-time cost of $334,960 for all affected certificate holders.

d. Part 121 Appendix H Requirements

The revision to part 121 appendix H requires one-time revision to the certificate holder's approved training program to remove the pilot experience prerequisites for using a Level C FFS during training and checking. This revised training program must be submitted to the FAA for approval. The FAA expects that the program updates to reflect this change are minimal and are subsumed in the paperwork costs for the collective amendments made to the training provisions in this final rule.

The FAA estimates there are no costs for this provision.

e. Approval of Qualification Standards Document for Certificate Holders Using an AQP (§ 121.909)

Although the final rule does not make any changes to § 121.909, when the new subparts N and O training requirements become effective, certificate holders that use an AQP must review their training programs to make sure they address the new subparts N and O requirements. It is possible that certificate holders may make a one-time revision to their Qualifications Standards Document

required by § 121.909 during this process to address the revised subparts N and O requirements.

This is a cost that only applies to certificate holders that use an AQP for pilot training because only those certificate holders must meet the § 121.909 requirements. Therefore, this provision does not apply to certificate holders who only train their pilots in accordance with subparts N and O.

For each of the 25 certificate holders with an approved AQP, the FAA estimates 3 hours of ground instructor time for development and submission of the revised Qualification Standards Document.

The FAA estimates that this provision results in one-time costs of $3,975 across all certificate holders who train their pilots under an AQP.

2. Recordkeeping

For the pilot training recordkeeping, the FAA estimated the paperwork costs for these provisions by first multiplying the number of required entries by the estimated number of pilots affected. Second, we multiplied the total number of entries by .001 hours (the time required to make each entry). Lastly, we multiplied the total time to make all entries by the hourly rate of the person responsible for making the entries. In all cases, the FAA assumes that the person making the entries is a clerical employee with an estimated fully-burdened wage of $29 per hour.[33]

a. Leadership and Command and Mentoring Ground Training for Pilots Currently Serving as PIC (§ 121.429)

A record showing compliance with this requirement for current PICs must be retained in accordance with § 121.683(a)(1). This is a one-time burden.

The FAA assumes that this cost is incurred in 2019, the year prior to the compliance date of the rule and estimates that during that year 39,515 pilots are affected and require one record. The FAA estimates 40 hours of clerical time for entry of these records.

The FAA estimates that this provision adds a one-time cost of $1,160 for all affected certificate holders.

b. Leadership and Command for SICs Serving in Operations That Require Three or More Pilots (§ 121.432(a))

A record showing compliance with this requirement for SICs currently serving in operations that require three or more pilots must be retained in accordance with § 121.683(a)(1). This is a one-time burden.

The FAA assumes that the majority of this cost is incurred in the year prior to the compliance date of the rule, however new SIC pilots serving in operations that require three or more pilots will also receive this initial training. The FAA estimates that 5,498 pilots are affected and require one record. The FAA estimates 5 hours of clerical time for entry of these records.

The FAA estimates that this provision adds a one-time cost of $145 for all affected certificate holders.

c. Recurrent PIC Leadership and Command and Mentoring Ground Training (§ 121.427)

A record showing compliance with this requirement for current PICs must be retained in accordance with § 121.683(a)(1), in addition to the current recordkeeping burden approved under OMB Control Number 2120–0008.

PICs are required to complete the recurrent training every 3 years. Over the 10-year analysis period, the FAA estimates that there are 109,874 instances of PICs undergoing recurrent training involving leadership and command and mentoring. Each instance requires one record. The FAA estimates 110 hours of clerical time for entry of these records.

The FAA estimates that this provision results in costs of $3,190 over the analysis period for all affected certificate holders.

d. Recurrent Leadership and Command Ground Training for SICs Serving in Operations That Require Three or More Pilots (§§ 121.427 and 121.432(a))

A record showing compliance with this requirement for SICs serving in operations that require three or more pilots must be retained in accordance with § 121.683(a)(1), in addition to the current recordkeeping burden approved under OMB Control Number 2120–0008.

These SICs are required to complete the recurrent training every 3 years. Over the 10-year analysis period, the FAA estimates that there are 8,267 instances of SICs undergoing recurrent training involving leadership and command. Each instance requires one record. The FAA estimates 8 hours of clerical time for entry of these records.

The FAA estimates that this provision results in costs of $232 over the analysis period for all affected certificate holders.

e. Operations Familiarization for New-Hire Pilots (§ 121.435)

Section 121.435 implements a new qualification requirement for new-hire pilots to complete operations familiarization consisting of 2 operating cycles. A record showing compliance with this requirement for each new-hire pilot must be retained in accordance with § 121.683(a)(1), in addition to the current recordkeeping burden approved under OMB Control Number 2120–0008.

The FAA estimates all affected certificate holders have a total of 23,517 new-hire pilots over the analysis period. Each of the estimated 23,517 pilots affected requires one record. The FAA estimates 24 hours of clerical time for entry of these records. The FAA estimates that this provision results in costs of $696 across the analysis period for all affected certificate holders.

3. Summary of Estimated Paperwork Costs

The total cost burden is $511,838 ($445,883 discounted at 7 percent) over the 10-year analysis period.

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[33] The clerk hourly wage rate of $20.29 multiplied by 1.435 to account for costs of employer provided benefits. Wage based on 2016 BLS Occupational Employment Statistics for Air Transportation Industry. (*http://www.bls.gov/oes/current/naics4_481100.htm*): Information and Record Clerks (43–4000). Wage multiplier from BLS, Employer costs for Employee compensation—December 2016, Table 5, Private Industry. (*https://www.bls.gov/news.release/archives/ecec_03172017.pdf*).

**Summary of Estimated Paperwork Costs**

| Proposed Rule Requirement | Number of Records | Number of Hours | Wage | Number of Certificate Holders | Total Cost |
|---|---|---|---|---|---|
| **Development and Approval of New and Revised Training Curriculums** | | | | | |
| Leadership and command and mentoring ground training for pilots currently serving as PIC (§ 121.429) and recurrent PIC leadership and command and mentoring training (§§ 121.409(b) and 121.427) | N/A | 40 | $ 53* | 79 | $ 167,480 |
| Upgrade training curriculum (§§ 121.420 and 121.426) | N/A | 80 | $ 53* | 79 | $ 334,960 |
| Approval of Qualification Standards Document (§ 121.909) | N/A | 3 | $ 53* | 25 | $ 3,975 |
| | | | | | |
| **Recordkeeping** | | | | | |
| Leadership and command and mentoring ground training for pilots currently serving as PIC (§ 121.429) | 39,515 | 40 | $ 29** | N/A | $ 1,160 |
| Leadership and Command for SICs Serving in Operations that Require Three or More Pilots (§ 121.432(a)) | 5,498 | 5 | $29** | N/A | $ 145 |
| Recurrent PIC leadership and command and mentoring ground training (§ 121.427) | 109,874 | 110 | $ 29** | N/A | $ 3,190 |
| Recurrent Leadership and Command Ground Training for SICs Serving in Operations that Require Three or More Pilots (§§ 121.427 and 121.432(a)) | 8,267 | 8 | $29** | N/A | $ 232 |
| Operations familiarization for new-hire pilots (§ 121.435) | 23,517 | 24 | $ 29** | N/A | $ 696 |
| | | | | | |
| **Total** | | **310** | | | **$ 511,838** |

*Fully burdened hourly wage for ground instructor.

**Fully burdened hourly wage for clerical employee.

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*F. International Compatibility and Cooperation*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the

maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

*G. Environmental Analysis*

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

**VI. Executive Order Determinations**

*A. Executive Order 13132, Federalism*

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

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

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

*C. Executive Order 13609, Promoting International Regulatory Cooperation*

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

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

This rule is not subject to the requirements of E.O. 13771 because this rule results in no more than *de minimis* costs or cost savings.

**VII. How To Obtain Additional Information**

*A. Rulemaking Documents*

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

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visit the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies/* or

3. Access the Government Publishing Office's web page at *http://www.gpo.gov/fdsys/.*

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

*B. Comments Submitted to the Docket*

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

*C. Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

**List of Subjects**

*14 CFR Part 61*

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

*14 CFR Part 91*

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

*14 CFR Part 121*

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

*14 CFR Part 135*

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

**The Amendment**

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

## PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 44729, 44903, 45102–45103, 45301–45302, Sec. 2307 Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note).

■ 2. Amend § 61.71 by revising paragraph (b)(1) to read as follows:

**§ 61.71 Graduates of an approved training program other than under this part: Special rules.**

* * * * *

(b) * * *

(1) Satisfactorily accomplished an approved training curriculum and a proficiency check for that airplane type that includes all the tasks and maneuvers required by §§ 121.424 and 121.441 of this chapter to serve as pilot in command in operations conducted under part 121 of this chapter; and

* * * * *

## PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 3. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 4. Amend § 91.1063 by revising paragraph (b) to read as follows:

**§ 91.1063 Testing and training: Applicability and terms used.**

* * * * *

(b) If authorized by the Administrator, a program manager may comply with the applicable training and testing sections of part 121, subparts N and O of this chapter instead of §§ 91.1065 through 91.1107, provided that the following additional limitations and allowances apply to program managers so authorized:

(1) *Operating experience and operations familiarization.* Program managers are not required to comply with the operating experience requirements of § 121.434 or the operations familiarization requirements of § 121.435 of this chapter.

(2) *Upgrade training.* (i) Each program manager must include in upgrade ground training for pilots, instruction in at least the subjects identified in § 121.419(a) of this chapter, as applicable to their assigned duties; and, for pilots serving in crews of two or more pilots, beginning on April 27, 2022, instruction and facilitated discussion in the subjects identified in § 121.419(c) of this chapter.

(ii) Each program manager must include in upgrade flight training for pilots, flight training for the maneuvers and procedures required in § 121.424(a), (c), (e), and (f) of this chapter; and, for pilots serving in crews of two or more pilots, beginning on April 27, 2022, the flight training required in § 121.424(b) of this chapter.

(3) *Initial and recurrent leadership and command and mentoring training.* Program managers are not required to include leadership and command training in §§ 121.409(b)(2)(ii)(B)(*6*), 121.419(c)(1), 121.424(b) and 121.427(d)(1) of this chapter, and mentoring training in §§ 121.419(c)(2) and 121.427(d)(1) of this chapter in initial and recurrent training for pilots in command who serve in operations that use only one pilot.

(4) *One-time leadership and command and mentoring training.* Section 121.429 of this chapter does not apply to program managers conducting operations under this subpart when those operations use only one pilot.

* * * * *

## PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

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

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112–95, sec. 412, 126 Stat. 89, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44729, 44732; 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112–95, 126 Stat. 62 (49 U.S.C. 44732 note).

■ 6. Amend § 121.400 by:

■ a. Revising paragraphs (a) and (c)(3);

■ b. Redesignating paragraphs (c)(4) through (11) as paragraphs (c)(5) through (12), respectively; and

■ c. Adding a new paragraph (c)(4).

The revisions and addition read as follows:

**§ 121.400 Applicability and terms used.**

(a) This subpart prescribes the requirements applicable to each certificate holder for establishing and maintaining a training program for crewmembers, aircraft dispatchers, and other operations personnel, and for the approval and use of flight simulation training devices and training equipment in the conduct of the program.

* * * * *

(c) * * *

(3) *Upgrade training.* The training required for flightcrew members who have qualified and served as second in command on a particular airplane type, before they serve as pilot in command on that airplane.

(4) *Conversion training.* The training required for flightcrew members who have qualified and served as flight engineer on a particular airplane type, before they serve as second in command on that airplane.

* * * * *

■ 7. Amend § 121.401 by revising paragraph (a)(4) to read as follows:

**§ 121.401 Training program: General.**

(a) * * *

(4) Provide enough flight instructors and approved check airmen to conduct the flight training and checks required under this part.

* * * * *

**§ 121.403 [Amended]**

■ 8. Amend § 121.403(b)(4) by removing the words ''airplane simulators or other training devices'' and add in their place the word ''FSTDs''.

■ 9. Amend § 121.407 revising the section heading and paragraphs (a) introductory text and (b) through (e) to read as follows:

**§ 121.407 Training program: Approval of flight simulation training devices.**

(a) Each FSTD used to satisfy a training requirement of this part in an approved training program, must meet all of the following requirements:

* * * * *

(b) A particular FSTD may be approved for use by more than one certificate holder.

(c) A Level B or higher FFS may be used instead of the airplane to satisfy the inflight requirements of §§ 121.439 and 121.441 and appendices E and F of this part, if the FFS—

(1) Is approved under this section and meets the appropriate FFS requirements of appendix H of this part; and

(2) Is used as part of an approved program that meets the training requirements of §§ 121.424 (a) and (c), 121.426, and appendix H of this part.

(d) An FFS approved under this section must be used instead of the airplane to satisfy the pilot flight training requirements prescribed in the certificate holder's approved low-altitude windshear flight training program set forth in § 121.409(d) of this part.

(e) An FFS approved under this section must be used instead of the airplane to satisfy the pilot flight training requirements prescribed in the extended envelope training set forth in § 121.423 of this part. Compliance with this paragraph is required no later than March 12, 2019.

■ 10. Amend § 121.409 by:

■ a. Revising the section heading and paragraphs (a), (b) introductory text, (b)(1), (b)(2)(ii)(B), and (b)(2)(ii)(B)(*4*) and (*5*);

■ b. Adding paragraph (b)(2)(ii)(B)(*6*);

■ c. Removing the undesignated paragraph following paragraph (b)(3); and

■ d. Revising paragraphs (c)(1) and (2) and (d).

The revisions and addition read as follows:

**§ 121.409 Training courses using flight simulation training devices.**

(a) Training courses utilizing FSTDs may be included in the certificate holder's approved training program for use as provided in this section.

(b) Except for the airline transport pilot certification training program approved to satisfy the requirements of § 61.156 of this chapter, a course of training in an FFS may be included for use as provided in § 121.441 if that course—

(1) Provides at least 4 hours of training at the pilot controls of an FFS as well as a proper briefing before and after the training.

(2) * * *

(ii) * * *

(B) Except as provided in paragraph (b)(2)(ii)(B)(*6*) of this section, beginning on March 12, 2019

* * * * *

(*4*) Is representative of two flight segments appropriate to the operations being conducted by the certificate holder;

(*5*) Provides an opportunity to demonstrate workload management and pilot monitoring skills; and

(*6*) Beginning on April 27, 2023, provides an opportunity for each pilot in command to demonstrate leadership and command skills.

(c) * * *

(1) A course of pilot training in an FFS as provided in § 121.424(d); or

(2) A course of flight engineer training in an FSTD as provided in § 121.425(d).

(d) Each certificate holder required to comply with § 121.358 of this part must use an approved FFS for each airplane type in each of its pilot training courses that provides training in at least the procedures and maneuvers set forth in the certificate holder's approved low-altitude windshear flight training program. The approved low-altitude windshear flight training, if applicable, must be included in each of the pilot flight training courses prescribed in §§ 121.409(b), 121.418, 121.424, 121.426, and 121.427 of this part.

**§ 121.411 [Amended]**

■ 11. Amend § 121.411 in paragraphs (a)(1) and (2) and (f)(1) and (2) by removing the words ''flight simulator'' and adding in their place the word ''FFS'' and in paragraph (b)(4) by removing the word ''in-flight'' and adding in its place the word ''inflight''.

**§ 121.412 [Amended]**

■ 12. Amend § 121.412 in paragraphs (a)(1) and (2) and (f)(1) and (2) by removing the words ''flight simulator'' and adding in their place the word ''FFS'' and in paragraph (b)(4) by removing the word ''in-flight'' and adding in its place the word ''inflight''.

**§ 121.413 [Amended]**

■ 13. Amend § 121.413:

■ a. In paragraphs (a)(2), (c)(7) introductory text, (c)(7)(iv), (d)(2) introductory text, (d)(2)(iv), and (f) by removing the words ''flight simulator'' and adding in their place the word ''FFS'';

■ b. In paragraph (f), by removing the words ''in flight'' and adding in their place the word ''inflight'';

■ c. In paragraphs (g) introductory text and (g)(1) by removing the words ''flight simulator'' and adding in their place the word ''FFS'';

■ c. In paragraph (g)(2) by removing the words ''flight simulators'' and adding in their place ''FFSs''; and

■ d. In paragraph (h) by removing the words ''flight simulator'' and adding in their place the word ''FFS''.

**§ 121.414 [Amended]**

■ 14. Amend § 121.414:

■ a. In paragraphs (a)(2), (c)(8) introductory text, (c)(8)(iv), (d)(2) introductory text, and (d)(2)(iv) by removing the words ''flight simulator'' and adding in their place the word ''FFS'';

■ b. In paragraph (e)(3)(i), by removing the word ''In-flight'' and adding in its place the word ''Inflight''; and

■ c. In paragraph (f), by removing the words ''in flight'' and adding in their place the word ''inflight'';

■ d. In paragraphs (f), (g) introductory text, (g)(1), and (h), by removing the words ''flight simulator'' and adding in their place the word ''FFS''.

■ e. In paragraph (g)(2), by removing the words ''flight simulators'' and adding in their place the word ''FFSs''; and

■ f. In paragraph (h), by removing the words ''flight simulator'' and adding in their place the word ''FFS''.

■ 15. Amend § 121.415 by:

■ a. Revising paragraphs (b) and (e);

■ b. Redesignating paragraphs (f) through (j) as paragraphs (g) through (k), respectively;

■ c. Adding a new paragraph (f); and

■ d. Revising newly redesignated paragraphs (g), (h) introductory text, (j), and (k).

The revisions and addition read as follows:

**§ 121.415 Crewmember and dispatcher training program requirements.**

* * * * *

(b) Each training program must provide the flight training specified in §§ 121.424 through 121.426, as applicable.

* * * * *

(e) Upgrade training:

(1) Upgrade training as specified in §§ 121.420 and 121.426 for a particular type airplane may be included in the training program for flightcrew members who have qualified and served as second in command pilot on that airplane; or

(2) Before April 27, 2022, upgrade training as specified in §§ 121.419 and 121.424 for a particular type airplane may be included in the training program for flightcrew members who have qualified and served as second in command pilot on that airplane.

(f) Conversion training as specified in §§ 121.419 and 121.424 for a particular type airplane may be included in the training program for flightcrew members who have qualified and served as flight engineer on that airplane.

(g) Particular subjects, maneuvers, procedures, or parts thereof specified in §§ 121.419, 121.420, 121.421, 121.422, 121.424, 121.425, and 121.426 for transition, conversion or upgrade training, as applicable, may be omitted, or the programmed hours of ground instruction or inflight training may be reduced, as provided in § 121.405.

(h) In addition to initial, transition, conversion, upgrade, recurrent and differences training, each training program must also provide ground and flight training, instruction, and practice as necessary to insure that each crewmember and aircraft dispatcher—

* * * * *

(j) Each training program must include methods for remedial training and tracking of pilots identified in the analysis performed in accordance with paragraph (i) of this section.

(k) Compliance with paragraphs (i) and (j) of this section is required no later than March 12, 2019.

**§ 121.417 [Amended]**

■ 16. Amend § 121.417 in paragraph (b)(3)(ii) by removing the words ''in flight'' and adding in their place the word ''inflight''.

■ 17. Amend § 121.418 by revising paragraphs (a)(2) and (c) to read as follows:

**§ 121.418 Differences training and related aircraft differences training.**

(a) * * *

(2) Differences training for all variations of a particular type airplane may be included in initial, transition, conversion, upgrade, and recurrent training for the airplane.

* * * * *

(c) *Approved related aircraft differences training.* Approved related aircraft differences training for flightcrew members may be included in initial, transition, conversion, upgrade and recurrent training for the base aircraft. If the certificate holder's approved training program includes related aircraft differences training in accordance with paragraph (b) of this section, the training required by §§ 121.419, 121.420, 121.424, 121.425, 121.426, and 121.427, as applicable to flightcrew members, may be modified for the related aircraft.

■ 18. Amend § 121.419 by:

■ a. Revising the section heading and paragraphs (a) introductory text and (b) introductory text;

■ b. Redesignating paragraphs (c) through (e) as paragraphs (d) through (f), respectively;

■ c. Adding new paragraph (c);

■ d. Revising newly redesignated paragraph (f)(2); and

■ e. Adding paragraph (g).

The revisions and additions read as follows:

**§ 121.419 Pilots and flight engineers: Initial, transition, conversion and upgrade ground training.**

(a) Except as provided in paragraph (b) of this section, initial and conversion ground training for pilots and initial and transition ground training for flight engineers, must include instruction in at least the following as applicable to their assigned duties:

* * * * *

(b) Initial and conversion ground training for pilots who have completed the airline transport pilot certification training program in § 61.156 of this chapter, and transition ground training for pilots, must include instruction in at least the following as applicable to their assigned duties:

* * * * *

(c) Beginning on April 27, 2022, and in addition to the requirements in paragraph (a) or (b) of this section, as applicable, initial ground training for pilots in command must include instruction and facilitated discussion on the following:

(1) Leadership and command, including flightcrew member duties under § 121.542; and

(2) Mentoring, including techniques for instilling and reinforcing the highest standards of technical performance, airmanship, and professionalism in newly hired pilots.

* * * * *

(f) * * *

(2) Beginning March 12, 2019, initial programmed hours applicable to pilots as specified in paragraphs (d) and (e) of this section must include 2 additional hours.

(g) Before April 27, 2022, upgrade ground training must include either the instruction specified in paragraph (a) of this section or the instruction specified in § 121.420. Beginning on April 27, 2022, upgrade ground training must include the instruction specified in § 121.420.

■ 19. Add § 121.420 to read as follows:

**§ 121.420 Pilots: Upgrade ground training.**

(a) Upgrade ground training must include instruction in at least the following subjects as applicable to the duties assigned to the pilot in command:

(1) Seat dependent procedures, as applicable;

(2) Duty position procedures, as applicable; and

(3) Crew resource management, including decision making, authority and responsibility, and conflict resolution.

(b) In addition to the requirements in paragraph (a) of this section, upgrade ground training must include instruction and facilitated discussion on the following:

(1) Leadership and command, including flightcrew member duties under § 121.542; and

(2) Mentoring, including techniques for reinforcing the highest standards of technical performance, airmanship, and professional development in newly hired pilots.

(c) Compliance date: Beginning on April 27, 2022, upgrade ground training must satisfy the requirements of this section.

**§ 121.423 [Amended]**

■ 20. Amend § 121.423 in the section heading by removing the word ''Pilot'' and adding in its place the word ''Pilots''.

■ 21. Amend § 121.424 by:

■ a. Revising the section heading and paragraph (a) introductory text;

■ b. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively;

■ c. Adding new paragraph (b);

■ d. Revising newly redesignated paragraphs (c)(1) and (3), (d) introductory text, (e) introductory text, (e)(1)(i) and (ii), and (e)(2); and

■ e. Adding paragraph (g).

The revisions and additions read as follows:

**§ 121.424 Pilots: Initial, transition, conversion, and upgrade flight training.**

(a) Initial, transition, and conversion flight training for pilots must include the following:

* * * * *

(b) Beginning on April 27, 2022, in addition to the requirements in paragraph (a) of this section, initial flight training for pilots in command must include sufficient scenario-based training incorporating CRM and leadership and command skills, to ensure the pilot's proficiency as pilot in command. The training required by this paragraph may be completed inflight or in an FSTD.

(c) * * *

(1) That windshear maneuvers and procedures must be performed in an FFS in which the maneuvers and procedures are specifically authorized to be accomplished;

* * * * *

(3) To the extent that certain other maneuvers and procedures may be performed in an FFS, an FTD, or a static airplane as permitted in appendix E to this part.

(d) Except as permitted in paragraph (e) of this section, the initial flight training required by paragraph (a)(1) of this section must include at least the following programmed hours of inflight training and practice unless reduced under § 121.405;

* * * * *

(e) If the certificate holder's approved training program includes a course of training utilizing an FFS under § 121.409 (c) and (d) of this part, each pilot must successfully complete—

(1) * * *

(i) Training and practice in the FFS in at least all of the maneuvers and procedures set forth in appendix E of this part for initial flight training that are capable of being performed in an FFS; and

(ii) A proficiency check in the FFS or the airplane to the level of proficiency of a pilot in command or second in command, as applicable, in at least the maneuvers and procedures set forth in appendix F of this part that are capable of being performed in an FFS.

(2) With respect to § 121.409(d) of this part, training and practice in at least the maneuvers and procedures set forth in the certificate holder's approved low-altitude windshear flight training program that are capable of being performed in an FFS in which the maneuvers and procedures are specifically authorized.

* * * * *

(g) Before April 27, 2022, upgrade flight training must be provided in accordance with paragraphs (a), (c), (e), and (f), of this section or § 121.426. Beginning on April 27, 2022, upgrade flight training must be provided as specified in § 121.426.

■ 22. Amend § 121.425 as follows:

■ a. In paragraphs (a)(1) and (a)(2)(iii), remove the comma after the word ''inflight'' and remove the words ''in an airplane simulator, or in a training device'' and add in their place the words ''or in an FSTD'';

■ b. By redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;

■ c. By designating the undesignated paragraph that follows paragraph (a)(2)(iii) as paragraph (b) and revising it;

■ d. In newly redesignated paragraph (c), by removing the reference to ''paragraph (c)'' and adding in its place ''paragraph (d)'';

■ e. In newly redesignated paragraph (d) introductory text, by removing the words ''airplane simulator or other training device'' and adding in their place the word ''FSTD'' and removing the words ''simulator or other training device'' and adding in their place the word ''FSTD''.

The revision reads as follows:

**§ 121.425 Flight engineers: Initial and transition flight training.**

* * * * *

(b) Flight engineers possessing a commercial pilot certificate with an instrument, category and class rating, or pilots already qualified as second in command and reverting to flight engineer, may complete the entire flight check, required by paragraph (a)(2) of this section, in an approved FFS.

* * * * *

■ 23. Add § 121.426 to read as follows:

**§ 121.426 Pilots: Upgrade flight training.**

(a) Upgrade flight training for pilots must include the following:

(1) Seat dependent maneuvers and procedures, as applicable;

(2) Duty position maneuvers and procedures, as applicable;

(3) Extended envelope training set forth in § 121.423;

(4) Maneuvers and procedures set forth in the certificate holder's low altitude windshear flight training program;

(5) Sufficient scenario-based training incorporating CRM and leadership and command skills, to ensure the pilot's proficiency as pilot in command; and

(6) Sufficient training to ensure the pilot's knowledge and skill with respect to the following:

(i) The airplane, its systems and components;

(ii) Proper control of airspeed, configuration, direction, altitude, and attitude in accordance with the Airplane Flight Manual, the certificate holder's operations manual, checklists, or other approved material appropriate to the airplane type; and

(iii) Compliance with ATC, instrument procedures, or other applicable procedures.

(b) The training required by paragraph (a) of this section must be performed inflight except—

(1) That windshear maneuvers and procedures must be performed in an FFS in which the maneuvers and procedures are specifically authorized to be accomplished;

(2) That the extended envelope training required by § 121.423 must be performed in a Level C or higher FFS unless the Administrator has issued to the certificate holder a deviation in accordance with § 121.423(e); and

(3) To the extent that certain other maneuvers and procedures may be performed in an FFS, an FTD, or a static airplane as permitted in Appendix E of this part.

(c) If the certificate holder's approved training program includes a course of training utilizing an FFS under § 121.409(c) and (d), each pilot must successfully complete—

(1) With respect to § 121.409(c)—A proficiency check in the FFS or the airplane to the level of proficiency of a pilot in command in at least the maneuvers and procedures set forth in Appendix F of this part that are capable of being performed in an FFS.

(2) With respect to § 121.409(d), training and practice in at least the maneuvers and procedures set forth in the certificate holder's approved low-altitude windshear flight training program that are capable of being performed in an FFS in which the maneuvers and procedures are specifically authorized.

(d) Compliance dates: Beginning on April 27, 2022, upgrade flight training must satisfy the requirements of this section.

■ 24. Amend § 121.427 as follows:

■ a. Revise paragraphs (a), (b)(2) and (4), and (c);

■ b. Redesignate paragraphs (d) and (e) as paragraphs (e) and (f), respectively;

■ c. Add new paragraph (d); and

■ d. Revise newly redesignated paragraphs (e)(1)(ii), (e)(2)(ii), and (f)(1).

The revisions and additions read as follows:

**§ 121.427 Recurrent training.**

(a) Recurrent training must ensure that each crewmember or aircraft dispatcher is adequately trained and currently proficient with respect to the type airplane (including differences training, if applicable) and crewmember position involved.

(b) * * *

(2) Instruction as necessary in the following:

(i) For pilots, the subjects required for ground training by §§ 121.415(a)(1), (3), and (4) and 121.419(b);

(ii) For flight engineers, the subjects required for ground training by §§ 121.415(a)(1), (3), and (4) and 121.419(a);

(iii) For flight attendants, the subjects required for ground training by §§ 121.415(a)(1), (3), and (4) and 121.421(a); and

(iv) For aircraft dispatchers, the subjects required for ground training by §§ 121.415(a)(1) and (4) and 121.422(a).

* * * * *

(4) For crewmembers, CRM training and for aircraft dispatchers, DRM training. For flightcrew members, CRM training or portions thereof may be accomplished during an approved FFS line-oriented flight training (LOFT) session.

(c) Recurrent ground training for crewmembers and aircraft dispatchers must consist of at least the following programmed hours of instruction in the required subjects specified in paragraph (b) of this section unless reduced under § 121.405:

(1) For pilots—

(i) Group I reciprocating powered airplanes, 15 hours;

(ii) Group I turbopropeller powered airplanes, 19 hours; and

(iii) Group II airplanes, 24 hours.

(2) For flight engineers—

(i) Group I, reciprocating powered airplanes, 16 hours;

(ii) Group I turbopropeller powered airplanes, 20 hours; and

(iii) Group II airplanes, 25 hours.

(3) For flight attendants—

(i) Group I reciprocating powered airplanes, 4 hours;

(ii) Group I turbopropeller powered airplanes, 5 hours; and

(iii) Group II airplanes, 12 hours.

(4) For aircraft dispatchers—

(i) Group I reciprocating powered airplanes, 8 hours;

(ii) Group I turbopropeller powered airplanes, 10 hours; and

(iii) Group II airplanes, 20 hours.

(d) Recurrent ground training for pilots serving as pilot in command:

(1) Within 36 months preceding service as pilot in command, each person must complete recurrent ground training on leadership and command and mentoring. This training is in addition to the ground training required in paragraph (b) of this section and the programmed hours required in paragraph (c) of this section. This training must include instruction and facilitated discussion on the following:

(i) Leadership and command, including instruction on flightcrew member duties under § 121.542; and

(ii) Mentoring, including techniques for instilling and reinforcing the highest standards of technical performance, airmanship, and professionalism in newly hired pilots.

(2) The requirements of paragraph (d)(1) do not apply until after a pilot has completed ground training on leadership and command and mentoring, as required by §§ 121.419, 121.420 and 121.429, as applicable.

(e) * * *

(1) * * *

(ii) Flight training in an approved FFS in maneuvers and procedures set forth in the certificate holder's approved low-altitude windshear flight training program and flight training in maneuvers and procedures set forth in Appendix F of this part, or in a flight training program approved by the Administrator, except as follows—

* * * * *

(2) * * *

(ii) The flight check, other than the preflight inspection, may be conducted in an FSTD. The preflight inspection may be conducted in an airplane, or by using an approved pictorial means that realistically portrays the location and detail of preflight inspection items and provides for the portrayal of abnormal conditions. Satisfactory completion of an approved line-oriented flight training may be substituted for the flight check.

(f) * * *

(1) Compliance with the requirements identified in paragraph (e)(1)(i) of this section is required no later than March 12, 2019.

* * * * *

■ 25. Add § 121.429 to subpart N to read as follows:

**§ 121.429 Pilots in command: Leadership and command and mentoring training.**

(a) Beginning on April 27, 2023, no certificate holder may use a pilot as pilot in command in an operation under this part unless the pilot has completed the following ground training in accordance with the certificate holder's approved training program:

(1) Leadership and command training in § 121.419(c)(1) and mentoring training in § 121.419(c)(2); or

(2) Leadership and command training in § 121.420(b)(1) and mentoring training in § 121.420(b)(2).

(b) Credit for training provided by the certificate holder:

(1) The Administrator may credit leadership and command training and mentoring training completed by the pilot, with that certificate holder, after April 27, 2017, and prior to April 27, 2020, toward all or part of the training required by paragraph (a) of this section.

(2) In granting credit for the training required by paragraph (a) of this section, the Administrator may consider training aids, devices, methods, and procedures used by the certificate holder in voluntary leadership and command and mentoring instruction.

■ 26. Amend § 121.431 by revising paragraph (a)(1) to read as follows:

**§ 121.431 Applicability.**

(a) * * *

(1) Prescribes crewmember qualifications for all certificate holders except where otherwise specified; and

* * * * *

■ 27. Amend § 121.432 by revising paragraph (a) to read as follows:

**§ 121.432 General.**

(a) Except in the case of operating experience under § 121.434 and ground training for mentoring required by §§ 121.419, 121.420, 121.427, and 121.429, as applicable, a pilot who serves as second in command of an operation that requires three or more pilots must be fully qualified to act as pilot in command of that operation.

* * * * *

■ 28. Amend § 121.433 by revising paragraphs (a)(2) and (c)(2) to read as follows:

**§ 121.433 Training required.**

(a) * * *

(2) Crewmembers who have qualified and served as second in command or flight engineer on a particular type airplane may serve as pilot in command or second in command, respectively, upon completion of upgrade or conversion training, as applicable, for that airplane as provided in § 121.415.

* * * * *

(c) * * *

(2) For pilots, a proficiency check as provided in § 121.441 of this part may be substituted for the recurrent flight training required by this paragraph and the approved FFS course of training under § 121.409(b) of this part may be substituted for alternate periods of recurrent flight training required in that airplane, except as provided in paragraphs (d) and (e) of this section.

* * * * *

■ 29. Amend § 121.434 by revising paragraph (b)(3), adding paragraph (b)(4), and revising paragraphs (c)(1)(ii) and (c)(3)(iii) to read as follows:

**§ 121.434 Operating experience, operating cycles, and consolidation of knowledge and skills.**

* * * * *

(b) * * *

(3) In the case of a pilot who satisfactorily completed the preflight visual inspection of an aircraft by approved pictorial means during an initial, transition, conversion, or upgrade proficiency check, the pilot must also demonstrate proficiency to a check pilot on at least one complete preflight visual inspection of the interior and exterior of a static airplane. This demonstration of proficiency must be completed by the pilot and certified by the check pilot before the completion of operating experience.

(4) The experience must be acquired inflight during operations under this part. However, in the case of an aircraft not previously used by the certificate holder in operations under this part, operating experience acquired in the aircraft during proving flights or ferry flights may be used to meet this requirement.

(c) * * *

(1) * * *

(ii) For a qualifying pilot in command completing initial or upgrade training specified in § 121.424 or § 121.426, be observed in the performance of prescribed duties by an FAA inspector during at least one flight leg which includes a takeoff and landing. During the time that a qualifying pilot in command is acquiring the operating experience in paragraphs (c)(l)(i) and (ii) of this section, a check pilot who is also serving as the pilot in command must occupy a pilot station. However, in the case of a transitioning pilot in command the check pilot serving as pilot in command may occupy the observer's seat, if the transitioning pilot has made at least two takeoffs and landings in the type airplane used, and has satisfactorily demonstrated to the check pilot that he is qualified to perform the duties of a pilot in command of that type of airplane.

* * * * *

(3) * * *

(iii) In the case of transition training where the certificate holder's approved training program includes a course of training in an FFS under § 121.409(c), each pilot in command must comply with the requirements prescribed in paragraph (c)(3)(i) of this section for initial training.

* * * * *

■ 30. Add § 121.435 to read as follows:

**§ 121.435 Pilots: Operations Familiarization.**

(a) *Applicability.* The operations familiarization requirements in paragraph (b) of this section apply to all persons newly hired by the certificate holder to serve as a pilot in part 121 operations and who began the certificate holder's basic indoctrination ground training on or after April 27, 2022. The requirements in paragraph (b) of this section also apply to all certificate holders required to comply with this subpart, except for those certificate holders operating under part 135 of this chapter that have been authorized to comply with this subpart instead of the requirements of part 135, subparts E, G, and H, pursuant to § 135.3(c), and those fractional ownership program managers operating under part 91, subpart K, of this chapter that have been authorized to comply with this subpart instead of §§ 91.1065 through 91.1107, pursuant to § 91.1063(b) of this chapter.

(b) *Operations familiarization requirements.* (1) No certificate holder may use, and no person may serve as, a pilot in operations under this part unless that person has completed the operations familiarization required by

this paragraph (b). Operations familiarization may be completed during or after basic indoctrination training, but must be completed before the pilot begins operating experience under § 121.434.

(2) Operations familiarization must include at least two operating cycles conducted by the certificate holder in accordance with the operating rules of this part.

(3) All pilots completing operations familiarization must occupy the observer seat on the flight deck and have access to and use an operational headset.

(c) *Deviation.* (1) A certificate holder who operates an aircraft that does not have an observer seat on the flight deck may submit a request to the Administrator for approval of a deviation from the requirements of paragraphs (a) and (b) of this section.

(2) A request for deviation from any of the requirements in paragraphs (a) and (b) of this section must include the following information:

(i) The total number and types of aircraft operated by the certificate holder in operations under this part that do not have an observer seat on the flight deck;

(ii) The total number and types of aircraft operated by the certificate holder in operations under this part that do have an observer seat on the flight deck; and

(iii) Alternative methods for achieving the objectives of this section.

(3) A certificate holder may request an extension of a deviation issued under this section.

(4) Deviations or extensions to deviations will be issued for a period not to exceed 12 months.

■ 31. Amend § 121.439 as follows:

■ a. Revise paragraphs (a), (b) introductory text, and (b)(1);

■ b. Remove and reserve paragraph (c); and

■ c. Revise paragraphs (d), (e), and (f)(2)(ii).

The revisions read as follows:

**§ 121.439 Pilot qualification: Recent experience.**

(a) No certificate holder may use any person nor may any person serve as a required pilot flightcrew member, unless within the preceding 90 days, that person has made at least three takeoffs and landings in the type airplane in which that person is to serve. The takeoffs and landings required by this paragraph may be performed in a Level B or higher FFS approved under § 121.407 to include takeoff and landing maneuvers. In addition, any person who fails to make the three required takeoffs and landings within any consecutive 90-day period must re-establish recency of experience as provided in paragraph (b) of this section.

(b) In addition to meeting all applicable training and checking requirements of this part, a required pilot flightcrew member who has not met the requirements of paragraph (a) of this section must re-establish recency of experience as follows:

(1) Under the supervision of a check airman, make at least three takeoffs and landings in the type airplane in which that person is to serve or in a Level B or higher FFS.

* * * * *

(d) When using an FFS to accomplish any of the requirements of paragraphs (a) or (b) of this section, each required flightcrew member position must be occupied by an appropriately qualified person, and the FFS must be operated as if in a normal inflight environment without use of the repositioning features of the FFS.

(e) A check airman who observes the takeoffs and landings prescribed in paragraph (b)(1) of this section shall certify that the person being observed is proficient and qualified to perform flight duty in operations under this part and may require any additional maneuvers that are determined necessary to make this certifying statement.

(f) * * *

(2) * * *

(ii) The number of takeoffs, landings, maneuvers, and procedures necessary to maintain or re-establish recency based on review of the related aircraft, the operation, and the duty position.

* * * * *

■ 32. Amend § 121.441 by revising paragraphs (a) introductory text, (a)(1)(i)(B), (a)(1)(ii)(B), (a)(2)(i) and (ii), and (c) through (e) to read as follows:

**§ 121.441 Proficiency checks.**

(a) No certificate holder may use any person nor may any person serve as a required pilot flight crewmember unless that person has satisfactorily completed either a proficiency check, or an approved FFS course of training under § 121.409, as follows:

(1) * * *

(i) * * *

(B) In addition, within the preceding 6 calendar months, either a proficiency check or the approved FFS course of training.

(ii) * * *

(B) In addition, within the preceding 6 calendar months, either a proficiency check or the approved FFS course of training.

(2) * * *

(i) Within the preceding 24 calendar months either a proficiency check or the line-oriented flight training course under § 121.409; and

(ii) Within the preceding 12 calendar months, either a proficiency check or any FFS training course under § 121.409

* * * * *

(c) An approved FFS or FTD may be used in the conduct of a proficiency check as provided in appendix F to this part.

(d) A person giving a proficiency check may, in his or her discretion, waive any of the maneuvers or procedures for which a specific waiver authority is set forth in Appendix F of this part if the conditions in paragraphs (d)(1) through (3) of this section are satisfied:

(1) The Administrator has not specifically required the particular maneuver or procedure to be performed.

(2) The pilot being checked is, at the time of the check, employed by a certificate holder as a pilot.

(3) The pilot being checked meets one of the following conditions:

(i) The pilot is currently qualified for operations under this part in the particular type airplane and flightcrew member position.

(ii) The pilot has, within the preceding six calendar months, satisfactorily completed an approved training curriculum, except for an upgrade training curriculum in accordance with §§ 121.420 and 121.426, for the particular type airplane.

(e) If the pilot being checked fails any of the required maneuvers, the person giving the proficiency check may give additional training to the pilot during the course of the proficiency check. In addition to repeating the maneuvers failed, the person giving the proficiency check may require the pilot being checked to repeat any other maneuvers he finds are necessary to determine the pilot's proficiency. If the pilot being checked is unable to demonstrate satisfactory performance to the person conducting the check, the certificate holder may not use him nor may he serve in operations under this part until he has satisfactorily completed a proficiency check.

* * * * *

■ 33. Revise appendix E to part 121 to read as follows:

**Appendix E to Part 121—Flight Training Requirements**

(a) The maneuvers and procedures required by § 121.424 for pilot initial, transition, and conversion flight training are set forth in the certificate holder's approved

low-altitude windshear flight training program, § 121.423 extended envelope training, and in this appendix. The maneuvers and procedures required for upgrade training in accordance with § 121.424 are set forth in this appendix and in the certificate holder's approved low-altitude windshear flight training program and § 121.423 extended envelope training. For the maneuvers and procedures required for upgrade training in accordance with § 121.426, this appendix designates the airplane or FSTD, as appropriate, that may be used.

(b) All required maneuvers and procedures must be performed inflight except that windshear and extended envelope training maneuvers and procedures must be performed in a full flight simulator (FFS) in which the maneuvers and procedures are specifically authorized to be accomplished. Certain other maneuvers and procedures may be performed in an FFS, an FTD, or a static airplane as indicated by the appropriate symbol in the respective column opposite the maneuver or procedure.

(c) Whenever a maneuver or procedure is authorized to be performed in an FTD, it may be performed in an FFS, and in some cases, a static airplane. Whenever the requirement may be performed in either an FTD or a static airplane, the appropriate symbols are entered in the respective columns.

(d) A Level B or higher FFS may be used instead of the airplane to satisfy the inflight requirements if the FFS is approved under § 121.407 and is used as part of an approved program that meets the requirements for an Advanced Simulation Training Program in Appendix H of this part.

(e) For the purpose of this appendix, the following symbols mean—

I = Pilot in Command (PIC) and Second in Command (SIC) initial training
T = PIC and SIC transition training
U = SIC to PIC upgrade training
C = Flight engineer (FE) to SIC conversion training

| Maneuvers/procedures | Inflight | Static airplane | FFS | FTD |
|---|---|---|---|---|
| As appropriate to the airplane and the operation involved, flight training for pilots must include the following maneuvers and procedures. | | | | |
| I. Preflight: | | | | |
| (a) Visual inspection of the exterior and interior of the airplane, the location of each item to be inspected, and the purpose for inspecting it. The visual inspection may be conducted using an approved pictorial means that realistically portrays the location and detail of visual inspection items and provides for the portrayal of normal and abnormal conditions. | ..... | I, T, U, C. | | |
| (b) Use of the prestart checklist, appropriate control system checks, starting procedures, radio and electronic equipment checks, and the selection of proper navigation and communications radio facilities and frequencies prior to flight. | ..... | ..... | I, T, U, C. | |
| (c)(1) Before March 12, 2019, taxiing, sailing, and docking procedures in compliance with instructions issued by ATC or by the person conducting the training. | I, T, U, C. | | | |
| (2) Taxiing. Beginning March 12, 2019, this maneuver includes the following: | | | | |
| (i) Taxiing, sailing, and docking procedures in compliance with instructions issued by ATC or by the person conducting the training. | I, T, U, C. | | | |
| (ii) Use of airport diagram (surface movement chart) ..... | I, T, U, C. | | | |
| (iii) Obtaining appropriate clearance before crossing or entering active runways. | I, T, U, C. | | | |
| (iv) Observation of all surface movement guidance control markings and lighting. | I, T, U, C. | | | |
| (d)(1) Before March 12, 2019, pre-takeoff checks that include powerplant checks. | ..... | ..... | I, T, U, C. | |
| (2) Beginning March 12, 2019, pre-takeoff procedures that include powerplant checks, receipt of takeoff clearance and confirmation of aircraft location, and FMS entry (if appropriate) for departure runway prior to crossing hold short line for takeoff. | ..... | ..... | I, T, U, C. | |
| II. Takeoffs: | | | | |
| Training in takeoffs must include the types and conditions listed below but more than one type may be combined where appropriate: | | | | |
| (a) Normal takeoffs which, for the purpose of this maneuver, begin when the airplane is taxied into position on the runway to be used. | I, T, U, C. | | | |
| (b) Takeoffs with instrument conditions simulated at or before reaching an altitude of 100′ above the airport elevation. | ..... | ..... | I, T, U, C. | |
| (c)(1) Crosswind takeoffs ..... | I, T, U, C. | | | |
| (2) Beginning March 12, 2019, crosswind takeoffs including crosswind takeoffs with gusts if practicable under the existing meteorological, airport, and traffic conditions. | I, T, U, C. | | | |
| (d) Takeoffs with a simulated failure of the most critical powerplant— | ..... | ..... | I, T, U, C. | |
| (1) At a point after V1 and before V2 that in the judgment of the person conducting the training is appropriate to the airplane type under the prevailing conditions; or | ..... | ..... | I, T, U, C. | |
| (2) At a point as close as possible after V1 when V1 and V2 or V1 and VR are identical; or | ..... | ..... | I, T, U, C. | |
| (3) At the appropriate speed for nontransport category airplanes ..... | ..... | ..... | I, T, U, C. | |
| (e) Rejected takeoffs accomplished during a normal takeoff run after reaching a reasonable speed determined by giving due consideration to aircraft characteristics, runway length, surface conditions, wind direction and velocity, brake heat energy, and any other pertinent factors that may adversely affect safety or the airplane. | ..... | ..... | I, T, U, C. | |

| Maneuvers/procedures | Inflight | Static airplane | FFS | FTD |
|---|---|---|---|---|
| (f) Night takeoffs. For pilots in transition training, this requirement may be met during the operating experience required under § 121.434 by performing a normal takeoff at night when a check airman serving as PIC is occupying a pilot station. | I, T, U, C. | | | |
| III. Flight Maneuvers and Procedures: | | | | |
| (a) Turns with and without spoilers | | | I, T, U, C. | |
| (b) Tuck and Mach buffet | | | I, T, U, C. | |
| (c) Maximum endurance and maximum range procedures | | | I, T, U, C. | |
| (d) Operation of systems and controls at the flight engineer station | | | I, T, U. | |
| (e) Runaway and jammed stabilizer | | | I, T, U, C. | |
| (f) Normal and abnormal or alternate operation of the following systems and procedures: | | | | |
| (1) Pressurization | | | | I, T, U, C. |
| (2) Pneumatic | | | | I, T, U, C. |
| (3) Air conditioning | | | | I, T, U, C. |
| (4) Fuel and oil | | I, T, U, C | | I, T, U, C. |
| (5) Electrical | | I, T, U, C | | I, T, U, C. |
| (6) Hydraulic | | I, T, U, C | | I, T, U, C. |
| (7) Flight control | | I, T, U, C | | I, T, U, C. |
| (8) Anti-icing and deicing | | | I, T, U, C. | |
| (9) Autopilot | | | I, T, U, C. | |
| (10) Automatic or other approach aids | | | I, T, U, C. | |
| (11) Stall warning devices, stall avoidance devices, and stability augmentation devices. | | | I, T, U, C. | |
| (12) Airborne radar devices | | | I, T, U, C. | |
| (13) Any other systems, devices, or aids available | | | I, T, U, C. | |
| (14) Electrical, hydraulic, flight control, and flight instrument system malfunctioning or failure. | | I, T, U, C | | I, T, U, C. |
| (15) Landing gear and flap systems failure or malfunction | | I, T, U, C | | I, T, U, C. |
| (16) Failure of navigation or communications equipment | | | I, T, U, C. | |
| (g) Flight emergency procedures that include at least the following: | | | | |
| (1) Powerplant, heater, cargo compartment, cabin, flight deck, wing, and electrical fires. | | I, T, U, C | | I, T, U, C. |
| (2) Smoke control | | I, T, U, C | | I, T, U, C. |
| (3) Powerplant failures | | | I, T | U, C. |
| (4) Fuel jettisoning | | I, T, U, C | | I, T, U, C. |
| (5) Any other emergency procedures outlined in the appropriate flight manual. | | | I, T, U, C. | |
| (h) Steep turns in each direction. Each steep turn must involve a bank angle of 45° with a heading change of at least 180° but not more than 360°. This maneuver is not required for Group I transition training. | | | I, T, U, C. | |
| (i) Stall Prevention. For the purpose of this training the approved recovery procedure must be initiated at the first indication of an impending stall (buffet, stick shaker, aural warning). Stall prevention training must be conducted in at least the following configurations: | | | I, T, U, C. | |
| (1) Takeoff configuration (except where the airplane uses only a zero-flap takeoff configuration). | | | I, T, U, C. | |
| (2) Clean configuration | | | I, T, U, C. | |
| (3) Landing configuration | | | I, T, U, C. | |
| (j) Recovery from specific flight characteristics that are peculiar to the airplane type. | | | I, T, U, C. | |
| (k) Instrument procedures that include the following: | | | | |
| (1) Area departure and arrival | | | I, T, U, C. | |
| (2) Use of navigation systems including adherence to assigned radials | | | I, T, U, C. | |
| (3) Holding | | | I, T, U, C. | |
| (l) ILS instrument approaches that include the following: | | | | |
| (1) Normal ILS approaches | I, T, U, C. | | | |
| (2) Manually controlled ILS approaches with a simulated failure of one powerplant which occurs before initiating the final approach course and continues to touchdown or through the missed approach procedure. | I | | T, U, C. | |
| (m) Instrument approaches and missed approaches other than ILS which include the following: | | | | |
| (1) Nonprecision approaches that the pilot is likely to use | | | U, C | I, T. |
| (2) In addition to subparagraph (1) of this paragraph, at least one other nonprecision approach and missed approach procedure that the pilot is likely to use. | | | I, T, U, C. | |

| Maneuvers/procedures | Inflight | Static airplane | FFS | FTD |
|---|---|---|---|---|
| In connection with paragraphs III(l) and III(m), each instrument approach must be performed according to any procedures and limitations approved for the approach facility used. The instrument approach begins when the airplane is over the initial approach fix for the approach procedure being used (or turned over to the final approach controller in the case of GCA approach) and ends when the airplane touches down on the runway or when transition to a missed approach configuration is completed. | | | | |
| (n) Circling approaches which include the following: | I, T, U, C. | | | |
| (1) That portion of the circling approach to the authorized minimum altitude for the procedure being used must be made under simulated instrument conditions. | I, T, U, C. | | | |
| (2) The circling approach must be made to the authorized minimum circling approach altitude followed by a change in heading and the necessary maneuvering (by visual reference) to maintain a flight path that permits a normal landing on a runway at least 90° from the final approach course of the simulated instrument portion of the approach. | I, T, U, C. | | | |
| (3) The circling approach must be performed without excessive maneuvering, and without exceeding the normal operating limits of the airplane. The angle of bank should not exceed 30°. | I, T, U, C. | | | |
| Training in the circling approach maneuver is not required if the certificate holder's manual prohibits a circling approach in weather conditions below 1000–3 (ceiling and visibility). | | | | |
| (o) Zero-flap approaches. Training in this maneuver is not required for a particular airplane type if the Administrator has determined that the probability of flap extension failure on that type airplane is extremely remote due to system design. In making this determination, the Administrator determines whether training on slats only and partial flap approaches is necessary. | I, C | | T, U. | |
| (p) Missed approaches which include the following: | | | | |
| (1) Missed approaches from ILS approaches | | | I, T, U, C. | |
| (2) Other missed approaches | | | | I, T, U, C. |
| (3) Missed approaches that include a complete approved missed approach procedure. | | | | I, T, U, C. |
| (4) Missed approaches that include a powerplant failure | | | I, T, U, C. | |
| IV. Landings and Approaches to Landings: | | | | |
| Training in landings and approaches to landings must include the types and conditions listed below but more than one type may be combined where appropriate: | | | | |
| (a) Normal landings | I, T, U, C. | | | |
| (b) Landing and go around with the horizontal stabilizer out of trim | I, C | | T | U. |
| (c) Landing in sequence from an ILS instrument approach | I | | T, U, C. | |
| (d)(1) Crosswind landing | I, T, U, C. | | | |
| (2) Beginning March 12, 2019, crosswind landing, including crosswind landings with gusts if practicable under the existing meteorological, airport, and traffic conditions. | I, T, U, C. | | | |
| (e) Maneuvering to a landing with simulated powerplant failure, as follows: | | | | |
| (1) For 3-engine airplanes, maneuvering to a landing with an approved procedure that approximates the loss of two powerplants (center and one outboard engine). | I, C | | T, U. | |
| (2) For other multiengine airplanes, maneuvering to a landing with a simulated failure of 50 percent of available powerplants with the simulated loss of power on one side of the airplane. | I, C | | T, U. | |
| (f) Landing under simulated circling approach conditions (exceptions under III(n) applicable to this requirement). | I | | T, U, C. | |
| (g) Rejected landings that include a normal missed approach procedure after the landing is rejected. For the purpose of this maneuver the landing should be rejected at approximately 50 feet and approximately over the runway threshold. | I | | T, U, C. | |
| (h) Zero-flap landings if the Administrator finds that maneuver appropriate for training in the airplane. | I, C | | T, U. | |
| (i) Manual reversion | | | I, T, U, C. | |
| (j) Night landings. For pilots in transition training, this requirement may be met during the operating experience required under § 121.434 by performing a normal landing at night when a check airman serving as PIC is occupying a pilot station. | I, T, U, C. | | | |

■ 34. Revise appendix F to part 121 to read as follows:

## Appendix F to Part 121—Proficiency Check Requirements

(a) The maneuvers and procedures required by § 121.441 for pilot proficiency checks are set forth in this appendix. Except for the equipment examination, these maneuvers and procedures must be performed inflight. Certain maneuvers and procedures may be performed in an FFS or an FTD as indicated by the appropriate

symbol in the respective column opposite the maneuver or procedure.

(b) Whenever a maneuver or procedure is authorized to be performed in an FTD, it may be performed in an FFS.

(c) A Level B or higher FFS may be used instead of the airplane to satisfy the inflight requirements if the FFS is approved under § 121.407 and is used as part of an approved program that meets the requirements for an Advanced Simulation Training Program in Appendix H of this part.

(d) For the purpose of this appendix, the following symbols mean—

B = Both Pilot in Command (PIC) and Second in Command (SIC).

W = May be waived for both PIC and SIC, except during a proficiency check conducted to qualify a PIC after completing an upgrade training curriculum in accordance with §§ 121.420 and 121.426.

* = A symbol and asterisk (B* or W*) indicates that a particular condition is specified in the maneuvers and procedures column.

# = When a maneuver is preceded by this symbol it indicates the maneuver may be required in the airplane at the discretion of the person conducting the check.

(e) Throughout the maneuvers and procedures prescribed in this appendix, good judgment commensurate with a high level of safety must be demonstrated. In determining whether such judgment has been shown, the person conducting the check considers adherence to approved procedures, actions based on analysis of situations for which there is no prescribed procedure or recommended practice, and qualities of prudence and care in selecting a course of action.

| Maneuvers/procedures | Required | | Permitted | | |
|---|---|---|---|---|---|
| | Simulated instrument conditions | Inflight | FFS | FTD | Waiver provisions of § 121.441(d) |
| The procedures and maneuvers set forth in this appendix must be performed in a manner that satisfactorily demonstrates knowledge and skill with respect to—. | | | | | |
| (1) The airplane, its systems and components; | | | | | |
| (2) Proper control of airspeed, configuration, direction, altitude, and attitude in accordance with procedures and limitations contained in the approved Airplane Flight Manual, the certificate holder's operations manual, checklists, or other approved material appropriate to the airplane type; and | | | | | |
| (3) Compliance with approach, ATC, or other applicable procedures. | | | | | |
| I. Preflight: | | | | | |
| (a) Equipment examination (oral or written). As part of the proficiency check the equipment examination must be closely coordinated with, and related to, the flight maneuvers portion but may not be given during the flight maneuvers portion. The equipment examination must cover— | | | | | |
| (1) Subjects requiring a practical knowledge of the airplane, its powerplants, systems, components, operational and performance factors; | | | | | |
| (2) Normal, abnormal, and emergency procedures, and the operations and limitations relating thereto; and. | | | | | |
| (3) The appropriate provisions of the approved Airplane Flight Manual. | | | | | |
| The person conducting the check may accept, as equal to this equipment examination, an equipment examination given to the pilot in the certificate holder's ground training within the preceding 6 calendar months. | | | | | |
| (b) Preflight inspection. The pilot must— | | | | | |
| (1) Conduct an actual visual inspection of the exterior and interior of the airplane, locating each item and explaining briefly the purpose for inspecting it. The visual inspection may be conducted using an approved pictorial means that realistically portrays the location and detail of visual inspection items and provides for the portrayal of normal and abnormal conditions. If a flight engineer is a required flightcrew member for the particular type airplane, the visual inspection may be waived under § 121.441(d) ..... | ..... | ..... | ..... | B | W* |
| (2) Demonstrate the use of the prestart checklist, appropriate control system checks, starting procedures, radio and electronic equipment checks, and the selection of proper navigation and communications radio facilities and frequencies prior to flight ..... | ..... | ..... | ..... | B | |
| (c)(1) Taxiing. Before March 12, 2019, this maneuver includes taxiing, sailing, or docking procedures in compliance with instructions issued by ATC or by the person conducting the check. SIC proficiency checks for a type rating must include taxiing. However, other SIC proficiency checks need only include taxiing to the extent practical from the seat position assigned to the SIC ..... | ..... | B | | | |

| Maneuvers/procedures | Required | | Permitted | | |
|---|---|---|---|---|---|
| | Simulated instrument conditions | Inflight | FFS | FTD | Waiver provisions of § 121.441(d) |
| (c)(2) Taxiing. Beginning March 12, 2019, this maneuver includes the following: (i) Taxiing, sailing, or docking procedures in compliance with instructions issued by ATC or by the person conducting the check. (ii) Use of airport diagram (surface movement chart). (iii) Obtaining appropriate clearance before crossing or entering active runways. (iv) Observation of all surface movement guidance control markings and lighting. SIC proficiency checks for a type rating must include taxiing. However, other SIC proficiency checks need only include taxiing to the extent practical from the seat position assigned to the SIC | ..... | B | | | |
| (d)(1) Powerplant checks. As appropriate to the airplane type | ..... | ..... | B | | |
| (d)(2) Beginning March 12, 2019, pre-takeoff procedures that include powerplant checks, receipt of takeoff clearance and confirmation of aircraft location, and FMS entry (if appropriate), for departure runway prior to crossing hold short line for takeoff | ..... | ..... | B | | |
| II. Takeoff: | | | | | |
| Takeoffs must include the types listed below, but more than one type may be combined where appropriate: | | | | | |
| (a) Normal. One normal takeoff which, for the purpose of this maneuver, begins when the airplane is taxied into position on the runway to be used | ..... | B* | | | |
| (b) Instrument. One takeoff with instrument conditions simulated at or before reaching an altitude of 100′ above the airport elevation | B | ..... | B* | | |
| (c)(1) Crosswind. Before March 12, 2019, one crosswind takeoff, if practicable, under the existing meteorological, airport, and traffic conditions | ..... | B* | | | |
| (c)(2) Beginning March 12, 2019, one crosswind takeoff with gusts, if practicable, under the existing meteorological, airport, and traffic conditions | ..... | B* | | | |
| #(d) Powerplant failure. One takeoff with a simulated failure of the most critical powerplant— | ..... | ..... | B | | |
| (1) At a point after V1 and before V2 that in the judgment of the person conducting the check is appropriate to the airplane type under the prevailing conditions; | ..... | ..... | B | | |
| (2) At a point as close as possible after V1 when V1 and V2 or V1 and Vr are identical; or | ..... | ..... | B | | |
| (3) At the appropriate speed for nontransport category airplanes | ..... | ..... | B | | |
| (e) Rejected. A rejected takeoff may be performed in an airplane during a normal takeoff run after reaching a reasonable speed determined by giving due consideration to aircraft characteristics, runway length, surface conditions, wind direction and velocity, brake heat energy, and any other pertinent factors that may adversely affect safety or the airplane | ..... | ..... | B* | ..... | W |
| III. Instrument procedures: | | | | | |
| (a) Area departure and area arrival. During each of these maneuvers the pilot must— | B | ..... | B | ..... | W* |
| (1) Adhere to actual or simulated ATC clearances (including assigned radials); and | B | ..... | B | | |
| (2) Properly use available navigation facilities | B | ..... | B | | |
| Either area arrival or area departure, but not both, may be waived under § 121.441(d). | | | | | |
| (b) Holding. This maneuver includes entering, maintaining, and leaving holding patterns. It may be performed in connection with either area departure or area arrival | B | ..... | B | ..... | W |
| (c) ILS and other instrument approaches. There must be the following: | | | | | |
| (1) At least one normal ILS approach | B | ..... | B | | |
| (2) At least one manually controlled ILS approach with a simulated failure of one powerplant. The simulated failure should occur before initiating the final approach course and must continue to touchdown or through the missed approach procedure | B | B | | | |
| (3) At least one nonprecision approach procedure using a type of nonprecision approach procedure that the certificate holder is approved to use | B | ..... | B | | |

| Maneuvers/procedures | Required | | Permitted | | |
|---|---|---|---|---|---|
| | Simulated instrument conditions | Inflight | FFS | FTD | Waiver provisions of § 121.441(d) |
| (4) At least one nonprecision approach procedure using a different type of nonprecision approach procedure than performed under subparagraph (3) of this paragraph that the certificate holder is approved to use | B | | | B | |
| (5) For each type of EFVS operation the certificate holder is authorized to conduct, at least one instrument approach must be made using an EFVS | B | B* | | | |
| Each instrument approach must be performed according to any procedures and limitations approved for the approach procedure used. The instrument approach begins when the airplane is over the initial approach fix for the approach procedure being used (or turned over to the final approach controller in the case of GCA approach) and ends when the airplane touches down on the runway or when transition to a missed approach configuration is completed. Instrument conditions need not be simulated below 100′ above touchdown zone elevation. | | | | | |
| (d) Circling approaches. If the certificate holder is approved for circling minimums below 1000–3 (ceiling and visibility), at least one circling approach must be made under the following conditions— | | | B* | | W* |
| (1) The portion of the approach to the authorized minimum circling approach altitude must be made under simulated instrument conditions | B | | B* | | |
| (2) The approach must be made to the authorized minimum circling approach altitude followed by a change in heading and the necessary maneuvering (by visual reference) to maintain a flight path that permits a normal landing on a runway at least 90° from the final approach course of the simulated instrument portion of the approach | | | B* | | |
| (3) The circling approach must be performed without excessive maneuvering, and without exceeding the normal operating limits of the airplane. The angle of bank should not exceed 30° | | | B* | | |
| If local conditions beyond the control of the pilot prohibit the maneuver or prevent it from being performed as required, it may be waived as provided in § 121.441(d). However, the maneuver may not be waived under this provision for two successive proficiency checks. Except for a SIC proficiency check for a type rating, the circling approach maneuver is not required for a SIC if the certificate holder's manual prohibits a SIC from performing a circling approach in operations under this part. | | | | | |
| (e) Missed approach. | | | | | |
| (1) At least one missed approach from an ILS approach | | | B* | | |
| (2) At least one additional missed approach for SIC proficiency checks for a type rating and for all PIC proficiency checks | | | B* | | |
| A complete approved missed approach procedure must be accomplished at least once. At the discretion of the person conducting the check a simulated powerplant failure may be required during any of the missed approaches. These maneuvers may be performed either independently or in conjunction with maneuvers required under Sections III or V of this appendix. At least one missed approach must be performed inflight. | | | | | |
| IV. Inflight Maneuvers: | | | | | |
| (a) Steep turns. For SIC proficiency checks for a type rating and for all PIC proficiency checks, at least one steep turn in each direction must be performed. Each steep turn must involve a bank angle of 45° with a heading change of at least 180° but not more than 360° | B | | B | | W |
| (b) Stall Prevention. For the purpose of this maneuver the approved recovery procedure must be initiated at the first indication of an impending stall (buffet, stick shaker, aural warning). Except as provided below there must be at least three stall prevention recoveries as follows: | B | | B | | W* |
| (1) Takeoff configuration (except where the airplane uses only a zero-flap takeoff configuration) | B | | B | | |
| (2) Clean configuration | B | | B | | |
| (3) Landing configuration | B | | B | | |

| Maneuvers/procedures | Required | | Permitted | | |
|---|---|---|---|---|---|
| | Simulated instrument conditions | Inflight | FFS | FTD | Waiver provisions of § 121.441(d) |
| At the discretion of the person conducting the check, one stall prevention recovery must be performed in one of the above configurations while in a turn with the bank angle between 15° and 30°. Two out of the three stall prevention recoveries required by this paragraph may be waived. | | | | | |
| If the certificate holder is authorized to dispatch or flight release the airplane with a stall warning device inoperative the device may not be used during this maneuver. | | | | | |
| (c) Specific flight characteristics. Recovery from specific flight characteristics that are peculiar to the airplane type | ..... | ..... | B | ..... | W |
| (d) Powerplant failures. In addition to specific requirements for maneuvers with simulated powerplant failures, the person conducting the check may require a simulated powerplant failure at any time during the check | ..... | ..... | B | | |
| V. Landings and Approaches to Landings: | | | | | |
| Notwithstanding the authorizations for combining and waiving maneuvers and for the use of an FFS, at least two actual landings (one to a full stop) must be made for all PIC proficiency checks, all initial SIC proficiency checks, and all SIC proficiency checks for a type rating. | | | | | |
| Landings and approaches to landings must include the types listed below, but more than one type may be combined where appropriate: | | | | | |
| (a) Normal landing | ..... | B | | | |
| (b) Landing in sequence from an ILS instrument approach except that if circumstances beyond the control of the pilot prevent an actual landing, the person conducting the check may accept an approach to a point where in his judgment a landing to a full stop could have been made | ..... | B* | | | |
| (c)(1) Crosswind landing, if practical under existing meteorological, airport, and traffic conditions | ..... | B* | | | |
| (c)(2) Beginning March 12, 2019, crosswind landing with gusts, if practical under existing meteorological, airport, and traffic conditions | ..... | B* | | | |
| (d) Maneuvering to a landing with simulated powerplant failure as follows: | | | | | |
| (1) In the case of 3-engine airplanes, maneuvering to a landing with an approved procedure that approximates the loss of two powerplants (center and one outboard engine); or | ..... | ..... | B* | | |
| (2) In the case of other multiengine airplanes, maneuvering to a landing with a simulated failure of 50 percent of available powerplants, with the simulated loss of power on one side of the airplane | ..... | ..... | B* | | |
| Notwithstanding the requirements of subparagraphs (d) (1) and (2) of this paragraph, for an SIC proficiency check, except for an SIC proficiency check for a type rating, the simulated loss of power may be only the most critical powerplant. | | | | | |
| In addition, a PIC may omit the maneuver required by subparagraph (d)(1) or (d)(2) of this paragraph during a required proficiency check or FFS course of training if he satisfactorily performed that maneuver during the preceding proficiency check, or during the preceding approved FFS course of training under the observation of a check airman, whichever was completed later. | | | | | |
| (e) Except as provided in paragraph (f) of this section, if the certificate holder is approved for circling minimums below 1000–3 (ceiling and visibility), a landing under simulated circling approach conditions. However, when performed in an airplane, if circumstances beyond the control of the pilot prevent a landing, the person conducting the check may accept an approach to a point where, in his judgment, a landing to a full stop could have been made | ..... | ..... | B* | | |
| #(f) A rejected landing, including a normal missed approach procedure, that is rejected approximately 50′ over the runway and approximately over the runway threshold. This maneuver may be combined with instrument, circling, or missed approach procedures, but instrument conditions need not be simulated below 100 feet above the runway | ..... | ..... | B | | |

| Maneuvers/procedures | Required | | Permitted | | |
|---|---|---|---|---|---|
| | Simulated instrument conditions | Inflight | FFS | FTD | Waiver provisions of § 121.441(d) |
| (g) If the certificate holder is authorized to conduct EFVS operations to touchdown and rollout, at least one instrument approach to a landing must be made using an EFVS, including the use of enhanced flight vision from 100 feet above the touchdown zone elevation to touchdown and rollout | B | B* | | | |
| (h) If the certificate holder is authorized to conduct EFVS operations to 100 feet above the touchdown zone elevation, at least one instrument approach to a landing must be made using an EFVS, including the transition from enhanced flight vision to natural vision at 100 feet above the touchdown zone elevation | B | B* | | | |
| VI. Normal and Abnormal Procedures: | | | | | |
| Each pilot must demonstrate the proper use of as many of the systems and devices listed below as the person conducting the check finds are necessary to determine that the person being checked has a practical knowledge of the use of the systems and devices appropriate to the airplane type: | | | | | |
| (a) Anti-icing and deicing systems | ..... | ..... | B | | |
| (b) Autopilot systems | ..... | ..... | B | | |
| (c) Automatic or other approach aid systems | ..... | ..... | B | | |
| (d) Stall warning devices, stall avoidance devices, and stability augmentation devices | ..... | ..... | B | | |
| (e) Airborne radar devices | ..... | ..... | B | | |
| (f) Any other systems, devices, or aids available | ..... | ..... | B | | |
| (g) Hydraulic and electrical system failures and malfunctions | ..... | ..... | ..... | B | |
| (h) Landing gear and flap systems failure or malfunction | ..... | ..... | ..... | B | |
| (i) Failure of navigation or communications equipment | ..... | ..... | B | | |
| VII. Emergency Procedures: | | | | | |
| Each pilot must demonstrate the proper emergency procedures for as many of the emergency situations listed below as the person conducting the check finds are necessary to determine that the person being checked has an adequate knowledge of, and ability to perform, such procedure: | | | | | |
| (a) Fire in flight | ..... | ..... | B | | |
| (b) Smoke control | ..... | ..... | B | | |
| (c) Rapid decompression | ..... | ..... | B | | |
| (d) Emergency descent | ..... | ..... | B | | |
| (e) Any other emergency procedures outlined in the approved Airplane Flight Manual | ..... | ..... | B | | |

■ 35. Revise appendix H to part 121 to read as follows:

## Appendix H to Part 121—Advanced Simulation

This appendix prescribes criteria for use of Level B or higher FFSs to satisfy the inflight requirements of Appendices E and F of this part and the requirements of § 121.439. The criteria in this appendix are in addition to the FFS approval requirements in § 121.407. Each FFS used under this appendix must be approved as a Level B, C, or D FFS, as appropriate.

### Advanced Simulation Training Program

For a certificate holder to conduct Level C or D training under this appendix all required FFS instruction and checks must be conducted under an advanced simulation training program approved by the Administrator for the certificate holder. This program must also ensure that all instructors and check airmen used in Appendix H training and checking are highly qualified to provide the training required in the training program. The advanced simulation training program must include the following:

1. The certificate holder's initial, transition, conversion, upgrade, and recurrent FFS training programs and its procedures for re-establishing recency of experience in the FFS.

2. How the training program will integrate Level B, C, and D FFSs with other FSTDs to maximize the total training, checking, and certification functions.

3. Documentation that each instructor and check airman has served for at least 1 year in that capacity in a certificate holder's approved program or has served for at least 1 year as a pilot in command or second in command in an airplane of the group in which that pilot is instructing or checking.

4. A procedure to ensure that each instructor and check airman actively participates in either an approved regularly scheduled line flying program as a flightcrew member or an approved line observation program in the same airplane type for which that person is instructing or checking.

5. A procedure to ensure that each instructor and check airman is given a minimum of 4 hours of training each year to become familiar with the certificate holder's advanced simulation training program, or changes to it, and to emphasize their respective roles in the program. Training for instructors and check airmen must include training policies and procedures, instruction methods and techniques, operation of FFS controls (including environmental and trouble panels), limitations of the FFS, and minimum equipment required for each course of training.

6. A special Line-Oriented Flight Training (LOFT) program to facilitate the transition from the FFS to line flying. This LOFT program must consist of at least a 4-hour course of training for each flightcrew. It also must contain at least two representative flight segments of the certificate holder's operations. One of the flight segments must contain strictly normal operating procedures from push back at one airport to arrival at another. Another flight segment must contain training in appropriate abnormal and emergency flight operations. After March 12, 2019, the LOFT must provide an opportunity for the pilot to demonstrate workload management and pilot monitoring skills.

**FFS Training, Checking and Qualification Permitted**

*1. Level B FFS*

a. Recent experience (§ 121.439).

b. Training in night takeoffs and landings (Appendix E of this part).

c. Except for EFVS operations, landings in a proficiency check (Appendix F of this part).

*2. Level C and D FFS*

a. Recent experience (§ 121.439).

b. All pilot flight training and checking required by this part except the following:

i. The operating experience, operating cycles, and consolidation of knowledge and skills requirements of § 121.434;

ii. The line check required by § 121.440; and

iii. The visual inspection of the exterior and interior of the airplane required by appendices E and F.

c. The practical test requirements of § 61.153(h) of this chapter, except the visual inspection of the exterior and interior of the airplane.

## PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 36. The authority citation for part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 41706, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58 (49 U.S.C. 44730).

■ 37. Amend § 135.3 by adding paragraph (d) to read as follows:

**§ 135.3 Rules applicable to operations subject to this part.**

* * * * *

(d) Additional limitations applicable to certificate holders that are required by paragraph (b) of this section or authorized in accordance with paragraph (c) of this section, to comply with part 121, subparts N and O of this chapter instead of subparts E, G, and H of this part.

(1) *Upgrade training.* (i) Each certificate holder must include in upgrade ground training for pilots, instruction in at least the subjects identified in § 121.419(a) of this chapter, as applicable to their assigned duties; and, for pilots serving in crews of two or more pilots, beginning on April 27, 2022, instruction and facilitated discussion in the subjects identified in § 121.419(c) of this chapter.

(ii) Each certificate holder must include in upgrade flight training for pilots, flight training for the maneuvers and procedures required in § 121.424(a), (c), (e), and (f) of this chapter; and, for pilots serving in crews of two or more pilots, beginning on April 27, 2022, the flight training required in § 121.424(b) of this chapter.

(2) *Initial and recurrent leadership and command and mentoring training.* Certificate holders are not required to include leadership and command training in §§ 121.409(b)(2)(ii)(B)(*6*), 121.419(c)(1), 121.424(b) and 121.427(d)(1) of this chapter and mentoring training in §§ 121.419(c)(2) and 121.427(d)(1) of this chapter in initial and recurrent training for pilots in command who serve in operations that use only one pilot.

(3) *One-time leadership and command and mentoring training.* Section 121.429 of this chapter does not apply to certificate holders conducting operations under this part when those operations use only one pilot.

Issued under authority provided by 49 U.S.C. 106(f), 106(g), 44701(a), and Sec. 206 of Public Law 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note) in Washington, DC, on January 13, 2020.

**Steve Dickson,**

*Administrator.*

[FR Doc. 2020–01111 Filed 2–24–20; 8:45 am]

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Part V

## Department of the Interior

Bureau of Indian Affairs

25 CFR Part 273
Education Contracts Under Johnson-O'Malley Act; Final Rule

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Part 273**

**[201D0102DB/DS5A300000/DR.5A311.IA000520]**

**RIN 1076–AF24**

# Education Contracts Under Johnson-O'Malley Act

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule.

**SUMMARY:** Under the Johnson-O'Malley (JOM) Act, the Bureau of Indian Education (BIE) provides assistance, through contracts, for Indian students attending public schools and nonsectarian private schools. This rule implements the JOM Act, as amended by the JOM Supplemental Indian Education Program Modernization Act (JOM Modernization Act), to clarify the eligibility requirements for Indian students to receive the benefits of a JOM contract, clarify the funding formula and process to ensure full participation of contracting parties, and to otherwise reconcile and modernize the regulations to comport with the activities of contracting parties under the JOM Modernization Act.

**DATES:** This rule is effective on March 26, 2020.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov.*

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## I. Background

The JOM Act authorizes the Secretary of the Interior (Secretary), in his or her discretion, to enter into contracts with States, schools, and private nonsectarian organizations, and to expend appropriated funds in support of Indian students under such contracts. See, 25 U.S.C. 5341 *et seq.* Federally recognized Indian Tribes and Tribal organizations are also eligible to apply for JOM contracts. Contracts under JOM contain educational objectives that adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contract is capable of meeting such objectives. See, 25 U.S.C. 5345. The regulations at 25 CFR part 273 that implement this authority became effective in 1975 and the rule has been in effect over 40 years without substantial changes. In 2018, Congress updated the JOM Act with the JOM Modernization Act. The rule being finalized today updates 25 CFR part 273 to implement the JOM Modernization Act and make other changes necessary to update the rule, as described below.

The proposed rule was published on June 27, 2019. *See* 84 FR 30647. During the 60-day public comment period, BIE held four consultations sessions directly with the Tribes and four consultation sessions with eligible entities and interested parties: July 16, 2019, in Tahlequah, OK; July 19, 2019, in Bismarck, ND; July 23, 2019, via webinar; and July 25, 2019, via webinar. *See* 84 FR 30647. The public comment period on the proposed rule ended on August 26, 2019.

## II. Overview of the Final Rule

The JOM Modernization Act requires the BIE to revise the existing regulations at 25 CFR part 273, to:

1. Determine how the regulatory definition of ''eligible Indian student'' may be revised to clarify eligibility requirements for contracting parties under the Act;

2. Determine, as necessary, how the funding formula may be clarified and revised to ensure full participation of contracting parties and provide clarity on the funding process under the Act; and

3. Reconcile and modernize the rule to comport with the activities of the contracting parties under the Act.

The final rule includes changes to meet these requirements, by:

- Clarifying who is an eligible Indian student;
- Specifying how funds can be used;
- Describing how a new contracting party can enter into contracts and clarifying the process for existing contracting parties to renew contracts;
- Clarifying what requirements do not apply to Tribal organizations;
- Revising the funding formula to reflect how it is currently calculated;
- Clarifying the annual reporting requirements;
- Adding a new subpart J—Responsibility and Accountability, to address the Secretary's reporting requirements and compliance with Paperwork Reduction Act; and
- Clarifying the appeals processes.

The rule also makes other technical edits to improve clarity and readability.

## III. Comments on the Proposed Rule and Responses to Comments

The BIE sought public comment on the proposed rule, as well as Tribal input through a series of consultation sessions. Overall, BIE heard from a wide variety of stakeholders including Tribal leaders, existing JOM contractors, potential JOM contracts, public school districts, tribal organizations, Indian corporations, JOM Indian Education Committee members, employees of public schools serving American Indian students, and parents. In total, BIE received 54 written comment submissions, including a few submissions that included 11 to 145 signatures each. All public comments received in response to the proposed

rule are available for public inspection. To view all comments, search by Docket Number ''BIA–2018–0002'' in *https://www.regulations.gov.* The BIE has decided to proceed to the final rule stage after careful consideration of all comments. The BIE's responses to such comments are detailed below.

*A. Terminology*

*Comment:* Change the term ''student'' to ''child'' to include children who are homeschooled and in foster care.

*Response:* The regulation uses the term ''student'' because the statutory authority uses that term; however, there is nothing preventing a non-traditional student, such as a homeschooled student, or child in foster care from meeting the eligibility requirements set out for Indian students in § 273.112.

*Comment:* The proposed definition of ''Tribal organization'' is too broad because it combines sovereign Tribes with others. If ''Tribal organization'' includes others, there should be a requirement for specific support from the Tribe or Tribes who will receive services.

*Response:* The final rule adds to the definition of ''Tribal organization'' a requirement for the approval of the Tribe or Tribes. This language is adapted from the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 5304.

*B. Comments Regarding ''Eligible Indian Student''*

Many commenters requested changes to restrict, broaden, or clarify who an ''eligible Indian student'' is. BIE weighed these concerns, looked to Congress's intent to provide for the education of Indian students, and also considered that there should be a connection to a federally recognized Tribe (*i.e.,* a Tribe with whom the U.S. Government has a government-to-government relationship). As a result, the substance of the final rule is the same as the proposed rule regarding who qualifies as an eligible Indian student, requiring that the student either: (1) Be a Tribal member; or (2) have a link to a Tribal member (through descendancy) that is within a certain proximity (through ¼ degree blood quantum). BIE acknowledges the concerns expressed by some of the comments that any reliance on blood quantum is antiquated and distasteful; therefore, BIE may revisit this standard in the future. For the purposes of this rule, however, BIE has chosen to retain the standard to ensure consistency with the Indian Student Equalization Program (ISEP) standard, as explained below. Pending any comprehensive review of the standard used for both JOM and ISEP eligibility, the Department believes the proposed eligibility standard establishes guidelines sufficient to identify who the population of eligible Indian students is, while allowing for some discretion in implementation to ensure that Congress' intent is met on a case-by-case basis, as further described in the responses to comments, below.

1. One-Fourth Degree Indian Blood

*Comment:* Does a student have to be a descendant of someone who has ¼ degree of Indian blood?

*Response:* The rule provides that, if the Indian student is not a Tribal member, then the Indian student himself or herself must have ¼ degree of Indian blood, as a descendent of a member of a federally recognized Tribe, in order to be eligible.

*Comment:* Explain where the requirement for ¼ degree of Indian blood came from and how long it has been used.

*Response:* The regulatory requirement requiring ¼ or more degree Indian blood for eligibility for JOM contracts dates back to 1957. *See* 22 FR 10533 (December 24, 1957). For additional history, see the discussion in the preamble to the proposed rule at 84 FR 30648 (June 27, 2019). However, the rule no longer contains a ¼ degree or more Indian blood requirement as a prerequisite for student eligibility in the JOM program. The rule instead provides an option for eligibility if the student is ¼ degree Indian blood descendant of a member of a Tribe.

*Comment:* Remove mention of ¼ degree of Indian blood and instead require descendancy back to the Tribe's base roll or historical roll, to open the door for more descendants who may not be eligible as Tribal members due to enrollment practices, etc. Our ancestors who signed the Tribe's roll agreed to have all their descendants eligible for future assistance and did not specify any degree of blood, so the Federal Government should not withhold assistance for any descendants.

*Response:* The final rule retains the requirement for ¼ degree of Indian blood in one of the two options for eligibility to ensure consistency with the ISEP standard. Consistency between the ISEP and JOM programs is important because an eligible Indian student may move between a JOM contractor school and Bureau-funded school and should be equally eligible for both. Should BIE consider changing the blood quantum standard in the future, it will propose to do so for both JOM and ISEP simultaneously to ensure consistency.

*Comment:* Using blood quantum is a racist practice and is tantamount to telling a child that they are not ''Indian enough.'' It is becoming a discriminatory issue to include a child with ¼ Indian blood quantum as eligible and exclude another student with ⅛ Indian blood quantum. A ¼ blood quantum limit will decrease the number of Native American children that will be educated about their heritage, decrease the number of future Native American leaders, and begin to deplete Native American culture. Many have more Native blood than they can prove because their ancestors did not want to be recognized as Native or because of mistakes made in the records.

*Response:* The final rule codifies the practice that has been in place since 1991, which aligns with the eligibility criteria with ISEP, so this final rule is not expected to cause a decrease in current student eligibility.

*Comment:* Remove mention of ¼ degree of Indian blood to get out of the business of defining which Tribal members qualify, and instead defer to Tribes' determinations.

*Response:* Tribes have the sovereign right to determine their membership and Tribes are free to limit membership according to blood quantum or not. This rule is determining who is an ''eligible Indian student'' for the purposes of a Federal program and does not affect Tribes' right to determine their own memberships. The rule defers to Tribes' determinations of their members by making Tribal members eligible regardless of blood quantum, as long as the Tribe has determined the student is a member.

*Comment:* Remove mention of ¼ degree of Indian blood and instead allow only Tribal members to be eligible, to defer to Tribes' sovereign right to decide Tribal membership.

*Response:* BIE has determined that restricting eligibility to students who are themselves Tribal members is more restrictive than Congress intended in the Act. As the National Indian Education Association (NIEA) pointed out in response to the 2018 proposed rule, restricting eligibility to only those students who are Tribal members may exclude thousands of Native students who are at least ¼ Indian blood descendant of a member of a Tribe and currently participate in JOM programs, but who are not Tribal members due to enrollment requirements. For example, a Tribe may not formally enroll a student until he or she reaches a certain age, or the student's application for enrollment may be pending review with the Tribe.

*Comment:* Require both ¼ degree Indian blood descendancy and Tribal membership.

*Response:* BIE has determined, in accordance with Federal district court precedent, that requiring both ¼ degree Indian blood descendancy and Tribal membership for eligibility is too restrictive.

*Comment:* Remove the ¼ degree Indian blood requirement if the Federal district court said it was too restrictive.

*Response:* The Federal district court ruled that requiring both a ¼ degree Indian blood descendancy and Tribal membership is too restrictive. Deleting the requirement for ¼ degree Indian blood descendancy from a member of a Tribe as one of the two options for eligibility would be more restrictive than the proposed rule, which allows for either ¼ degree Indian blood descendancy from a member of a Tribe or Tribal membership.

*Comment:* Allow students who are either a member of a federally recognized Tribe or at least ¼ degree Indian blood descendant of a member of a federally recognized Tribe to be eligible.

*Response:* This comment reflects what was in the proposed rule and is included in the final rule.

*Comment:* Allow a student who is a Tribal member, but who does not have ¼ degree Indian blood of the Tribe in which the student is enrolled, to be eligible.

*Response:* This comment reflects what was in the proposed rule and is included in the final rule; a student that is a Tribal member is eligible regardless of the student's Indian blood quantum.

*Comment:* Requiring the student be either a Tribal member or ¼ degree Indian blood descendant of a member would exclude several children who rely on JOM and value the programs, resources, and connections it offers.

*Response:* The final rule codifies the practice that has been in place since 1991, so this final rule will not affect current student eligibility.

*Comment:* Add a definition of ''descendant'' to clarify.

*Response:* A descendant is one who follows in lineage, such as a child or grandchild (*i.e.,* offspring). The final rule does not add a definition because the rule uses the term ''descendant'' only once and the meaning of the term is the plain, dictionary meaning of the term.

*Comment:* Clarify whether students who are ¼ degree Indian blood from more than one member of an Indian Tribe meet the requirement for being ¼ degree Indian blood descendant of ''a member of a federally recognized Tribe.'' In other words, clarify that the ¼ Indian blood quantum can be from more than one Tribe (*i.e.,* a combination of Tribes).

*Response:* A strict reading of the proposed rule would exclude a student who is ¼ degree Indian blood descendant of more than one member of a Tribe. As one Tribal commenter stated, in keeping with the intent of the JOM program, Indian students should have eligibility verified using the most inclusive interpretation possible; therefore, BIE interprets the regulation to allow for blood quantum calculations to include blood from different federally recognized Tribes. This interpretation is also consistent with the interpretation for ISEP eligibility.

*Comment:* A student may not be eligible for membership in a Tribe because he or she does not meet the Tribe's blood quantum requirement for membership, but a student could be full-blood Native from eight different Tribes. The JOM eligibility criteria should allow for blood quantum to be measured from multiple Tribes, to be more inclusive than Tribes are for membership.

*Response:* As explained above, BIE interprets the regulation to allow for blood quantum calculations to include blood from different federally recognized Tribes.

*Comment:* Allow anyone who has a Certificate of Degree of Indian Blood (CDIB) to qualify as an eligible Indian student.

*Response:* If the CDIB or other documentation shows that the child is a member of a federally recognized Tribe, then no further documentation is necessary. Otherwise, a CDIB alone is sufficient to show eligibility as an Indian student only if it shows that the student has ¼ degree blood quantum from a federally recognized Tribe. Or, as explained above, multiple CDIBs showing the student has blood quantum from more than one federally recognized Tribe are sufficient to show eligibility as an Indian student if the blood quantum from federally recognized Tribes add up to ¼ degree or more.

*Comment:* If you do not allow anyone with a CDIB to be eligible, then children who are waiting for their Tribal enrollment to be processed by their Tribe will be penalized.

*Response:* If a child is not yet a Tribal member and the CDIB does not show ¼ blood quantum from a federally recognized Tribe, then the CDIB alone would not be sufficient to show eligibility, but the student could show eligibility by providing a letter or other documentation from the Tribe explaining the circumstances (*e.g.,* that the Tribe is still processing the enrollment paperwork but the child meets Tribal membership requirements).

*Comment:* Is a waiver permissible where the student is not yet formally enrolled with the Tribe but we can verify that the enrollment paperwork is pending with the Tribe and that the student meets the enrollment criteria?

*Response:* As explained in the above response, BIE may consider other documentation if the enrollment paperwork is pending with the Tribe.

*Comment:* Include as eligible any student who can provide any documentation that shows he or she is ''eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' This change would ensure that all Alaska Native and American Indian students would be ''eligible Indian students'' regardless of their Tribal membership status or Indian blood quantum.

*Response:* There may be documentation showing eligibility for a special program or service provided by another Federal agency; to the extent that documentation supports eligibility under this rule, BIE may consider that documentation.

2. Documentation Showing Eligibility

*Comment:* Accept Indian Health Service (IHS) documents such as an IHS card, health records showing vaccinations, or birth certificates, because that documentation may be more readily available given that the student must have vaccinations to enroll in public school and would prove eligibility because the IHS will administer vaccinations to only Tribal members or individuals with a CDIB.

*Response:* In some cases, IHS documentation may be sufficient, if it includes information showing that the student is a Tribal member or ¼ degree blood quantum of a federally recognized Tribe.

*Comment:* Some students are in foster care or other child custody or are in an institution away from home but do not have their Tribal paperwork available because they are not living at home.

*Response:* BIE will examine these situations on a case-by-case basis to determine whether other documentation can verify that the child is an eligible Indian student.

*Comment:* Accept the following documents as evidence of eligibility: Student Tribal documentation, such as Tribal enrollment cards, Tribal citizenship cards, documentation from Tribal enrollment offices; Student CDIBs; and parent Tribal enrollment documentation with a child's birth

certificate. Accept documentation showing ANCSA descendancy. Accept Title VI or Title VII forms indicating the child is part of a Tribe as documentation to support that the child is a member, even if not enrolled.

*Response:* BIE accepts Tribal enrollment cards and other official documentation from Tribal enrollment offices as evidence of Tribal membership and will examine other documentation on a case-by-case basis to determine whether it verifies that the child is an eligible Indian student.

3. Other Comments Regarding Eligibility of Indian Students

*Comment:* Several commenters referred to specific membership requirements in their Tribes.

*Response:* Tribes, as sovereigns, have the right to determine their own qualifications for membership.

*Comment:* Change references to Tribal ''membership'' to Tribal ''citizenship'' to differentiate from other non-sovereign groups.

*Response:* The Act uses the term Tribal ''member,'' so the regulations use that term for consistency.

*Comment:* Clarify whether Indian students are eligible for JOM if they reside in a boarding school.

*Response:* An Indian student is eligible for JOM services if he or she resides in a ''previously private'' Bureau-funded boarding school, or in a Bureau-funded boarding facility for the purpose of attending public school within the school district.

*Comment:* Why does the age range first refer to age (''age three years''), then to grade (''grade 12'')?

*Response:* The age range begins at age 3 to capture pre-K, and ends at grade 12 to include all who are enrolled in grade 12 regardless of age.

*Comment:* Allow students who are on an Indian Education Plan until age 21, or who have special needs, disabilities, or other challenges that may need to stay in school until they are age 21, to be included as eligible Indian students.

*Response:* Under the rule, any student who is an eligible Indian student remains so through grade 12, regardless of age.

*C. Indian Education Committee*

*Comment:* The proposed rule grants Indian Education Committees too much authority. When a Tribe compacts JOM or includes it in a 477 plan, Committees should no longer have programmatic or budgetary authority over that program. A Committee should not have the power to recommend termination of a contract with a Tribe; Tribes should not have to fret about potential loss of services to Indian children because of Committee politics.

*Response:* Congress requires establishment of an Indian Education Committee to participate fully in the development of programs to be conducted under a JOM contract, approve or disapprove programs to be conducted under those contracts, and carry out other duties as Interior provides by regulation. *See* 25 U.S.C. 5346(a). The full participation in development and authority to approve or disapprove of programs requires programmatic and budgetary authority. While an IEC may recommend cancellation or suspension of a contract with a Tribe under the specific circumstance that the Tribal contractor fails to permit the Committee to exercise its powers and duties, the final decision rests with the awarding official, who is certified under the Awarding Official Certification System. *See* § 273.117.

*Comment:* Indian Education Committees should not be formed for every school district, but instead should be a single body that serves all school districts that receive JOM funds within a Tribal jurisdiction.

*Response:* The composition of the Indian Education Committee is directed by the statute requires establishment of an Indian Education Committee for school districts and refers to whether the local school board is composed of a majority of Indians. Because the composition of the Committee depends upon the local school board composition, a Committee must necessarily be established for each school district. *See* 25 U.S.C. 5346(a).

*Comment:* Employees of the school district, regardless of whether they are Indian or have a child enrolled at the school, have a conflict of interest. They should be made ex-officio non-voting members or technical advisors of the Committee, excluded, or be required to disclose their conflict of interest for the Committee to address.

*Response:* The composition of the Indian Education Committee is directed by the statute.

*Comment:* Having family members serve on an Indian Education Committee may create issues in covertly or overtly wresting control of the Committee.

*Response:* The composition of the Indian Education Committee is directed by the statute.

*Comment:* Legal guardians should be entitled to vote with parents on the Indian Education Committee.

*Response:* The final rule defines ''parent'' to include legal guardians. *See* § 273.106.

*Comment:* Tribes, instead of parents, should have authority to determine who serves on the Indian Education Committee.

*Response:* The composition of the Indian Education Committee is directed by the statute. *See* 25 U.S.C. 5346.

*Comment:* Allow the Tribe, rather than the Indian Education Committee, the authority to cancel a contract.

*Response:* The Indian Education Committee may recommend cancellation, but does not have the authority to cancel. *See* § 273.117.

*Comment:* Education directors should have no decision-making ability over parents as to what funding is spent on; the directors should have administrative power only over implementing the programs and disbursing the funds. Also, local education agencies and Tribes that run and disburse programs have attempted to control what the Indian Education Committee can do in public schools. The Indian Education Committee keeps schools from misusing funding and using JOM funding for what is already in the general budget for the public school.

*Response:* The Indian Education Committee may bring to the attention of the awarding official if the contractor fails to permit the Committee to exercise their powers. *See* § 273.117.

*Comment:* The Indian Education Committee should consult the Tribe when it adopts a grievance policy, as the Tribe has a say over their citizens receiving the JOM benefits.

*Response:* The Indian Education Committee is encouraged to work with the Tribe when developing a grievance policy.

*Comment:* The sections addressing the Indian Education Committee are geared toward the Committee working with contractors that are public school districts, rather than self-governance Tribes or Tribal contractors under the 477 program.

*Response:* The Indian Education Committee is a component of all JOM contracts that is required by Congress. *See* 25 U.S.C. 5346.

*D. Education Plan*

*Comment:* Clarify whether ''prospective contractor'' in § 273.119 refers to a new contractor.

*Response:* ''Prospective contractor'' in § 273.119 refers to a new contractor. For contract renewals, see § 273.192.

*Comment:* Clarify why costs that parents normally are expected to pay for each school must be included in the budget estimates and financial information that is part of the Education Plan; Native American parents normally cannot pay for their children's

additional education costs and rely on JOM services and resources for their children.

*Response:* The requirement for this information is included in the current regulation and carried forward to the final rule. It is required to provide estimates for justifying the need for JOM funds to support the unique educational needs of eligible Indian students.

*Comment:* The Tribe(s) should have the opportunity to review the education plan to ensure it properly uses funds to benefit the children.

*Response:* If the Tribe is the contractor, the Tribe will formulate an education plan in consultation with the Indian Education Committee. *See* § 273.119.

*Comment:* Can we continue to use the same format we have been using for the Education Plan?

*Response:* Yes, there is no prescribed form for the Education Plan, as long as it meets the requirements of subpart D.

*E. Priority to Contracts Serving Indian Students On or Near Reservations*

*Comment:* Clarify what the contracts are being prioritized for in § 273.128.

*Response:* This section prioritizes how new contracts will be awarded if BIE receives more funding.

*Comment:* The Fiscal Year 2020 budget justification states that priority is given to programs that are on or adjacent to Indian reservations located in Oklahoma and Alaska. We disagree with this priority because the funding should be for all Indian students who have specialized and unique needs.

*Response:* The definition of ''eligible Indian student'' does not include a requirement to live on or near a reservation. Section 273.128 establishes a mechanism for prioritization of new programs where there may be limited funding available. This prioritization does not limit contracts only to eligible entities located on or near reservations.

*Comment:* Because of the importance of the JOM program to Tribes, BIE should prioritize Tribes in JOM funding even as it seeks to expand the geographic reach of the program. Under no circumstances should contracts to non-Tribal entities, such as States or public schools, reduce the funds that are available to Tribes to support their children. Tribes should never have to compete with States or other entities for funds, and Tribes should always have priority when seeking or renewing JOM contracts.

*Response:* The final rule adds a provision, which exists in the current regulation, that gives the Tribe the first opportunity to contract, by notifying the BIE by February 1 preceding the school year to be covered by the contract. If the Tribe does not notify the BIE by this date, then BIE may contract with the State, public school district, or Indian corporation. *See* § 273.131(a)–(b).

*Comment:* Proposed § 273.128 states that priority will be given to contracts that serve Indian students on or near reservations. Revise this section to include Alaska Native villages, to account for the fact that there is only one reservation in Alaska.

*Response:* The definition of ''reservation'' at § 273.106 accounts for Alaska Native villages by including ''Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act.''

*Comment:* Indian students should be considered a priority no matter where they reside. Many eligible Indian students live in urban areas far from their reservations and rely on the JOM program. Delete reference to ''on or near'' a reservation because Tribal reservations were assigned arbitrarily and the large majority of our Tribal members live off-reservation and far from the reservation.

*Response:* The definition of ''eligible Indian student'' does not include a requirement to live on or near a reservation. Section 273.128 establishes a mechanism for prioritization of new programs where there may be limited funding available. This prioritization does not limit contracts only to eligible entities located on or near reservations.

*Comment:* Clarify how many miles from a reservation is considered ''near'' a reservation. We have public schools that are near the reservation and would like to apply if possible.

*Response:* The rule does not intend to establish a distance from a reservation for eligibility; rather, § 273.128(a) establishes a mechanism for prioritization of new programs where there may be limited funding available.

*F. Comments on Funding and the Funding Formula*

The proposed rule set out the funding formula for distribution of JOM funds to contractors. The formula includes a ''weight factor'' that is multiplied by the number of eligible Indian students.

1. Funding Formula

*Comment:* The national average cost per pupil that is used in the formula should be broken down to national average cost per Native pupil and national average cost per non-Native pupil.

*Response:* The U.S. Department of Education does not currently provide a breakdown of data on average cost per pupil by Native versus non-Native.

*Comment:* The weight factor does not benefit our Tribe; it reduces the amount of funds allocated to us.

*Response:* The new formula based on the 1.3 weight factor was implemented in 1988 at the direction of Congress as a more realistic weight factor given the level of appropriations.

*Comment:* Funding should not be based on the State average cost per pupil for States that poorly fund their education programs because children are then at the whim of the politics of that State. Instead, use a blended rate or the medium of all States.

*Response:* The weight factor provides a lower boundary to help equalize among States. Specifically, if the State average divided by the national average is less than the weight factor (1.3), then the weight factor is used.

*Comment:* Explain how the per pupil amount is determined.

*Response:* The cost per pupil is based upon U.S. Department of Education public data.

*Comment:* The national average cost per pupil does not accurately reflect the average cost per pupil in Tribal communities where we lack infrastructure. For example, in Alaska, we have kindergarten and high school students in the same facility, being taught by the same teacher.

*Response:* The national average cost per pupil is used as the denominator in calculating the weight factor, so if the national average cost per pupil is significantly higher than the State average cost per pupil, then calculated weight factor will be lower than 1.3, and the minimum weight factor of 1.3 will be used instead. The minimum weight factor is an equalizer for communities where the State average cost per pupil is low.

*Comment:* If the schools that receive JOM funds are required to meet State standards, then JOM funding is treated like general funding for students, and not specialized and unique funding as intended to meet the needs of eligible Indian students.

*Response:* JOM funding may be used only to provide educational benefits to eligible Indian students for the programs, activities, and equipment set out in § 273.113; it is not general funding.

*Comment:* Although we fully support the attempt to not reduce funds for contracting parties, BIE should be engaged in extensive Tribal consultation on how best to update the formula while holding Tribes harmless.

*Response:* BIE has conducted six webinars and two full-day, in-person consultation sessions on this topic.

2. ''Hold Harmless'' Provision

*Comment:* How does the hold harmless provision affect schools with 50 percent or more Native students?

*Response:* The hold harmless provision does not depend upon the percentage of eligible Indian students a contractor has.

*Comment:* Clarify how the funding formula will impact smaller Tribes once the four-year ''hold harmless'' period expires.

*Response:* Depending on Congressional appropriations, Tribal organizations who contract under JOM to meet the specialized and unique educational needs of eligible Indian students may see a change in the amount of JOM funding received once the four-year ''hold harmless'' period expires. The funding formula requires multiplication of the number of eligible Indian students by a weight factor so, to some extent, the number of eligible Indian students a Tribal organization serves will affect how much funding is allocated to that Tribal organization.

*Comment:* After the four-year ''hold harmless'' period expires, funding may decrease and smaller Tribes may be at a significant disadvantage. Consider closely any plan that would result in less money for small Tribal communities or smaller eligible Indian student counts.

*Response:* Congress decides the level at which JOM is funded. The funding formula affects allocation of that funding. The funding formula reflects the formula used since 1988.

3. Availability of Funding

*Comment:* Many commented on the need for the JOM program to be fully funded or requested an increase in JOM funding, including:

- The Tribe's JOM program has always been underfunded, and has never received funding to recover from the additional decreases made during sequestration. Adequate funding is needed.
- We should be expanding the program to provide more services, so the formula should not result in less funding. Revisit the funding formula to make sure equal or greater funding is available for eligible Indian students. Funding must follow the students.
- Any reductions to already meager JOM funding is categorically unacceptable. The updated count required by the Act will demonstrate an explosion of funding need in FY20 and beyond. Before the increased student count begins reducing funds per-awardee below the FY17 level, overall JOM program funding increases must be in place.
- Tribes should receive no reductions in funding; if the treaty and trust obligations were fully honored, Tribes would be fully funded. Decreasing funds to Tribal JOM contractors is inconsistent with fulfillment of trust and treaty obligations to provide for Indian education.
- The current weight factor (1.3) should be increased to an amount that is consistent with the needs of Native students and funding per students should be increased at least to the level established in 1994.
- Public schools should receive no reductions in funding if they consult with area Tribes for their consent on use of funds for academic, social, and cultural enrichment.
- BIE has a responsibility to determine the amount necessary to fully serve this need, and then passionately advocate for it during the federal budget development cycle, ensuring Federal appropriators are aware of the negative consequences for Indian Country.
- BIE plays a critical role in ensuring the availability of funds. It is incumbent on BIE to request the funds needed to adequately support the JOM program.

*Response:* Congress decides the level at which JOM is funded, but BIE will consider this comment in preparing its annual report to Congress. As stated in § 273.201, BIE will recommend appropriate funding levels for the program based on the most recent determination of the number of eligible Indian students served by each contracting party.

*Comment:* If a contractor fails to submit their student count, they may not receive funds for the next school year, but will that failure affect appropriations? Are appropriations tied to the annual student count reported?

*Response:* Congress determines the amount of appropriations. BIE is unable to speculate on whether Congress considers the annual student count.

*Comment:* If additional schools apply for JOM funds, there is no assurance the funding will increase to accommodate the programs. Funding to existing programs could decrease. Without funding, we cannot meet the specialized and unique needs of eligible Indian students.

*Response:* The rule provides that ''subject to the availability of appropriations,'' eligible entities who have not previously entered into a contract for JOM may submit a proposal. *See* § 273.125.

4. Use of JOM Funding

*Comment:* In the past, JOM funding has been used to support culture and language programs, but the proposed reference in § 273.113(b) to ''culturally sensitive dropout prevention activities'' does not appear to encompass those. Revise to include cultural activities.

*Response:* The final rule deletes proposed § 273.113(b) because the language at § 273.113(a)(1), allowing for cultural programs, is more encompassing and would include language programs.

*Comment:* JOM has historically funded more than academics, to include social services. Retain social services as a component of JOM, as social emotional learning is gaining popularity in schools and the trauma index of our children is skyrocketing.

*Response:* JOM funds are to be used to provide educational benefits only and the final rule clarifies that any counseling funded through JOM is limited to academic, career and college-readiness counseling. *See* § 273.113.

*Comment:* Keep community-based programs, as they are best able to meet the needs of their children.

*Response:* The Indian Education Committee may choose to develop community-based programs to meet the unique educational needs of eligible Indian students. *See* §§ 273.115 and 273.117.

*Comment:* Ensure that JOM funding can continue to be used for food for children who go without unless school is in session and for Tribal cultural gatherings.

*Response:* As in the current rule, the final rule provides that education plans may provide for free school lunches for eligible Indian students who do not qualify for free U.S. Department of Agriculture lunches. *See* § 273.143(c).

*Comment:* Ensure that JOM funding can be used for school supplies, sports equipment, and similar items that boost self-esteem, increase participation, and contribute to school spirit, as well as dues, fees, registration, summer school, shoes, clothes, eyeglasses, technology, facility rentals, academic incentives, parental involvement incentives, student direct services, sports fees, leadership camps, sports camps, substance abuse, hygiene items.

*Response:* The final rule allows JOM funds to be used for important needs, such as school supplies and items that enable recipients to participate in curricular and extra-curricular activities. *See* § 273.113(a)(3).

*Comment:* JOM funding should be available to train members of the Indian Education Committee so that members understand their duties, roles, and responsibilities, and to allow stipend and travel costs where internet is not available to meet remotely.

*Response:* As in the current regulation, the final rule allows a JOM contract to include funding to support the duties of the Indian Education Committee, including members' attendance at meetings (such as stipend and travel costs) and training sessions, as the Committee deems appropriate. *See* § 273.127.

*G. Comments on Reporting Requirements*

*Comment:* When are reports due and who do we send them to?

*Response:* The final rule provides that the annual report is due on or before September 15 (s*ee* § 273.152) and should be sent to the awarding official, Indian Education Committee(s) and Tribe(s) (*see* § 273.153).

*Comment:* Consider that May and June are busy for schools when setting reporting deadlines.

*Response:* The final rule provides that the annual report is due on or before September 15, to allow sufficient time following schools' busy seasons to prepare. *See* § 273.152.

*Comment:* If a contractor fails to meet the reporting requirements, what will BIE do with the funds it withholds?

*Response:* Funds that are withheld for failure to meet reporting requirements will be allocated among the other JOM contractors.

*Comment:* Have you modernized the application and reporting process?

*Response:* BIE accepts applications and reports electronically through email and is open to suggestions as to how to further modernize these processes.

*Comment:* Clarify what reporting requirements apply to self-governance compact Tribes.

*Response:* The final rule adds a provision to § 273.111 to clarify what reporting requirements self-governance compact Tribes are subject to.

*Comment:* Add an exception to the annual reporting requirements in subpart G to follow the 477 reporting requirements when applicable because the reporting requirements in §§ 273.151 and 273.152, to report by a certain date and to include specific data, conflict with existing law under P.L. 102–477.

*Response:* BIE has not added the requested exception because the JOM Modernization Act establishes a reporting framework that requires all JOM contractors to report on the same schedule. Specifically, the Act requires each contracting party to submit a report for each academic year, and provides that a failure to report will result in the contracting party receiving no amounts for the following academic year. BIE is also required to submit an annual report with the most recent determination of the number of eligible Indian students served by each contracting party. 25 U.S.C. 5348(c).

*Comment:* Make reporting and eligibility requirements consistent and uniform for all JOM contracts, whether the contractor is a Tribe, a public school, or other contractor, to place them in the same calendar year and be more uniform with other programs or contracts.

*Response:* The final rule provides for a consistent schedule for reporting: annual reports are due September 15 of each year, regardless of who the contracting party is or the vehicle through which they receive their funds (*e.g.,* 477 plan, self-determination contract, or self-governance contract or compact). *See* § 273.152. Eligibility requirements are consistent for all Indian students, as specified in § 273.112.

*Comment:* I oppose withholding funds for the next school year if a contractor fails to comply with the reporting requirements.

*Response:* Under § 273.156, BIE will provide technical assistance and training to assist existing contractors in complying with the reporting requirements.

*H. Agency Administration of JOM*

*Comment:* Clarify who the Regional Director is. We believe it should be someone in BIE, as most BIA Regional Directors are not experts in education matters.

*Response:* The final rule replaces the term ''Regional Director'' with ''BIE Director'' to reflect that BIE is administering JOM.

*Comment:* Allow the Regional Office to receive funding to provide technical assistance because Regional Offices are closer to Tribes.

*Response:* BIE is responsible for providing technical assistance and will work with BIA Regions to provide the technical assistance to Tribes.

*Comment:* As part of the current proposed rule, the BIE requested comment on a proposal to shift responsibility for approving JOM program contracts from the BIA to the BIE. Due to budgetary processes and capacity, the BIA has historically processed JOM contracts on behalf of the BIE. In early 2019, the BIE took an unprecedented step toward managing its own budget and contracting processes. As the BIE builds capacity for to support its own budgetary systems, management of contracts for education programs and services should be shifted to the BIE for administration and approval. Streamlining administration education programs under BIE authority provides greater flexibility for those with the most knowledge of education programs and avoids bureaucratic delays that inevitably occur when both the BIE and BIA are required to sign off on routine contracts. For this reason, we support the proposal to shift JOM contract administration from the BIA to the BIE.

*Response:* BIE is continuing to build capacity and is exploring options to streamline the management of education contracts.

*Comment:* We request that administration of contracts remain with BIA instead of BIE because there is no BIE presence in Alaska, and that could negatively affect efficiency here. Additionally, because many Tribal organizations operate their JOM through a 477 plan, retaining administration with BIA will better align the programs.

*Response:* BIE is working with BIA to ensure management of education contacts is as efficient as possible.

*I. Participation in Rulemaking and Implementation*

*Comment:* We request that BIE not move forward with JOM modernization without better engaging program participants to enhance the rulemaking process with a working group including Tribal representatives.

*Response:* BIE engaged in Tribal consultation and reached out to stakeholders in developing this regulation and will continue to engage with JOM contractors and Tribes as it implements the JOM program.

*Comment:* Update the JOM guideline booklet to set out what Tribal contractors can do versus public school contractors.

*Response:* BIE will be updating the JOM handbook to reflect the changes made by this final rule.

*Comment:* Some Tribes and contractors would have participated in the meetings and consultation sessions on the proposed rule but were off for the summer.

*Response:* BIE scheduled the meetings in order to allow it to meet the statutory deadline for a final rule and so as not to interfere with scheduled school activities. BIE offered webinars to allow for easier access regardless of location.

*Comment:* In implementing these changes, BIE should regularly meet with Tribal stakeholders to evaluate opportunities to improve the rule and the program.

*Response:* BIE welcomes Tribal input on best practices and other improvements in implementing the JOM program.

*Comment:* Insert regulatory text that requires formal Tribal consultation to

expand geographic coverage and enhance Tribal participation.

*Response:* The final rule adds that BIE will consult with Tribes in implementing § 273.104.

*Comment:* Require BIE to conduct consultation with area Tribes prior to any cancellation to allow the Tribes to take over administration of the funds.

*Response:* If a contract is cancelled for cause, the Bureau will attempt to perform the work by another contract, which may be the Tribe. See § 273.195(d).

*Comment:* Parents are the second most important key stakeholder after children in this process.

*Response:* The public meetings on the proposed rule included parents.

*J. Miscellaneous Comments*

*Comment:* Will existing contractors need to reapply?

*Response:* Existing contractors will not need to reapply.

*Comment:* Proposed § 273.126 refers to minimum State standards or requirements, but some schools work with standards set by their accrediting agency, rather than the State.

*Response:* The final rule addresses this comment by changing ''State standards or requirements'' to ''State or other applicable standards or requirements.''

*Comment:* Requiring a public school district to establish in its proposal to contract that it has at least 70 percent eligible Indian students enrolled is unreasonable. Lower the figure to 50 percent.

*Response:* The final rule changes the required percentage to 50 percent because 50 percent more accurately reflects the enrollment numbers at public school districts that meet the remaining requirements of § 273.126.

*Comment:* We support having payments be made in advance for schools.

*Response:* As in the current rule, the final rule allows for advance payments. *See* § 273.142.

*Comment:* Clarify in section 273.192(a) whether the new Tribal resolution that is required if the current one has expired or its terms do not address renewal is required annually on some other time schedule.

*Response:* Section 273.192(a) requires the new Tribal resolution only upon renewal of the contract.

## IV. Summary of Final Rule and Changes From Proposed Rule to Final Rule

This final rule amends part 273 as a whole to implement the JOM Modernization Act and make other changes necessary to update the rule as described below. An edit made throughout the rule was to replace ''Regional Director'' with ''BIE Director'' to reflect that BIE, rather than BIA, will be primarily implementing part 273.

*A. General Provisions and Definitions (Subpart A)*

Final subpart A updates each of the existing sections (purpose and scope, definitions, revision or amendment of regulations, and policy of maximum Indian participation). For example, the final rule splits the purpose and scope section into several sections; adds, revises, and removes definitions; and changes requirements for revising or amending the regulations to provide that the Bureau will follow the Administrative Procedure Act. The final rule adds a section on how the Secretary will ensure full geographic coverage and full participation to address a requirement in the JOM Modernization Act that the Secretary consult with eligible entities that have not previously participated in the JOM program.

Changes from the proposed rule to final rule in this subpart include:

- Adding a sentence to indicate that the Secretary will consult with Tribes (and contact State educational agencies, local educational agencies, and Alaska Native organizations that have not previously entered into a contract) in ensuring geographic coverage and the full participation of all federally recognized Tribes and school districts to better reflect the statutory requirement for consultation. *See* § 273.104.
- Adding a definition for ''BIE Director'' as this term replaced the proposal to include ''Regional Director.'' *See* § 273.106.
- Adding a definition for ''Bureau-funded school'' to clarify what schools are included, as this term is used in the description of who is an ''eligible Indian student.'' *See* § 273.106.
- Adding clarification in the definition of ''contract'' to distinguish JOM contracts from Indian Self-Determination and Education Assistance Act contracts and compacts. *See* § 273.106.
- Deleting reference to BIA in the definition of ''Director.'' *See* § 273.106.
- Adding a definition of ''parent,'' as this term is used throughout the part. *See* § 273.106.
- Adding a definition of ''sectarian school,'' as this term is used in the description of who is an ''eligible Indian student.'' *See* § 273.106.
- Adding to the definition of ''Tribal organization'' the statutory requirement for each Tribe's approval of a contract to perform services benefitting more than one Tribe. *See* § 273.106.

*B. Program Eligibility & Applicability (Subpart B)*

Final subpart B addresses the same topics of eligible applicants (but updates the term to refer to ''eligible entities'' to reflect the language of the JOM Modernization Act) and eligible students as the current subpart B, but moves the other subpart B topics to subparts C, D and E. Subpart B also addresses what funds may be used under JOM contracts and what programs may be contracted under the JOM Act. The final rule revises the criteria for ''eligible Indian students'' and adds examples of how JOM contract funds can be used. The final rule also clarifies which provisions Tribal organizations are subject to (*see* proposed § 273.111).

Changes from the proposed rule to final rule in this subpart include:

- Revising § 273.111 to provide that Tribal organizations are subject to the § 273.113 restrictions on what JOM funds may be used for.
- Clarifying in § 273.111 that Tribal organizations are subject to reporting requirements for JOM. *See* § 273.111.
- Clarifying that the Indian Education Committee has the authority only to recommend cancellation or suspension of contracts, rather than authority to revoke them. *See* § 273.111(b)(8).
- Adding reference to self-governance regulations at 25 CFR 1000 for contract proposals, clarifying that education plans must be submitted to the BIE Director, and clarifying that redesign and reallocation under Title I contracts or Title IV compacts must comply with another regulatory provision. *See* § 273.111(c).
- Clarifying an exception for students enrolled in previously private schools that may be eligible Indian students. *See* § 273.112(b).
- Referring to the definition of ''Indian Tribe'' rather than repeating ''federally recognized.'' *See* § 273.112(c).
- Clarifying that ''counseling'' refers to academic, career and college-readiness counseling. *See* § 273.113(a)(1).
- Deleting reference to culturally sensitive dropout prevention activities and instead add ''establish'' to the broader description of programs. *See* § 273.113(a).
- Changing the recipient of annual reports from the awarding official to the BIE Director. *See* § 273.152, § 273.153.

*C. Indian Education Committee (Subpart C)*

Final subpart C addresses the Indian Education Committee, which is in

current subpart B. The final rule revises the description of ''Indian Education Committee'' to include a preference in committee membership for parents and guardians of children enrolled in a school. The rule also removes a requirement to report to the Bureau regarding who will serve on the Indian Education Committee. The rule adds that organizational papers and by-laws of the Indian Education Committee may include additional powers and duties that would permit the Committee to, among other things, establish policy and procedures for hearing grievances.

Changes from the proposed rule to final rule in this subpart include:

- Adding the statutory allowance for the Tribe(s) to specify the Local Indian Committee(s) or Indian Advisory School Board(s) as the Indian Education Committee if the Indian Education Committee was established prior to 1975. *See* § 273.115.
- Adding a cross-reference in the list of powers and duties of the Indian Education Committee to § 273.194, which more fully sets out how an Indian Education Committee could recommend cancellation or suspension of a contract. *See* § 273.117(d).

*D. Education Plan (Subpart D)*

Final subpart D addresses the contents of the education plan (currently addressed in subpart B) and adds a section specifying that an education plan will be approved by a the BIE Director, under 25 U.S.C. 5345.

No substantive changes from the proposed rule to final rule, beyond changing ''Regional Director'' references to ''BIE Director'' were made in this subpart.

*E. Contract Proposal, Review, and Approval (Subpart E)*

The final rule moves provisions that are in the current subpart B regarding applications and requests to contract, contract review, and approval, to a new subpart E. This new subpart includes a section regarding how eligible entities who have not participated in the program in the past should submit a contract proposal. The final rule changes the contract approval period from 60 days to 90 days. The change from 60 to 90 days aligns JOM contract approval with the statutory 90-day approval period for both Public Law 93–638 contracts and Public Law 102–477 plans. The subpart also includes updates to outdated statutory and regulatory citations. Since the BIE is responsible for administering Indian education programming for the Department, the final rule reflects that BIE is the primary agency administering JOM.

Changes from the proposed rule to final rule in this subpart include:

- Revising two requirements for a public school district to establish to contract for operational support: that the funds are needed to meet ''other applicable standards'' if State standards do not apply; and lowering the percentage of eligible Indian enrollment in the school district from 70 to 50. *See* § 273.126(b)(1).
- Adding that a Tribal resolution is needed in support of a contract proposal if the contractor is a Tribal organization. *See* § 273.130.
- Adding in the option of first refusal that is in the current regulation for Tribes who would like to enter into a contract to notify the BIE no later than February 1 preceding the school year for the contract, and only after that date will the BIE Director seek to contract with the State, public school district, or Indian corporation. *See* § 273.131(b).

*F. Funding Provisions (Subpart F)*

Final subpart F includes provisions that are in current subpart C. This new subpart F revises the funding formula to reflect current practice, with the four-year ''hold harmless'' and phased decrease approach provided by the JOM Modernization Act. This subpart also moves the section on advance payments from current subpart D and revises the section on advance payments to comply with 25 U.S.C. 5324(b).

No substantive changes were made to this subpart from the proposed rule to final rule, beyond changing ''Regional Director'' references to ''BIE Director'' and updating the fiscal year references from 2017 to 2018.

*G. Annual Reporting Requirements (Subpart G)*

Final subpart G revises reporting requirements to reflect the annual student count reporting requirements of the JOM Modernization Act. As such, this subpart adds sections requiring an annual report, describing what must be included in the annual report, describing what will happen if a contractor fails to submit an annual report, and identifying who will notify a contractor that they have failed to submit an annual report. This subpart also includes a section explaining that the Bureau is required to provide technical assistance and training, and describing the process to request assistance to meet annual reporting requirements. An additional new section describes how a decrease in the reported student count will affect future funding. The subpart includes language reflective of the JOM Modernization Act defining a ''contracting party'' as an entity that has a contract through a program authorized under this Act.

No substantive changes were made in this subpart from the proposed rule to final rule, beyond changing ''Regional Director'' references to ''BIE Director'' and, in § 273.155, changing ''awarding official'' to ''BIE Director.''

*H. General Contract Requirements (Subpart H)*

Final subpart H addresses many of the same topics as current subpart D. In addition to updating outdated statutory and regulatory citations, this subpart updates records requirements now that contract files are to be filed under the Department Records Schedule. This subpart also revises a contractor's responsibility for penalties under the Privacy Act requirements, and revises who will investigate a complaint received of a Civil Rights Act violation in State school districts and provides that such investigations will be performed by the Department of Education and removes references to the Department of Justice.

Changes to this subpart from the proposed rule to final rule included changing ''Regional Director'' references to ''BIE Director'' and adding a new paragraph (d) to § 273.170 to address requirements for Self-Governance Tribes to submit their education plans to the BIE Director.

*I. Contract Renewal, Revisions, and Cancellations (Subpart I)*

Final subpart I addresses the topics in current subpart E, and also includes new provisions adding a contract renewal process.

No substantive changes from the proposed rule to final rule, beyond changing ''Regional Director'' references to ''BIE Director'' were made in this subpart.

*J. Responsibility and Accountability (Subpart J)*

This final subpart addresses requirements in the JOM Modernization Act which, among other things, requires the Secretary to provide an annual report to Congressional committees and subcommittees to include a determination on the number of eligible students served by each contracting party, recommendations on appropriate funding levels for the program based upon such determination, and an assessment of the contracts under JOM.

No changes from the proposed rule to final rule were made in this subpart.

*K. Appeals (Subpart K)*

Final subpart K includes provisions that are currently at subpart F and encourages the use of an Alternate Dispute Resolution (ADR) process that has been established by the Department of the Interior prior to filling a formal appeal. The subpart would also refers to the Contracts Dispute Act of 1978, 41 U.S.C. 7101—7109, which created the Civilian Board of Contract Appeals (CBCA). The CBCA is an independent tribunal with its own formal appeal process. Additional information on the CBCA can be found at: *https://www.dbca.gov/index.html.* Tribes and Tribal organizations may bring appeals involving Self-Determination Act contracts before the CBCA under 25 U.S.C. 5331(d)-(e).

The only change from the proposed rule to final rule in this subpart was to add a reference to 25 CFR part 1000 as an avenue to request an appeal, as applicable.

**V. Procedural Requirements**

*A. Regulatory Planning and Review (E.O. 12866 and 13563)*

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The BIE has developed this rule in a manner consistent with these requirements. This rule is also part of the Department's commitment under the Executive Order to reduce the number and burden of regulations.

*B. Reducing Regulations and Controlling Regulatory Costs (E.O. 13771)*

E.O. 13771 of January 30, 2017, directs Federal agencies to reduce the regulatory burden on regulated entities and control regulatory costs. E.O. 13771, however, applies only to significant regulatory actions, as defined in Section 3(f) of E.O. 12866. Therefore, E.O. 13771 does not apply to this rule.

*C. Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*D. Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more because the funding available through JOM does not approach this amount.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, Tribal or local government agencies, or geographic regions because this rule affects only certain education contracts.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because this rule affects only certain education contracts.

*E. Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

*F. Takings (E.O. 12630)*

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this rule does not affect individual property rights protected by the Fifth Amendment or involve a compensable ''taking.'' A takings implication assessment is not required.

*G. Federalism (E.O. 13132)*

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement because the rule affects only individuals' eligibility under certain education contracts. A federalism summary impact statement is not required.

*H. Civil Justice Reform (E.O. 12988)*

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

*I. Consultation With Indian Tribes (E.O. 13175)*

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has substantial direct effects on federally recognized Indian Tribes because one portion of the criteria for eligibility of Indian students is Tribal membership. The proposed rule was published on June 27, 2019. *See* 84 FR 30647. During the 60-day public comment period, BIE held four consultations sessions directly with the Tribes and four consultation sessions with eligible entities and interested parties: July 16, 2019, in Tahlequah, OK; July 19, 2019, in Bismarck, ND; July 23, 2019, via webinar; and July 25, 2019, via webinar. *See* 84 FR 30647. The public comment period on the proposed rule ended on August 26, 2019.

*J. Paperwork Reduction Act*

This rule contains information collections requiring approval under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* The Department is seeking approval for a new OMB Control Number.

*OMB Control Number:* 1076–0193.

*Brief Description of Collection:* The regulations at 25 CFR 273, Subpart E, implement in section 7(c) Contracting Party Student Count Reporting Compliance, of the Johnson-O'Malley Supplemental Indian Education Program Modernization Act (Pub. L. 115–404), enacted December 31, 2018. These regulations require the BIE to implement an annual reporting requirement for existing JOM

contractors to report a student count served by each contracting party, and an accounting of the amounts and purposes for which the contract funds were expended. The information received from the annual reporting requirements of the contractor will allow the Secretary to provide an annual report, including the most recent determination of the number of eligible Indian students served by each contracting party, recommendation on appropriate funding levels, and an assessment of the contracts receiving JOM contracts, to the appropriate Committee and Subcommittees in the Senate and of the House of Representatives. The JOM Modernization Act indicates a ''contracting party'' is an entity that has a contract through a program authorized under this Act. It does not exclude Tribal organizations from the annual reporting requirements. The Department is seeking approval for a new OMB Control Number.

*Title of Collection:* Johnson O'Malley Student Count Annual Report.

*Type of Review:* New collection.

*Respondents/Affected Public:* Tribal organizations, States, public school districts, Indian corporations.

*Total Estimated Number of Annual Respondents:* 312.

*Total Estimated Number of Annual Responses:* 1,197.

*Estimated Completion Time per Response:* Ranges from 2 to 80 hours.

*Total Estimated Number of Annual Burden Hours:* 11,450.

*Respondent's Obligation:* Required to Obtain a Benefit.

*Frequency of Collection:* Annually.

*Total Estimated Annual Non-hour Burden Cost:* $0.

*K. National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because these are ''regulations . . . whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.'' 43 CFR 46.210(i). The BIE has also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

*L. Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

**List of Subjects in 25 CFR Part 273**

Elementary and secondary education, Grant programs-Indians, Indians-education, Schools.

For the reasons set forth in the preamble, the Department of the Interior, Bureau of Indian Affairs, revises 25 CFR part 273 to read as follows:

## PART 273—EDUCATION CONTRACTS UNDER JOHNSON–O'MALLEY ACT

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**Authority:** Secs. 201–203, Pub. L. 93–638, 88 Stat. 2203, 2213–2214 (25 U.S.C. 455–457), unless otherwise noted.

## Subpart A—General Provisions and Definitions

### § 273.101 What is the purpose and scope of this part?

The purpose of this part is to set forth the process by which the Secretary will enter into contracts for the education of Indian students under the Johnson-O'Malley Act. Such contracts are for the purpose of financially assisting those efforts designed to meet the specialized and unique educational needs of eligible Indian students, including supplemental programs and school operational support, where such support is necessary to maintain established State educational standards.

### § 273.102 How will revision or amendments be made to this part?

Prior to making any substantive revisions or amendments to this part, the Secretary will consult with Indian Tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and will consider their views in preparing the proposed revision or amendment. Nothing in this section precludes Indian Tribes or national or regional Indian organizations from initiating a request for revisions or amendments.

### § 273.103 What is the Secretary's policy of maximum Indian participation?

The meaningful participation in all aspects of educational program development and implementation by those affected by such programs is an essential requisite for success. Such participation not only enhances program responsiveness to the needs of those served, but also provides them with the opportunity to determine and affect the desired level of educational achievement and satisfaction which education can and should provide. Consistent with this concept, maximum Indian participation in the development, approval, and implementation of all programs contracted under this part is required.

### § 273.104 How will the Secretary extend geographic coverage and enhance participation under the Johnson-O'Malley Act?

The Secretary will, to the extent practicable, and subject to the availability of appropriations, ensure full geographic coverage and the full participation of all federally recognized Tribes and school districts, regardless of whether the school districts or Tribal organizations had entered into a contract under the Johnson-O'Malley Act before fiscal year 1995. To the maximum extent practicable, the Secretary will consult with Indian Tribes and contact State educational agencies, local educational agencies, and Alaska Native organizations that have not previously entered into a contract in the implementation of this section.

### § 273.105 How do these regulations affect existing Tribal rights?

Nothing in these regulations may be construed as:

(a) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian Tribe;

(b) Authorizing or requiring the termination, waiving, modifying, or reducing of any existing trust responsibility of the United States with respect to the Indian people;

(c) Permitting significant reduction in services to Indian people as a result of this part; or

(d) Mandating an Indian Tribe to request a contract or contracts. Such requests are strictly voluntary.

### § 273.106 What key terms do I need to know?

Terms used in this part:

*Academic year* means the period of the year during which students attend an educational institution.

*Appeal* means a request for an administrative review of an adverse Agency decision.

*Approving official* means the BIE Director, or Agency Superintendents (for Tribes assigned under their management), has the responsibility and duties to review, approve or decline the contract in accordance with the Act.

*Awarding official* means any person who by appointment or delegation in accordance with applicable regulations has the authority to enter into and administer contracts on behalf of the United States of America and make determinations and findings with respect thereto. This person can be a contracting officer or other authorized Federal official.

*BIE Director* means the Bureau of Indian Education Director or his or her designee.

*Bureau* or *BIE* means the Bureau of Indian Education.

*Bureau-funded school* means a Bureau-operated elementary or secondary day or boarding school; or a Bureau-operated dormitory for students attending a school other than a Bureau school; or a Tribally controlled elementary school, secondary school, or dormitory that receives financial assistance for its operation under a contract, grant, or agreement with the Bureau under the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act, as amended.

*Calendar year* means the period of 365 days (or 366 days in leap years) starting from January 1.

*Capital outlay* means money spent to acquire, maintain, repair, or upgrade capital asset. Capital assets, also known as fixed assets, may include machinery, land, facilities, or other business necessities that are not expended during normal use.

*Contract* means to transfer the funds in support of the efforts designed to meet the specialized and unique educational needs of Indian students in the Johnson-O'Malley program from the Federal Government to the contractor. Tribes availing themselves of Public Law 93–638, the Indian Self-Determination and Education Assistance Act, may receive funds under Title I contracts or Title IV contracts.

*Contracting party* means an entity that has a contract through a program authorized under the Johnson-O'Malley Act.

*Contractor* means any Tribal organization, State, school district, or Indian corporation to which a contract has been awarded.

*Days* means calendar days; except where a date specified in these regulations falls on a Saturday, Sunday, or a Federal holiday, the period will carry over to the next business day.

*Debt retirement* means the act of paying off debt completely to a lender.

*Director* means the Director of the Bureau of Indian Education.

*Economic enterprise* means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

*Education plan* means a comprehensive plan for the programmatic and fiscal services of and accountability by a contractor for the education of eligible Indian students.

*Eligible entity* means a Tribal organization, State, public school district, or Indian corporation is eligible to request a contract for a supplemental or operational support program under this Act. For purposes of this part, previously private schools are considered Tribal organizations.

*Existing contracting party* means a contracting party that has a contract under this Act that is in effect on the date of the JOM Modernization Act (Pub. L. 115–404), enacted December 31, 2018.

*Fiscal year* means the period used by the Bureau for accounting and budget purposes. The Bureau's fiscal year begins October 1 and ends September 30.

*Indian* means a person who is a member of an Indian Tribe.

*Indian Advisory School Board* means an Indian advisory school board established pursuant to 25 U.S.C. 5342–5347 prior to January 4, 1975.

*Indian corporation* means a legally established organization of Indians chartered under State or Federal law and which is not included within the definition of ''Tribal organization''.

*Indian Education Committee* means one of the entities specified by § 273.115.

*Indian Tribe* means any Indian Tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the U.S. Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

*Initial contract proposal* and *contract proposal* means a proposal for education contracts under the Johnson-O'Malley Act for the purpose of financially assisting those efforts designed to meet the specialized and unique educational needs of eligible Indian students, including programs supplemental to the regular school program and school operational support, where such support is necessary to maintain established State educational standards.

*Johnson-O'Malley Act* means the Act of April 16, 1934 (48 Stat. 596), as amended by the Act of June 4, 1936 (49 Stat. 1458, 25 U.S.C. 452–456), and by the Act of January 4, 1975 (88 Stat. 2203), and further amended by the Johnson-O'Malley Supplemental Indian Education Program Modernization Act (Pub. L. 115–404), enacted December 31, 2018 (JOM Modernization Act).

*Local Indian Committee* means any committee established pursuant to 20 U.S.C. 7424(c)(4), which provides that the committee must be composed of and selected by parents and family members of Indian children; representatives of Indian Tribes on Indian lands located within fifty miles; teachers in the schools; and if appropriate, Indian students attending secondary schools.

*New contracting party* means an entity that enters into a contract under this Act after the date of enactment of the JOM Modernization Act (Pub. L. 115–404), enacted December 31, 2018.

*Operational support* means those expenditures for school operational costs in order to meet established State educational standards or Statewide requirements and as specified in § 273.126.

*Parent* means the lawful father or mother of someone, and may include:

(1) Either the natural father or the natural mother of a child;

(2) The adoptive father or adoptive mother of a child;

(3) A child's putative blood parent who has expressly acknowledged paternity;

(4) An individual or agency whose status as guardian has been established by judicial decree.

*Previously private school* means a school (other than a Federal school formerly operated by the Bureau) that is operated primarily for Indian students from age 3 years through grades 12; and, which at the time of application is controlled, sanctioned, or chartered by the government body(s) of an Indian Tribe(s).

*Public school district* means a State-funded school district that:

(1) Serves public elementary schools or public secondary schools; and

(b) Has established or will establish local committees or is using a committee or Indian advisory school board to approve supplementary or operational support programs beneficial to Indian students.

*Reservation* or *Indian reservation* means any Indian Tribe's reservation, pueblo, colony, or rancheria, including former reservations in Oklahoma, Alaska Natives regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

*School district* or *local education agency* means that subdivision of the State which contains the public elementary and secondary educational institutions providing educational services and is controlled by a duly elected board, commission, or similarly constituted assembly.

*Scope of work* means a framework document that will outline the work that will be performed under a contract and detail the expectations for the Johnson-O'Malley program.

*Secretary* means the Secretary of the Interior.

*Sectarian school* means a school sponsored or supported, at least in part, by a religious denomination; also commonly known as a parochial school.

*State* means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and each of the outlying areas, or any political subdivision of the 50 States.

*School official* or *school administrator* means a person employed by the school in an administration, supervisory, academic, or support staff position.

*Supplemental program* means a program designed to meet the specialized and unique educational needs of eligible Indian students that may have resulted from socio-economic conditions of the parents, from cultural or language differences or other factors. Programs may also provide academic assistance to Indian students for the improvement of student learning,

increase the quality of instruction, and as provided by § 273.143(b).

*System of record* means a system of record that contains information that is retrieved by an individual name or other unique identifiers.

*Tribal government, Tribal governing body* and *Tribal Council* means the recognized governing body of an Indian Tribe.

*Tribal organization* means the recognized governing body of any Indian Tribe or any legally established organization of Indians or Tribes which is controlled, sanctioned, or chartered by such governing body or bodies, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; provided that in any case where a contract is let to an organization to perform services benefitting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting of the contract.

## Subpart B—Program Eligibility & Applicability

### § 273.110 Who is eligible to request contracts under the Johnson-O'Malley Act?

The following entities are eligible to enter into an education contract under the Johnson-O'Malley Act for the purpose of financially assisting efforts designed to meet the specialized and unique educational needs of eligible Indian students, including supplemental programs and school operational support, where such support is necessary to maintain established State educational standards:

(a) Tribal organizations;

(b) States;

(c) Public school districts that:

(1) Serve public elementary schools or public secondary schools; and

(2) Have a local school board composed of a majority of Indians or have established or will establish an Indian Education Committee, as described in § 273.115 to approve supplementary or operational support programs beneficial to Indian students; and

(d) Indian corporations.

### § 273.111 How do the requirements for Tribal organizations differ from those for other eligible entities?

(a) States, public school districts, or Indian corporations must comply with the requirements in this part.

(b) The requirements of this part apply to Tribal organizations (including but not limited to provisions regarding how funds can be used under the Johnson-O'Malley Act and reporting requirements), except that Tribal organizations do not need to comply with:

(1) Sections 273.120—273.121, regarding approval of an education plan by the Director;

(2) Section 273.125, regarding entering into a contract as a new contracting party;

(3) Sections 273.132—273.135, regarding review, approval, and negotiation of the contract;

(4) Section 273.142, regarding advance payments;

(5) Any section in subpart H (other than the following sections, which still apply: § 273.170, regarding special program provisions to be included in a contract, § 273.172, regarding State employees' access to Tribal lands, reservations or allotments, and § 273.182, regarding penalties for misusing funds or property);

(6) Any section in subpart I (other than § 273.194, regarding the Indian Education Committee's authority to recommend cancellation or suspension of contracts, which still applies);

(7) Any section in subpart K (other than § 273.208).

(c) The contract proposal submitted by the Tribal organization must meet the requirements in part 900 or 1000 of this chapter, in addition to those in § 273.130 except that education plans must be submitted to the BIE Director for approval in accordance with § 273.170. The requirements in part 900 or 1000 of this chapter apply to contracts and compacts with Tribal organizations, except for the provisions in §§ 900.240 through 900.256, 1000.300, and 1000.330 of this chapter concerning retrocession and reassumption of programs. If a Tribal organization retrocedes a contract, the Bureau will then contract with a State, public school district, or Indian corporation for the supplemental programs or operational support. Redesign and reallocation under either Title I contracts or Title IV compacts must be done with approval in accordance with § 900.8(g)(6) of this chapter.

### § 273.112 Who is an eligible Indian student under the Johnson-O'Malley Act?

An Indian student is eligible for benefits provided by a Johnson O'Malley contract if the student is:

(a) From age three (3) years through grade(s) twelve (12);

(b) Not enrolled in a Bureau-funded school or sectarian school (except the student is eligible if enrolled in a previously private school controlled by an Indian Tribe or Tribal organization); and

(c) Is either:

(1) At least one-fourth (¼) degree Indian blood descendant of a member of an Indian Tribe as defined in § 273.106; or

(2) A member of an Indian Tribe as defined in § 273.106.

### § 273.113 How can the funds be used under the Johnson-O'Malley Act?

An eligible entity may use the funds available under the contract to provide educational benefits to eligible Indian students to:

(a) Establish, carry out programs or expand programs in existence before the contract period that provide:

(1) Remedial instruction, career, academic, and college-readiness counseling, and cultural programs;

(2) Selected courses related to the academic and professional disciplines; or

(3) Important needs, such as school supplies and items that enable recipients to participate in curricular and extra-curricular programs; and

(b) Purchase equipment to facilitate training for professional trade skills and intensified college preparation programs.

### § 273.114 What programs may be contracted under the Johnson-O'Malley Act?

All programs contracted under this part must:

(a) Be developed and approved in full compliance with the powers and duties of the Indian Education Committee and as may be contained in the Committee's organizational documents and bylaws.

(b) Be included as a part of the education plan.

## Subpart C—Indian Education Committee

### § 273.115 Who determines the unique educational needs of eligible Indian students?

(a) When a school district to be affected by a contract(s) for the education of Indians has a local school board composed of a majority of Indians, the local school board may act as the Indian Education Committee; otherwise, the parents of Indian children may elect an Indian Education Committee from among their number or a Tribal governing body(ies) of the Indian Tribe(s) affected by the contract(s) may specify one of the following entities to serve as the Indian Education Committee:

(1) A Local Indian Committee or Committees; or

(2) An Indian Advisory School Board or Boards.

(b) The Tribal governing body(ies) of the Indian Tribe(s) affected by the contract(s) may specify one of the entities in paragraph (a)(1) or (2) of this section at its discretion if the Indian Education Committee was established prior to January 4, 1975.

**§ 273.116 Does an Indian Education Committee need to establish procedures and report to the BIE Director?**

The Indian Education Committee and its members must establish procedures under which the Committee serves. Such procedures must be set forth in the Committee's organizational documents and by-laws.

(a) Each Committee must file a copy of its organizational documents and by-laws with the BIE Director, together with a list of its officers and members.

(b) The existence of an Indian Education Committee may not limit the continuing participation of the rest of the Indian community in all aspects of programs contracted under this part.

**§ 273.117 What are the powers and duties of the Indian Education Committee?**

Consistent with the purpose of the Indian Education Committee, each such Committee is vested with the authority to undertake the activities in paragraphs (a) through (d) of this section.

(a) Participate fully in the planning, development, implementation, and evaluation of all programs, including both supplemental and operational support, conducted under a contract or contracts pursuant to this part. Such participation includes further authority to:

(1) Recommend curricula, including texts, materials, and teaching methods to be used in the contracted program or programs;

(2) Approve budget preparation and execution;

(3) Recommend criteria for employment in the program;

(4) Nominate a reasonable number of qualified prospective educational programmatic staff members from which the contractor would be required to select; and

(5) Evaluate staff performance and program results and recommend appropriate action to the contractor.

(b) Approve and disapprove all programs to be contracted under this part. All programs contracted require the prior approval of the appropriate Indian Education Committee.

(c) Secure a copy of the negotiated contract(s) that includes the program(s) approved by the Indian Education Committee.

(d) Recommend cancellation or suspension of a contract(s) under § 273.194.

**§ 273.118 Are there additional authorities an Indian Education Committee can exercise?**

The organizational papers and by-laws of the Indian Education Committee may include additional powers and duties that would permit the Committee to:

(a) Participate in negotiations concerning all contracts;

(b) Make an annual assessment of the learning needs of Indian children in the community affected;

(c) Have access to all reports, evaluations, surveys, and other program and budget related documents determined necessary by the Committee to carry out its responsibilities, subject only to the provisions of § 273.180;

(d) Request periodic reports and evaluations regarding the Indian education program;

(e) Establish a local grievance policy and procedures related to programs in the education plan;

(f) Meet regularly with the professional staff serving Indian children and with the local education agency;

(g) Hold committee meetings on a regular basis which are open to the public; and

(h) Have such additional powers as are consistent with these regulations.

## Subpart D—Education Plan

**§ 273.119 What is an education plan and what must it include?**

A prospective contractor in consultation with its Indian Education Committee(s) must formulate an education plan that contains educational objectives that adequately address the educational needs of the Indian students and assures that the contract is capable of meeting such objectives. The education plan must contain:

(a) The education programs developed and approved by the Indian Education Committee(s);

(b) Educational goals and objectives that adequately address the educational needs of the Indian students to be served by the contract;

(c) Procedures for addressing hearing grievances from Indian students, parents, guardians, community members, and Tribal representatives relating to the program(s) contracted. Such procedures must provide for adequate advance notice of the hearing;

(d) Established State standards and requirements that must be maintained in operating the contracted programs and services;

(e) A description of how the State standards and requirements will be maintained;

(f) A requirement that the contractor comply in full with the requirements concerning meaningful participation by the Indian Education Committee;

(g) A requirement that education facilities receiving funds be open to visits and consultations by the Indian Education Committee(s), Tribal representatives, Indian parents and guardians in the community, and by duly authorized representatives of the Federal and State Governments;

(h) An outline of administrative and fiscal management procedures to be used by the contractor;

(i) Justification for requesting funds for operational support. The public school district must establish in its justification that it meets the requirements given in § 273.126(b). The information given should include records of receipt of local, State, and Federal funds;

(j) Budget estimates and financial information needed to determine program costs to contract for services. This includes, but is not limited to, the following:

(1) State and district average operational cost per pupil;

(2) Other sources of Federal funding the applicant is receiving, the amount received from each, the programs being funded, and the number of eligible Indian students served by such funding;

(3) Administrative costs involved, total number of employees, and total number of Indian employees;

(4) Costs that parents normally are expected to pay for each school;

(5) Supplemental and operational funds outlined in a separate budget, by line item, to facilitate accountability; and

(6) Total number of employees for each special program and number of Indian employees for that program;

(k) The total enrollment of school or district, by age and grade level;

(l) The eligible Indian enrollment—total and classification by Tribal affiliation(s) and by age and grade level;

(m) The total number of school board members and number of Indian school board members;

(n) Government equipment needed to carry out the contract;

(o) The period of contract term requested;

(p) The signature of the authorized representative of applicant; and

(q) Written information regarding:

(1) Program goals and objectives related to the learning needs of potential target students;

(2) Procedures and methods to be used in achieving program objectives, including ways whereby parents, students and communities have been

involved in determining needs and priorities;

(3) Overall program implementation including staffing practices, parental and community involvement, evaluation of program results, and dissemination thereof; and

(4) Determination of staff and program effectiveness in meeting the stated needs of target students.

#### § 273.120 Does an education plan need to be approved by the BIE Director?

The Secretary will not enter into any contract for the education of Indians unless:

(a) The contractor has submitted an education plan to the BIE Director; and

(b) The BIE Director has determined that the education plan contains educational objectives that adequately address the educational needs of the Indian students who are to be beneficiaries of the contract, and that the contract is capable of meeting such objectives.

#### § 273.121 When does the BIE Director approve the education plan?

The BIE Director approves the education plan when a contractor submits a contract proposal for funding.

### Subpart E—Contract Proposal, Review, and Approval

#### § 273.125 How may a new contracting party request a contract under the Johnson-O'Malley Act?

Subject to the availability of appropriations, eligible entities who have not previously entered into a contract for the Johnson-O'Malley program may submit an initial contract proposal.

#### § 273.126 What proposals are eligible for contracts under the Johnson-O'Malley Act?

(a) Any proposal to contract for funding a supplemental program will be considered an eligible proposal.

(b)(1) To contract for operational support, a public school district is required to establish in the proposal that it:

(i) Cannot meet the minimum State or other applicable standards or requirements without such funds;

(ii) Has made a reasonable tax effort with a mill levy at least equal to the State average in support of educational programs;

(iii) Has fully utilized all other sources of financial aid, including all forms of State aid and Public Law 874 payments, and the State aid contribution per pupil is at least equal to the State average;

(iv) Has at least 50 percent eligible Indian enrollment;

(v) Has clearly identified the educational needs of the students intended to benefit from the contract;

(vi) Has made a good faith effort in computing State and local contributions without regard to contract funds pursuant to this part; and

(vii) Will not budget or project a deficit by using contract funds pursuant to this part.

(2) The requirements given in paragraph (b)(1) of this section do not apply to previously private schools.

#### § 273.127 Can a contract include funds to support the duties of an Indian Education Committee?

Programs developed or approved by the Indian Education Committee may, at the option of such Committee, include funds for the performance of Committee duties to include:

(a) Members' attendance at regular and special meetings, workshops and training sessions, as the Committee deems appropriate.

(b) Other reasonable expenses incurred by the Committee in performing its primary duties, including the planning, development, implementation and evaluation of the program.

#### § 273.128 How are contracts prioritized?

Priority will be given to contracts:

(a) Which would serve Indian students on or near reservations; and

(b) Where a majority of the Indian students will be members of the Tribe(s) of those reservations.

#### § 273.129 May the BIE Director reimburse a public school district for educating non-resident Indian students?

The BIE Director may consider a contract proposal to reimburse a public school district for the full per capita costs of educating Indian students who meet all of the following:

(a) Are members of recognized Indian Tribes;

(b) Do not normally reside in the State in which the school district is located; and

(c) Are residing in Federal boarding facilities for the purpose of attending public schools within the school district.

#### § 273.130 What is required in the contract proposal for funding?

A contract proposal must be in writing and contain the following:

(a) Name, address, and telephone number of the proposed contractor;

(b) Name, address, and telephone number of the Tribe(s) to be served by the contract;

(c) Descriptive narrative of the contract proposal;

(d) The education plan approved by the Indian Education Committee;

(e) A separate budget outlining the Johnson-O'Malley funds for operational support and/or supplemental programs, by line item, to facilitate accountability;

(f) A clear identification of what educational needs the Johnson-O'Malley funds requested for operational support will address; and

(g) Documentation of the requirements for operational support in § 273.126(b)(1).

#### § 273.131 What is required for a Tribal request for a contract?

(a) An Indian Tribal governing body that desires that a contract be entered into with a Tribal organization must notify the BIE Director no later than February 1 preceding the school year for the contract.

(b) If the BIE Director does not receive the Tribal governing body's notice by the date in paragraph (a) of this section, the BIE Director may contract with the State, public school district, or Indian corporation under this part.

(c) The Tribal governing body has the option to contract with the State, public school district, or Indian corporation.

#### § 273.132 Who will review and approve the contract proposal?

Each approving official within each Bureau Region is authorized to approve the contract(s) submitted by the State, public school district, or Indian corporation to provide services to Indian children within that approving official's region.

#### § 273.133 What is the process for review and decision?

Upon receiving a contract proposal, the approving official will:

(a) Notify the applicant in writing that the contract proposal has been received, within 14 days after receiving the contract proposal.

(b) Review the contract proposal for completeness and request, within 20 days after receiving the contract proposal, any additional information from the applicant which will be needed to reach a decision.

(c) On receiving the contract proposal for operational support, make a formal written determination and findings supporting the need for such funds. In arriving at such a determination, the approving official must be assured that each local education agency has made a good faith effort in computing State and local contributions without regard to funds requested.

(d) Assess the completed contract proposal to determine if the proposal is feasible and if the proposal complies

with the appropriate requirements of the Johnson-O'Malley Act and this part.

(e) Approve or disapprove the contract proposal after fully reviewing and assessing the application and any additional information submitted by the applicant.

(f) Promptly notify the applicant in writing of the decision to approve or disapprove the contract proposal.

(g) If the contract proposal is disapproved, the notice will give the reasons for disapproval and the applicant's right to appeal pursuant to subpart K of this part.

#### § 273.134 What is the timeframe for contract decision?

The approving official will approve or disapprove the contract proposal within 90 days after the approving official receives the contract proposal and any additional information requested. The approving official may extend the 90-day deadline after obtaining the written consent of the applicant.

#### § 273.135 Who will negotiate the contract?

After the approving official has approved the contract proposal, the awarding official, assisted by Bureau education personnel, will negotiate the contract.

## Subpart F—Funding Provisions

#### § 273.140 What is the funding formula to distribute funds?

Funds will be distributed to contractors based upon a funding formula. The funding formula is calculated using data obtained by the Department of Education from the previous year.

(a) The funding formula to determine the funding to be distributed to each contractor is the Weight Factor multiplied by the number of eligible Indian students, where the Weight Factor is:

(1) The State average cost per pupil count divided by the national average cost per pupil count; or

(2) A default weight factor of 1.3, if the calculation in paragraph (a)(1) of this section results in a weight factor of less than 1.3.

(b) Notwithstanding any other provisions of the law, Federal funds appropriated for the purpose will be allotted pro rata in accordance with the distribution method outlined in this formula.

(c) For four fiscal years following the date of enactment of the JOM Modernization Act (December 31, 2018):

(1) Existing contractors will not receive an amount that is less than the amount received for Fiscal Year 2018 (the fiscal year preceding the date of enactment of the JOM Modernization Act), unless:

(i) The existing contractor fails to submit a complete annual report;

(ii) The Secretary has found that the existing contractor has violated the terms of a contract under this part; or

(iii) The number of eligible Indian students reported in the annual report has decreased below the number of eligible Indian students served by the existing contractor in Fiscal Year 2018 (the fiscal year preceding the date of enactment of the JOM Modernization Act).

(2) Paragraph (c)(1)(iii) of this section notwithstanding, no existing contractor will receive an amount of funding per eligible Indian student that is less than the amount of funding per eligible Indian student that the existing contractor received for Fiscal Year 2018 (the fiscal year preceding the enactment of the JOM Modernization Act).

(d) Beginning December 31, 2022 (4 years after the December 31, 2018, date of enactment of the JOM Modernization Act), no contracting party will receive for a fiscal year more than a 10 percent decrease in funding per eligible Indian student from the previous year.

#### § 273.141 Will funding be prorated?

All monies provided by a contract may be expended only for the benefit of eligible Indian students. Where students other than eligible Indian students participate in programs contracted, money expended under the contract will be prorated to cover the participation of only the eligible Indian students, except where the participation of non-eligible students is so incidental as to be *de minimis.* Such *de minimis* participation must be approved by the Indian Education Committee.

#### § 273.142 Are advance payments on a contract allowed under the Johnson-O'Malley Act?

Payments to States, public school districts and Indian corporations will be made in advance or by way of reimbursement and in such installments and on such conditions as the BIE Director deems necessary to carry out the purposes of the Act.

#### § 273.143 Must other Federal, State, and local funds be used?

(a) Contract funds under this part supplement, and do not supplant, Federal, State and local funds. Each contract must require that the use of these contract funds will not result in a decrease in State, local, or Federal funds that would be made available for Indian students if there were no funds under this part.

(b) State, local and other Federal funds must be used to provide comparable services to non-Indian and Indian students prior to the use of contract funds.

(c) Except as hereinafter provided, the school lunch program of the United States Department of Agriculture (USDA) constitutes the only federally funded school lunch program for Indian students in public schools. Where Indian students do not qualify to receive free lunches under the National School Lunch Program of USDA because such students are non-needy and do not meet the family size and income guidelines for free USDA lunches, plans prepared pursuant to § 273.119 may provide, to the extent of funding available for Johnson-O'Malley programs, for free school lunches for those students who do not qualify for free USDA lunches but who are eligible Indian students under § 273.112.

#### § 273.144 Can Johnson-O'Malley funds be used for capital outlay or debt retirement?

In no instance may contract funds provided under this part be used as payment for capital outlay or debt retirement expenses; except that, such costs are allowable if they are considered to be a part of the full per capita cost of educating eligible Indian students who reside in Federal boarding facilities for the purpose of attending public schools.

#### § 273.145 How can funds be used for subcontractors?

The Bureau may make contract funds under the Johnson-O'Malley Act available directly only to Tribal organizations, States, public school districts, and Indian corporations. However, Tribal organizations, States, public school districts, and Indian corporations receiving funds may use the funds to subcontract for necessary services with any appropriate individual, organization, or corporation.

#### § 273.146 Can funds be used outside of schools?

Nothing in this part prevents the BIE Director from contracting with Indian corporations who will expend all or part of the funds in places other than the public or private schools in the community affected.

#### § 273.147 Are there requirements of equal quality and standard of education?

Contracts with State education agencies or public school districts receiving funds must provide educational opportunities to all Indian children within that school district on the same terms and under the same conditions that apply to all other

students as long as it will not affect the rights of eligible Indian children to receive benefits from the supplemental programs. Public school districts receiving funds must ensure that Indian children receive all aid from the State, and proper sources other than the Johnson-O'Malley contract, which other schools in the district and other school districts similarly situated in the State are entitled to receive. In no instance may there be discrimination against Indians or the schools enrolling Indians.

## Subpart G—Annual Reporting Requirements

### § 273.150 Does an existing contracting party need to submit any reports?

Each existing contracting party must submit an annual report based on the JOM funding received and other contract-related reports as required by the BIE Director.

### § 273.151 What information must the existing contracting party provide in the annual report?

Existing contracting parties who receive Johnson-O'Malley funding must submit the following information in the annual report:

(a) General information about the contractor;

(b) General information about the number and names of the schools;

(c) The number of eligible Indian students who were served using amounts allocated under the contract during the previous fiscal year;

(d) An accounting of the amounts and purposes for which the contract funds were expended;

(e) Information on the conduct of the program;

(f) A quantitative evaluation of the effectiveness of the contract program in meeting the stated objectives contained in the educational plans; and

(g) A complete accounting of actual receipts at the end of the fiscal year for which the contract funds were expended.

### § 273.152 When is the annual report due?

All existing contracting parties must submit the annual report to the BIE Director on or before September 15 of each year and covering the previous academic year.

### § 273.153 Who else needs a copy of the annual report?

All existing contracting parties must send copies of the annual reports to the Indian Education Committee(s) and to the Tribe(s) under the contract at the same time as the reports are sent to the BIE Director.

### § 273.154 What will happen if the existing contracting party fails to submit an annual report?

Any existing contracting party that fails to submit the annual report will receive no amounts under this Act for the fiscal year following the academic year for which the annual report should have been submitted.

### § 273.155 How will the existing contracting party know when reports are due?

The BIE Director will provide existing contracting parties with timely information relating to:

(a) Initial and final reporting deadlines; and

(b) The consequences of failure to comply.

### § 273.156 Will technical assistance be available to comply with the annual reporting requirements?

The Bureau will provide technical assistance and training on compliance with the reporting requirements to existing contracting parties. The Bureau will provide such technical assistance and training on an ongoing and timely basis.

### § 273.157 What is the process for requesting technical assistance and/or training?

(a) Existing contracting parties may request technical assistance and/or training by addressing the request in writing to the BIE Director.

(b) The BIE Director, or designee, will acknowledge receipt of a request for technical assistance and/or training.

(c) No later than 30 days after receiving the original request, the BIE Director will identify a point of contact and begin the process of providing technical assistance and/or training. The BIE Director and requesting contracting party will work together to identify the form, substance, and timeline for the assistance.

### § 273.158 When should the existing contracting party request technical assistance and/or training?

The existing contracting party is encouraged to request technical assistance and/or training before annual reporting requirements are due in order to avoid the consequences for failure to comply.

### § 273.159 If the existing contracting party reported a decrease of eligible Indian students, how will funding be reduced?

Except as provided in § 273.140(c) and (d) of this part, for four fiscal years following the date of enactment of the JOM Modernization Act (December 31, 2018) an existing contracting party's funding will not be reduced to a level that is less than the amount of funding per eligible Indian student that the existing contracting party received for Fiscal Year 2017 (the fiscal year preceding the date of enactment of the Johnson-O'Malley Modernization Act).

### § 273.160 Can the Secretary apply a ratable reduction in Johnson-O'Malley program funding?

If the funds available under the Johnson-O'Malley Act for a fiscal year are insufficient to pay the full amounts that all existing contracting parties are eligible to receive under for the fiscal year, the Secretary will ratably reduce those amounts for the fiscal year.

### § 273.161 What is the maximum decrease in funding allowed?

Beginning December 31, 2022 (4 years after the December 31, 2018, date of enactment of the JOM Modernization Act), no contracting party may receive for a fiscal year more than a 10 percent decrease in funding per eligible Indian student from the previous fiscal year.

## Subpart H—General Contract Requirements

### § 273.170 What special program provisions must be included in the contract?

All contracts must contain the following:

(a) The education plan containing the education programs approved by the Indian Education Committee(s);

(b) Any formal written determination and findings made by the BIE Director supporting the need for operational support as required by § 273.133(c); and

(c) A provision that State, local, and other Federal Funds will be used to provide comparable services to non-Indian and Indian students prior to the use of Johnson-O'Malley funds for the provision of supplementary program services to Indian children, as required in § 273.143(b).

(d) Public Laws 102–477 and 93–638 Self-Governance Tribes must submit their education plan as required by paragraph (a) of this section to the BIE Director for review. The BIE Director will forward copies of the education plans to the 477 office or the Office of Tribal Self-Governance, as appropriate.

### § 273.171 Can a contractor make changes to a program approved by an Indian Education Committee?

No program contracted may be changed from the time of its original approval by the Indian Education Committee to the end of the contract period without the prior approval, in writing, of the Indian Education Committee.

**§ 273.172 May State employees enter Tribal lands, reservations, or allotments?**

In those States where Public Law 83–280 (18 U.S.C. 1162 and 28 U.S.C. 1360) do not confer civil jurisdiction, State employees may be permitted to enter upon Indian Tribal lands, reservations, or allotments in an official capacity in connection with a contract under this part if the duly constituted governing body of the Tribe adopts a resolution of consent for the following purposes:

(a) Inspecting school conditions in the public schools located on Indian Tribal lands, reservations, or allotments; or

(b) Enforcing State compulsory school attendance laws against Indian children, parents or persons standing in *loco parentis.*

**§ 273.173 What procurement requirements apply to contracts?**

States, public school districts, or Indian corporations wanting to contract with the Bureau must comply with the applicable requirements in the Federal Acquisition Regulations at 48 CFR part 1.

**§ 273.174 Are there any Indian preference requirements for contracts and subcontracts?**

(a) Any contract made with a State, public school district, or Indian corporation for the benefit of Indian students must require that the contractor, to the greatest extent feasible:

(1) Give preference in and opportunities for employment and training to Indians in connection with the administration of such contract(s); and

(2) Give preference in the award of subcontracts to Indian organizations and Indian-owned economic enterprises.

(b) All subcontractors employed by the contractor must, to the extent possible, give preference to Indians for employment and training and must include in their bid submission a plan to achieve maximum use of Indian personnel.

**§ 273.175 How will a Tribal governing body apply Indian preference requirements for contracts and subcontracts?**

A Tribal governing body may develop its own Indian preference requirements for its contracts and subcontracts.

**§ 273.176 May there be a use and transfer of Government property?**

(a) The use of Government-owned facilities for school purposes may be authorized when not needed for Government activities. Transfer of title to such facilities (except land) may be arranged under the provisions of the Act of June 4, 1953 (67 Stat. 41) subject to the approval of the Tribal government if such property is located on a reservation.

(b) In carrying out a contract, the BIE Director may, with the approval of the Tribal government, permit a contractor to use existing buildings, facilities, and related equipment and other personal property owned by the Bureau within its jurisdiction under terms and conditions agreed upon for their use and maintenance. The property at the time of transfer must conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651). Use of Government property is subject to the following conditions:

(1) When nonexpendable Government property is turned over to public school authorities or Indian corporations under a use permit, the permittee must insure such property against damage by flood, fire, rain, windstorm, vandalism, snow, and tornado in amounts and with companies satisfactory to the Federal officer in charge of the property. In case of damage or destruction of the property by flood, fire, rain, windstorm, vandalism, snow, or tornado, the insurance money collected may be expended only for repair or replacement of property. Otherwise, insurance proceeds must be paid to the Bureau.

(2) If the public school authority is self-insured and can present evidence of that fact to the BIE Director, insurance for lost or damaged property will not be required. However, the public school authority will be responsible for replacement of such lost or damaged property at no cost to the Government or for paying the Government enough to replace the property.

(3) The permittee will maintain the property in a reasonable state of repair consistent with the intended use and educational purposes.

(c) The contractor may have access to existing Bureau records needed to carry out a contract under this part, as follows:

(1) The Bureau will make the records available subject to the provisions of the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (Pub. L. 93–502, 88 Stat. 1561).

(2) The contractor may have access to needed Bureau records at the appropriate Bureau office for review and making copies of selected records.

(3) If the contractor needs a small volume of identifiable Bureau records, the Bureau will furnish the copies to the contractor.

**§ 273.177 Who will provide liability and motor vehicle insurance?**

(a) States, school districts, and Indian corporations must obtain public liability insurance under contracts entered into with the Bureau, unless the Bureau approving official determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk.

(b) Notwithstanding paragraph (a) of this section, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles must contain a provision requiring the State, school district, or Indian corporation to provide liability insurance, regardless of how small the risk.

(c) If the public school authority is self-insured and can present evidence of that fact to the approving official, liability and motor vehicle insurance will not be required.

**§ 273.178 Are there contract recordkeeping requirements?**

A contractor will be required to maintain a recordkeeping system that allows the Bureau to meet its legal records program requirements under the Federal Records Act (44 U.S.C. 3101 *et seq.*). Such a record system must:

(a) Fully reflect all financial transactions involving the receipt and expenditure of funds provided under the contract in a manner that will provide accurate, current and complete disclosure of financial status; correlation with budget or allowable cost schedules; and clear audit facilitating data;

(b) Reflect the amounts and sources of funds other than Bureau contract funds that may be included in the operation of the contract;

(c) Provide for the creation, maintenance, and safeguarding of records of lasting value, including those involving individual rights, such as permanent records and transcripts; and

(d) Provide for the orderly retirement of permanent records in accordance with Department Records Schedule (Bureau of Indian Affairs (075)), when there is no established system set up by the State, public school district, or Indian corporation.

**§ 273.179 Are there contract audit and inspection requirements?**

(a) During the term of a contract and for three (3) years after the project or undertaking is completed, the BIE Director, or any duly authorized representative, must have access, for audit and examination purposes, to any

of the contractor's books, documents, papers, and records that, in the BIE Director's or representative's opinion, may be related or pertinent to the contract or any subcontract.

(b) The contractor is responsible for maintaining invoices, purchase orders, canceled checks, balance sheets and all other documents relating to financial transactions in a manner that will facilitate auditing. The contractor is responsible for maintaining files of correspondence and other documents relating to the administration of the contract, properly separated from general records or cross-referenced to general files.

(c) The contractor receiving funds is responsible for contract compliance.

(d) The records involved in any claim or expenditure that has been questioned must be further maintained until a final determination is made on the questioned expenditures.

(e) The contractor and local school officials must make available to each member of the Indian Education Committee and to members of the public upon request: all contracts, non-confidential records concerning students served by the program, reports, budgets, budget estimates, plans, and other documents pertaining to administration of the contract program in the preceding and current years. The contractor or local school official must provide, free of charge, single copies of such documents upon request.

#### § 273.180 Are there disclosure requirements for contracts?

(a) Unless otherwise required by law, the Bureau may not place restrictions on contractors that will limit public access to the contractor's records except when records must remain confidential.

(b) A contractor must make all reports and information concerning the contract available to the Indian people that the contract affects. Reports and information may be withheld from disclosure only when both of the following conditions exist:

(1) The reports and information fall within one of the following exempt categories:

(i) Specifically required by statute or Executive Order to be kept secret;

(ii) Commercial or financial information obtained from a person or firm on a privileged or confidential basis; or

(iii) Personnel, medical, social, psychological, academic achievement and similar files where disclosure would be a clearly unwarranted invasion of personal privacy; and

(2) Disclosure is prohibited by statute or Executive Order or sound grounds exist for using the exemption given in paragraph (b)(1) of this section.

(c) A request to inspect or copy reports and information must be in writing and reasonably describe the reports and information requested. The request may be delivered or mailed to the contractor. Within 10 working days after receiving the request, the contractor must determine whether to grant or deny the request and immediately notify the request of the determination.

(d) The time limit for making a determination may be extended up to an additional 10 working days for good reason. The requester must be notified in writing of the extension, reasons for the extension, and date on which the determination is expected to be made.

#### § 273.181 Are there Privacy Act requirements for contracts?

(a) When a contractor operates a system of records to accomplish a Bureau function, the contractor must comply with subpart K of 43 CFR part 2 which implements the Privacy Act (5 U.S.C. 552a). Examples of the contractor's responsibilities are:

(1) To continue maintaining systems of records declared by the Bureau to be subject to the Privacy Act;

(2) To make such records available to individuals involved;

(3) To disclose an individual's record to third parties only after receiving permission from the individual to whom the record pertains, and in accordance with the exceptions listed in 43 CFR 2.231;

(4) To establish a procedure to account for access, disclosures, denials, and amendments to records; and

(5) To provide safeguards for the protection of the records.

(b) The contractor may not, without prior approval of the Bureau:

(1) Discontinue or alter any established systems of records;

(2) Deny requests for notification or access of records; or

(3) Approve or deny requests for amendments of records.

(c) The contractor may not establish a new system of records without prior approval of the Department of Interior and the Office of Management and Budget.

(d) The contractor may not collect information about an individual unless it is relevant or necessary to accomplish a purpose of the Bureau as required by statute or Executive Order.

(e) The contractor is subject to 5 U.S.C. 552a(i)(1), which imposes criminal penalties for knowingly and willfully disclosing a record about an individual without the written request or consent of that individual unless disclosure is permitted under one of the exceptions.

#### § 273.182 Are there penalties for misusing funds or property?

If any officer, director, agent, or employee of, or connected with, any contractor or subcontractor under this part embezzles, willfully misapplies, steals, or obtains by fraud any of the funds or property connected with the contract or subcontract, he or she will be subject to the following penalties:

(a) If the amount involved does not exceed $100, person(s) will be fined not more than $1,000 or imprisoned not more than one (1) year, or both.

(b) If the amount involved exceeds $100, person(s) will be fined not more than $10,000 or imprisoned for not more than two (2) years, or both.

#### § 273.183 Can the Secretary investigate a potential Civil Rights Act violation?

In no instance may there be discrimination against Indians or schools enrolling Indians. When informed by a complainant or through its own discovery that a possible violation of title VI of the Civil Rights Act of 1964 exists within a State school district receiving funds, the Secretary will, in accordance with Federal requirements, notify the Department of Education of the possible violation. The Department Education will conduct an investigation into the matters alleged. If the report of the investigation conducted by the Department of Education discloses a failure or threatened failure to comply with this part, and if the non-compliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to contract or to continue financial assistance under the Johnson-O'Malley Act or by any other means authorized by law.

### Subpart I—Contract Renewal, Revisions, and Cancellations

#### § 273.191 How may a contract be renewed for Johnson-O'Malley funding?

An awarding official will notify the existing contracting party in advance of the contract's expiration and ask if the existing contracting party wants to renew the contract. The renewal must be in writing from the existing contracting party and the awarding official.

#### § 273.192 What is required to renew a contract?

(a) The existing contracting party seeking to renew a contract will submit to the awarding official:

(1) A written request to renew;

(2) The current education plan approved by the Indian Education Committee, if expired;

(3) A scope of work; and

(4) A budget outlining the Johnson-O'Malley funds for operational support and/or supplemental programs, by line item, to facilitate accountability.

(b) The awarding official will send the existing contracting party an acknowledgment letter and specify if any information is required to complete renewal package.

(c) The approving official will approve or disapprove a renewal within 90 days after the approving official receives the renewal and any additional information requested. The approving official may extend the 90-day deadline after obtaining the written consent of the existing contracting party.

#### § 273.193 May a contract be revised or amended?

Any contract may be revised or amended as deemed necessary to carry out the purposes of the program being contracted.

(a) A contractor may submit a written request for a revision or amendment of a contract to the awarding official.

(b) The written approval of the Indian Education Committee is required if the contract revision or amendment will alter a program that has been approved by the Indian Education Committee.

#### § 273.194 Does the Indian Education Committee have authority to cancel contracts?

The Indian Education Committee may recommend to the BIE Director, through the appropriate awarding official, cancellation or suspension of a contract(s) that contains the program(s) approved by the Indian Education Committee, if the contractor fails to permit such Committee to exercise its powers and duties.

#### § 273.195 May a contract be cancelled for cause?

(a) Any contract may be cancelled for cause when the contractor fails to perform the work called for under the contract or fails to permit an Indian Education Committee to perform its duties.

(b) Before cancelling the contract, the BIE Director will provide the contractor with written notice, including:

(1) The reasons why the Bureau is considering cancelling the contract; and

(2) The contractor will be given an opportunity to bring its work up to an acceptable level.

(c) If the contractor does not overcome the deficiencies in its contract performance, the Bureau will cancel the contract for cause. The Bureau will notify the contractor, in writing, of the cancellation. The notice will give the reasons for the cancellation and the right of the contractor to appeal under subpart K of this part.

(d) When a contract is cancelled for cause, the Bureau will attempt to perform the work by another contract.

(e) Any contractor that has a contract cancelled for cause must demonstrate that the cause(s) that led to the cancellation have been remedied before it will be considered for another contract.

## Subpart J—Responsibility and Accountability

#### § 273.201 What is required for the Secretary to meet his or her reporting responsibilities?

(a) The Secretary has the following reporting responsibilities to the Committee on Indian Affairs in the Senate; the Subcommittee on Interior, Environment, and Related Agencies of the Committee on Appropriations of the Senate; the Subcommittee on Indian, Insular, and Alaska Native Affairs of the Committee on Natural Resources of the House of Representatives; and the Subcommittee on Interior, Environment, and Related Agencies of the Committee on Appropriations of the House of Representatives:

(1) In order to provide information about the Johnson-O'Malley Program, the Bureau must obtain from all existing contracting parties the most recent determination of the number of eligible Indian students served by each contracting party.

(2) The Bureau will make recommendations on appropriate funding levels for the program based on such determination.

(3) The Bureau will make an assessment of the contracts under this Act.

(b) The Bureau will make such reports as described in paragraph (a) of this section publically available.

#### § 273.202 Does this part include an information collection?

The collections of information in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–0193. Responses is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

## Subpart K—Appeals

#### § 273.206 May a contract be appealed?

(a) A contractor may appeal:

(1) An adverse decision or action of the Bureau regarding a contract; or

(2) A decision to cancel a contract for cause.

(b) The Secretary encourages contractors to seek all means of dispute resolution before a formal appeal.

#### § 273.207 How does a contractor request dispute resolution?

The contractor may request dispute resolution in writing to the BIE Director.

(a) The Bureau has in place an alternative dispute resolution (ADR) process.

(1) The ADR process is intended to be a supplement to, and not a replacement for, the normal appeal process.

(2) Participation as a complainant in the ADR process is voluntary.

(3) Should a contractor participate in an ADR process, the pre-complaint process may extend to 90 days.

(b) The ADR process may result in an informal resolution of the complaint;

(c) If the ADR process does not result in an informal resolution of the complaint, the contractor still has the right to continue to pursue an appeal.

#### § 273.208 How does a Tribal organization request an appeal?

A Tribal organization may request an appeal pursuant to part 900 or 1000 of this chapter, as applicable.

#### § 273.209 How does a State, public school district, or an Indian corporation request an appeal?

The State, public school district, or an Indian corporation may request an appeal by filing an appeal with the Civilian Board of Contract Appeals under the Contract Disputes Act, 41 U.S.C. 7101–7109, no later than 90 calendar days after the date the contractor receives the decision.

Dated: December 12, 2019.

**Tara Sweeney,**

*Assistant Secretary—Indian Affairs.*

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